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U.S. DISTRICT COURT
DISTRICT OF KANSAS

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RALPH L. DELOACH

BY *[Signature]* DEPUTY
AT TOPEKA, KS.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)
----- Plaintiff,))
vs.)
WILLIAM L. PICKARD and)
CLYDE APPERSON,)
----- Defendant.)

Case No. 00-40104-01/02

VOLUME I
TRANSCRIPT OF TESTIMONY OF
CARL NICHOLS
UPON CROSS-EXAMINATION BY MR. BENNETT
HAD DURING THE JURY TRIAL
BEFORE
HONORABLE RICHARD D. ROGERS
and a jury of 12
on
March 3, 2003

APPEARANCES:

For the Government: Mr. Gregory G. Hough
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For the Defendant: Mr. Mark Bennett
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W I T N E S S

ON BEHALF OF PLAINTIFF: PAGE

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Cross-Examination by Mr. Bennett 3

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CARL NICHOLS,

called as a witness on behalf of the Plaintiff,
was previously sworn, and testified upon
cross-examination by Mr. Benett as follows:

CROSS-EXAMINATION

BY MR. BENNETT:

Q. Agent Nichols, in your-- early on in your
direct examination in your response to one of
Mr. Hough's questions, you have indicated, I
believe, that the-- in the course of your
investigation, the DEA generated a list from
files maintained by them relating to LSD and ET
traffickers, I think was generally what you
said. Do you recall that?

A. Yeah, generally, that's what formed the basis
of my knowledge about the LSD and ergotamine
tartrate organization.

Q. All right, and in that, you indicated that-- or
in that testimony you indicated that it
produced some names or some groups of people
that had a history of being involved in that
type activity. Is that correct?

A. Yes.

Q. You didn't find Mr. Apperson's name in those
files, did you?

1 A. No, but I did find Mr. Pickard's name.

2 Q. All right, but you didn't find Apperson's name?

3 A. I did not.

4 Q. Now, you also indicated-- early in your
5 testimony you recited some rules, I believe is
6 the way you put it, that the DEA had with
7 regards to dealing with informants or
8 confidential sources. Do you recall that
9 testimony?

10 A. Yes.

11 Q. And can you tell us what the purpose-- what
12 your understanding of the purpose was for those
13 rules that you told us about?

14 A. Well, the purpose is to, first of all, find out
15 and classify what type of an informant the
16 agency might be talking to. Secondly would be,
17 basically, guidelines for how to deal with an
18 informant, what things need to be done, how
19 they need to be debriefed, what type of reports
20 need to be generated, what type of background
21 needs to be done on the informant or on the
22 person who wants to cooperate before they are
23 established as an informant.

24 Q. All right, and if I understood your testimony,
25 in the course of doing that, according to my

1 notes, you said that there's an assessment done
2 of the informant on paper. Is that right?

3 A. That's true.

4 Q. Was there an assessment done on paper of Mr.
5 Skinner?

6 A. Yes, there was.

7 Q. Do you have that assessment?

8 A. It is in the confidential source file, and I
9 believe that's something that has been
10 presented to the Court in camera, and I believe
11 that, through Mr. Hough, you had an opportunity
12 to review it.

13 MR. BENNETT: Judge, I would ask that
14 we be provided with a copy of that assessment.
15 The only thing that I was allowed to have a
16 copy of out of the confidential source file was
17 the confidential source agreement, which has
18 been marked as an exhibit, but the assessment I
19 was not allowed to have.

20 MR. HOUGH: Judge, we made it
21 available, and as the Rule requires, we make it
22 available, and individual copies are not
23 required under the Rule. The Court has
24 previously visited that and held that providing
25 counsel with their own individual copies was

1 not necessary. We have fulfilled our discovery
2 obligation in making it available to both
3 counsel.

4 MR. RORK: Judge, on behalf of Mr.
5 Pickard, I would just indicate that you made a
6 different file that we couldn't have copies of
7 unrelated to this one, and I've never seen this
8 assessment. It hasn't been made available to
9 me.

10 MR. BENNETT: Judge, I don't want to
11 make a speech. I don't know if it's
12 appropriate to respond. Maybe we ought to
13 approach the bench.

14 THE COURT: I think so, yes.

15 (THEREUPON, the following proceedings
16 were held at the bench and outside of the
17 hearing of the jury.)

18 MR. BENNETT: Judge, I would
19 respectfully submit to the Court that that
20 assessment is something that goes to
21 credibility of the witness, and I think should
22 be-- a copy should be provided to us. We would
23 ask for a copy of it. I've looked at it. Let
24 me restate that. I don't recall looking at the
25 assessment of this particular witness. There

1 was a written assessment in there with regards
2 to, oh, the lady that got the \$14,000.

3 MR. RORK: Debra Harlow.

4 MR. BENNETT: Debra Harlow, but I
5 don't recall any written assessment of this
6 witness. I think it's certainly relevant to
7 credibility. I may or may not decide that I
8 want to offer it as an exhibit, but I would ask
9 that we would be provided with a copy of it.

10 MR. HOUGH: Pursuant to the Court's
11 prior orders, we made it available in our
12 office. It is not impeaching. In fact,
13 Skinner's CI file the Court viewed in camera,
14 and we made it available in our office, the
15 documents that the witness has just referred
16 to, as well as all the matters in that CI file,
17 so we have fulfilled our obligation under the
18 rule; and in addition to that, there's no
19 requirement for copies. Additionally, DEA regs
20 prohibit dissemination of the documents in the
21 CI file absent the consent of the Chief
22 Counsel. The regs, the CFRs, don't allow that.
23 So for those reasons, we believe the
24 defendant's objection should be overruled and
25 denied.

1 MR. RORK: Judge, I would just like
2 to look at it at a break. I don't want to take
3 it away from Mr. Bennett, and if you want to
4 get a copy, fine. I looked at a CI file about
5 18 inches thick, and I recall no assessment.
6 That's the first I heard of one for him, Judge.

7 MR. HOUGH: Judge, it's in my office,
8 and if they would like to look at it once again
9 at the end of the day, they are more than
10 welcome to do that.

11 MR. BENNETT: Judge, this came in--
12 this testimony about this assessment came in on
13 direct examination and was, in effect,
14 proffered by the government, and now they've
15 put the testimony in about an assessment, but
16 they say it's-- it can't be used, and I think
17 they have opened the door when they-- they
18 brought this out from the witness. It's not
19 something Mr. Rork brought out, not something I
20 brought out, came out in the first 20 minutes
21 or 30 minutes of this witness's testimony on
22 direct.

23 MR. HOUGH: Judge, that's painting
24 with an awfully broad brush. I asked him: How
25 do you handle a CI? And the witness testified,

1 "Among other things, we do an assessment."
2 "Was one done here?" "Yeah." And then I moved
3 on. So the specifics and the particulars of
4 the assessment are not a matter of record, and
5 again, we have made it available. If counsel
6 would like to come down after the break and
7 look at the CI file again, they're welcome to
8 do that.

9 THE COURT: Well, we've talked about
10 it. Give it to them. I'll order you to give
11 it to them. Let's move on, on these things.
12 Give them as many copies as they want.

13 (THEREUPON, the bench conference was
14 concluded and the following proceedings were
15 held within hearing of the jury.)

16 Q. (By Mr. Bennett) Mr. Nichols, I'll come back
17 to that question and go a little further with
18 it later on, and go on to some other questions
19 now. Okay?

20 A. That's fine.

21 Q. Now, the confidential source agreement-- or
22 there was a confidential source agreement
23 signed with Mr. Skinner, between Skinner and
24 the government. Correct?

25 A. Yes, there was.

1 MR. BENNETT: Do you have that
2 confidential source agreement? I don't know
3 the exhibit number.

4 MR. RORK: 801.

5 MR. BENNETT: 801 I think maybe.

6 MR. RORK: Yeah, it is 801.

7 MR. BENNETT: That's it. Thank you.
8 Judge, can I approach?

9 THE COURT: Yes, you may at any time.

10 Q. (By Mr. Bennett) Agent Nichols, I'm going to
11 show you what has been marked as Government's
12 Exhibit 801 and ask you, sir, if you recognize
13 that.

14 A. I do.

15 Q. And is that the confidential source agreement
16 that was entered into between the government
17 and Mr. Skinner?

18 A. It's a copy of it, yes.

19 Q. All right. It's not the original but it's an
20 exact copy, is it not?

21 A. It's a copy, yes.

22 Q. All right. And who were the parties that
23 signed that agreement?

24 A. Gordon Todd Skinner, also signed it as Gordon
25 Todd Rothe Skinner, Nancy L. Carter.

1 Q. Who is Nancy Carter?

2 A. She was an intelligence analyst, and she was
3 present during the debriefings of Mr. Skinner
4 on October 17th and 18th.

5 Q. In California?

6 A. In California.

7 Q. All right, then, go ahead.

8 A. And myself.

9 Q. All right, and that is dated-- are the
10 signatures dated?

11 A. Yes, they are.

12 Q. What are the signatures-- or the dates beside
13 the signatures?

14 A. October 18th, 2000.

15 Q. All three of them?

16 A. All three of them.

17 Q. And in that confidential source agreement, is
18 there a provision that requires, or is part of
19 the agreement that the informant or the source
20 will be completely truthful?

21 A. Well, paragraph No. 1 says, "I will provide
22 truthful information at all times."

23 Q. All right, and then is there also a provision
24 in the agreement about committing illegal acts?

25 A. Yes, there is.

1 Q. All right. What does that provision read?

2 A. It says, paragraph No. 3, "I will abide by
3 instructions given to me, will not take any
4 independent action, and I will not engage in
5 any unlawful acts for which I may be subject to
6 prosecution except as specifically authorized
7 by representatives of the DEA."

8 Q. All right. In the course of Mr. Skinner's
9 acting as a confidential source for the DEA or
10 the government, you subsequently determined,
11 did you not, that he did not provide truthful
12 information at all times he was working as a
13 source or an informant?

14 A. Well, more specifically, he concealed the fact
15 he had ergocristine.

16 Q. All right, and he-- you determined that not
17 only did he conceal it, but he lied about it,
18 didn't he?

19 A. Yeah, you could say that.

20 Q. Well, didn't-- you at one point ask him, did
21 you not, "Are you concealing or do you have any
22 more ergocristine?"

23 A. I believe I did on January 22nd when he brought
24 the original 22-- 24 cans to me in Oakland,
25 California.

1 Q. You asked him that question prior to him
2 bringing that to you, did you not? Didn't you
3 ask him on--

4 A. I--

5 Q. Excuse me.

6 A. I probably asked him on October 31st--

7 Q. Right.

8 A. -- when we were at the lab and when we found
9 the ergocristine in the lab if he had any
10 additional, and I may have asked him-- I may
11 have asked him on the 27th on the walk-through
12 that, did he have any additional. I didn't
13 want to see it, but yes or no, did he have any
14 additional ergocristine or ET.

15 Q. On the 27th, you believe you asked him, and his
16 response was what?

17 A. On the 27th, I believe it was yes, he did, and
18 it was part of the lab.

19 Q. All right. And then on October the 31st when
20 the search warrant was served, you found, what,
21 19 and a half cans, counting the half a can
22 that was-- you had previously seen?

23 A. No.

24 Q. Thirteen and a half? You tell me.

25 A. I believe we found 13. We may have found-- we

1 found 14 cans. We found 13 full cans plus the
2 one can that was partially full.

3 Q. All right. And on that occasion, on the 31st,
4 you and other agents questioned Mr. Skinner to
5 determine if there were additional containers
6 of ergocristine in his possession, did you not?

7 A. We did, because there-- we were processing the
8 lab, and at some point during us processing the
9 lab, Mr. Skinner went up to one of the other
10 agents and said something, "When they get done
11 processing the lab, I have a surprise." When
12 we were done processing the lab, the agent
13 brought me and others over, and I don't
14 remember who else was with me, and Mr. Skinner
15 said he had ET. He took us up into the storage
16 shed, into the Quonset hut, and underneath a
17 box of tile was a crate, a wooden crate, and
18 inside that crate was ten cans of ergocristine.

19 Q. Okay, but then to cut to the chase, he told you
20 he had and showed you these ten cans, but then
21 you asked him, did you not, "Do you have any
22 more?"

23 A. Absolutely.

24 Q. And what was his answer?

25 A. I believe it was no.

1 Q. And that was a lie, wasn't it?

2 A. That was a lie.

3 Q. And in these-- this confidential source
4 agreement that you just testified, he agreed,
5 did he not, that he would not take any
6 independent action and that he would not engage
7 in any unlawful act. That's what you told us
8 earlier, right?

9 A. I believe that's what paragraph three says.

10 Q. Right. But he violated that, did he not? He
11 did take some independent action, didn't he?

12 A. Well, yes, he did. He brought this
13 ergocristine or ET, as he thought it was, to
14 us. He didn't tell us he was in possession of
15 it. Yes.

16 Q. And he withheld it?

17 A. Absolutely.

18 Q. And in doing so, he was engaging in unlawful
19 acts, was he not?

20 A. I suppose, yes. First of all, ergocristine is
21 not a controlled substance. It's not a
22 regulated substance, so mere possession of
23 that, my understanding, would not be a
24 violation of the law. However, if it were used
25 to manufacture something, possession of it with

1 intent to manufacture would be, therefore, a
2 violation of the law. So did he violate the
3 law? Yes. Did he conceal it from us? Yes.
4 He eventually did bring it to us, and I don't
5 think we would ever have gotten it any other
6 way.

7 Q. Okay, we'll come back to that a little later in
8 my questioning, and some of the specifics of
9 what occurred, but let me go on now. As I
10 understood it, you as the case agent maintained
11 an overview of the case and were, in effect,
12 kind of a directing force of the investigation.
13 Is that a fair statement?

14 A. For the most part, yes.

15 Q. Okay. And in the course of your function in
16 that capacity, did you become aware of the
17 seizure of some computers from Clyde Apperson
18 or from his possession, from a vehicle that he
19 was driving?

20 A. Yes, from the vehicle he was driving, as well
21 as from his residence.

22 Q. All right, and in addition to the computers
23 themselves, were there also some disks and data
24 files also seized?

25 A. I believe there were, but I'd have to look at

1 the evidence.

2 Q. With regard to the seizure of those items, was
3 there then an examination done to determine
4 whether or not there was any arguably
5 inculpatory evidence or information contained
6 on those computers?

7 A. Yes, there was.

8 Q. And did you-- and was the same thing true of
9 the data files and the disks?

10 A. Everything, the computer related stuff we
11 seized was sent to the computer forensics
12 laboratory in Washington, DC, for analysis, so,
13 yes.

14 Q. And did you get the results, or have you seen
15 the results of those analyses?

16 A. Yes, I have.

17 Q. There was no correspondence found in any of the
18 computers between Mr. Pickard and Mr. Apperson,
19 was there?

20 A. Well, there was one computer, which we called
21 Exhibit N-34-- I don't remember what the court
22 number is-- that had correspondence from Linda
23 Apperson to various people, looked like she was
24 using the computer. It appeared that Mr.
25 Apperson, Clyde Apperson, was using the

1 computer, and it also appeared that Mr. Pickard
2 was using the computer. So was there
3 correspondence between them? No, but there was
4 one computer where all three of them, it
5 appeared, had used the computer.

6 Q. Didn't your investigation reveal that the one
7 computer that you say there was-- all three had
8 correspondence on it was a computer of-- that
9 belonged to Mr. Pickard that Mr. Apperson was
10 working on?

11 A. Well, Mr. Apperson could have been working on
12 it, but it appeared that there were items,
13 personal items to Mr. Apperson, Mrs. Apperson
14 on that computer. It appeared there were
15 drawings of Mr. Apperson's residence for
16 remodeling, so it appeared to me there were
17 personal items on that computer. I mean, he
18 could have put that stuff on there while he was
19 fixing Mr. Pickard's computer, but that would
20 not make a whole lot of sense to me.

21 Q. Well, let me ask you this. The information or
22 the data that was contained on that computer
23 that you say all three used--

24 A. Mm-hmm.

25 Q. -- there wasn't any correspondence of Linda

1 Apperson's, Clyde Apperson's, or William
2 Leonard Pickard's that had anything to do with
3 LSD manufacturing, money laundering, the sales
4 of LSD, possession of LSD, was there?

5 A. Well, that's not true. There is a document on
6 the computer that had a list of coded telephone
7 numbers, and that list of coded telephone
8 numbers matches, not exactly, but its a close
9 match for the list of coded telephone numbers
10 that we seized from Mr. Apperson at the time of
11 his arrest, and a number of those telephone
12 numbers were to people who have been involved
13 and named by Mr. Skinner and others, who were
14 named in this conspiracy. So I would disagree
15 with that and say that, yes, there is.

16 Q. Okay. Did you find any-- other than telephone
17 numbers, coded telephone numbers, you didn't
18 find anything else that related in any way to
19 drug manufacturing, possession or manufacture
20 of LSD, did you?

21 A. You know, I don't recall. I mean, I don't
22 recall-- well, I'm saying that because there
23 were-- there are volumes of evidence on--
24 volumes of information on the computer, and
25 there were-- one of the things that Mr. Pickard

1 was doing with computers, I guess what I would
2 call leapfrogging, is taking one computer and
3 the information from the hard drive on that
4 computer, buying a new computer, and putting
5 that information onto that second computer. So
6 there were a number of e-mails, there were a
7 number of items of Mr. Pickard's on that
8 computer that also had Mr. Apperson's and Mrs.
9 Apperson's information on there; but whether
10 there was evidence of LSD manufacturing on that
11 computer in addition to that coded telephone
12 list, I don't recall without looking at it.

13 Q. And there was no correspondence between Mr.
14 Pickard-- or Mr. Apperson or Mr. Pickard or
15 Mrs. Apperson with regards to any-- or with any
16 of the people that are alleged to be involved
17 in this matter, were there?

18 A. As we're talking about it, no, I don't recall
19 that, but what I do recall is a note, an
20 e-mail-- well, if I can explain-- there's an
21 e-mail from Mrs. Apperson talking with-- and I
22 don't remember who it was-- but talking about
23 the legal limit for transporting cash outside
24 of the country, that there is a reporting
25 requirement for a \$10,000 limit.

1 Q. All right, and did you follow through on that
2 and learn that the Appersons were taking or
3 planning a theatre tour trip to England at
4 about that time?

5 MR. HOUGH: Objection. Assumes facts
6 not in evidence.

7 THE COURT: Is it in evidence, or--

8 MR. BENNETT: Well, let me ask it
9 this way, Judge.

10 Q. (By Mr. Bennett) Did you-- were you able to
11 determine in your investigation that that had
12 anything to do with any illegal exchanging of
13 money at all?

14 A. I don't know.

15 Q. You seized the Appersons' passports, did you
16 not?

17 A. I did.

18 Q. All right. And did you compare their passports
19 to the approximate time that this entry was
20 found or was made on the computers?

21 A. I don't recall that I specifically did that,
22 because I did find other information and
23 evidence that the Appersons were, in fact, in
24 England and in, I believe, in Ireland.

25 Q. Okay, on some type of a tour?

1 A. I don't know if it was a tour. I did-- in
2 addition, I found a phone, a cellular phone in
3 there that had-- it appears to be a European
4 phone, cell phone, and it had Mr. Pickard's
5 cell phone number in it.

6 Q. You never found any evidence in the course of
7 this investigation that would support a
8 contention that the Appersons were in Europe
9 with or at the same time as Mr. Pickard, did
10 you?

11 A. No, I don't believe so.

12 Q. Now, in those computers that you found or that
13 you seized from Mr. Apperson, you found no
14 references to Aspen, did you?

15 A. I'm sorry?

16 Q. Aspen. You found no references to Aspen,
17 Colorado, did you?

18 A. No, I didn't.

19 Q. You found no references to Santa Fe, did you?

20 A. In one of the computers, and not in the-- not
21 in the computer files themselves, in one of the
22 computers there were documents, printed
23 documents for travel, travel requests for
24 Southwest Airlines or America West Airlines
25 going to Albuquerque, Tulsa, Omaha, Kansas

1 City, so--

2 Q. Well, my question was: Did you find anything?

3 You didn't find anything in the computer

4 relating to Santa Fe, New Mexico, did you?

5 That's the question.

6 A. I don't recall anything in the computer

7 specifically relating to that, no.

8 Q. And you didn't find anything in the computers,

9 any of those that were seized from Mr.

10 Apperson, with regards to Ellsworth, Kansas,

11 did you?

12 A. Well, yeah. I would go back to the one

13 document I've talked about that was in the

14 computer with the coded telephone list, and

15 there were telephone numbers for Salina,

16 Kansas. There were telephone numbers in there

17 for the Albuquerque area. There was an

18 address, a name, address, and telephone number

19 for a woman who lived in Santa Fe, so--

20 Q. Was it Santa Fe or Albuquerque?

21 A. Santa Fe.

22 Q. Who was that?

23 A. Teresa Marquez.

24 Q. Your testimony is she lived in Santa Fe?

25 A. I believe that's-- that's what I recall. It

- 1 was in Santa Fe.
- 2 Q. Just a second. I'll see if I can find
- 3 something that will refresh your recollection.
- 4 I want to show you a report or one page out of
- 5 a report and have you take a look at that.
- 6 Does that refer to the lady that you're talking
- 7 about?
- 8 A. It does, and I'm mistaken. It was in
- 9 Albuquerque, not in Santa Fe.
- 10 Q. All right, okay. So the answer to my question
- 11 is you didn't find any reference to Santa Fe,
- 12 did you?
- 13 A. Well, I'd like to be able to look at the rest
- 14 of that document or the rest of that report to
- 15 make sure, so--
- 16 Q. I want to show you-- let me put that page in
- 17 with it, then you will have the whole report.
- 18 I want to show you, Agent Nichols, a six-page
- 19 report that has your signature on it with a
- 20 date of November 13, 2001. Is that the rest of
- 21 the report that you wanted to see?
- 22 A. Yes, it is. (Pause.)
- 23 Q. Does that refresh your recollection, Agent?
- 24 A. Generally.
- 25 Q. You found nothing relating to Santa Fe, did

1 you?

2 A. There are no specific records to Santa Fe, no.

3 Q. And the same thing is true, is it not, you
4 found no references to Ellsworth or Wamego on
5 this computer?

6 A. Are you asking on all the computers we seized,
7 or are you asking--

8 Q. I'm asking about the computers you seized from
9 Mr. Apperson.

10 A. No, I don't recall anything specifically. I
11 mean, I would have to go review the items--

12 Q. All right.

13 A. -- to be sure, but I don't recall anything
14 specifically.

15 Q. Now, on direct examination-- and I want to see
16 if I can understand, because I didn't
17 understand at the time-- you testified when you
18 talked to Mr. Skinner, I think your language
19 was the story, his story, was pretty fantastic,
20 kind of a wild guy, thought it was kind of a
21 disjointed story, and then you said it even
22 continues now or something to that effect.
23 What do you mean when you say it even continues
24 now?

25 A. Well, let me back up and explain. When I first

1 met Mr. Skinner, he was full of this story. He
2 walk into the Sacramento hotel where we did the
3 debriefing, and--

4 Q. Well, just a minute, Agent. Excuse me for
5 interrupting. That's really not responsive to
6 my question, and if you could just tell me what
7 you mean or what you meant when you said it
8 even continues now.

9 A. Well, I don't think I can adequately answer it
10 without giving a description of my impression
11 of him when I initially met him.

12 Q. Well, let me ask it this way. Does your
13 distrust-- or do you distrust him?

14 A. I distrust-- I distrust all informants because
15 at some point, you know, they're likely-- if
16 you irritate them, if you anger them, they're
17 likely to come back at you and say something
18 against you and try to get you in trouble
19 because they're an informant. That's what they
20 do. They rat out their friends. So, yes, I
21 distrust him. I've told him that from the
22 beginning. I'm not going to trust him until I
23 can prove to myself that the information he
24 provided to me or to the government was
25 credible and corroborable.

1 Q. Well, you found out in the course of this
2 investigation that he-- that your distrust was
3 well founded, did you not?

4 A. On occasion, yes.

5 Q. Now, I want to go to the October 27th walk-
6 through. You indicated that Agent McKibben was
7 present at that walk-through?

8 A. From what I recall, Tim McKibben was present.

9 Q. All right. Were you here when Tim McKibben
10 testified he was not present?

11 A. I was not here when he testified.

12 Q. You testified that you had, in preparing or
13 talking with Mr. Skinner prior to the October
14 27th walk-through, that you had instructed him
15 to keep his hands off the stuff, whatever stuff
16 that was, that you had no search warrant, and
17 you didn't want him opening things or bringing
18 things to you. Is that correct?

19 A. I believe that's what I testified to.

20 Q. Why did you tell him that?

21 A. Well, because I didn't want to jeopardize any
22 future investigation that we might have.

23 Q. How would-- what was it that you were telling
24 him not to do? If he had done them, how would
25 that have jeopardized the investigation?

1 A. In doing searches for us, giving the impression
2 that he was doing a search for or on behest of
3 the government.

4 Q. Because he was an agent of the government at
5 the time?

6 A. Well, once he became a cooperating source, yes,
7 he was an agent of the government.

8 Q. Okay. And so you didn't want him setting
9 things out, or opening things up, or providing
10 you with things, bringing things to you until--
11 because that would, in your opinion or your
12 estimation, amount to an illegal search?

13 A. It could be.

14 Q. All right. And then as I understand it, when
15 you went on the walk-through, lo and behold,
16 there was an open can of what at the time you
17 thought was ET but later turned out to be
18 ergocristine. Is that right?

19 A. That's correct.

20 Q. And it was sitting on the stereo?

21 A. That's correct.

22 Q. And the stereo was located where?

23 A. In the missile bay in the center of the missile
24 silo.

25 Q. Would that be in--

1 A. The missile base.

2 Q. -- what was referred to earlier as the living
3 quarters?

4 A. No.

5 Q. Okay. It would be-- there was a stereo in some
6 area other than living quarters?

7 A. Yes. It's-- if you were to walk or drive down
8 the driveway, the asphalt driveway, it goes
9 down into the missile bay. It opens up or
10 closes down into the missile bay. The stereo
11 was sitting at the back of the missile bay, in
12 that area, sitting on top of a stage. The can
13 was sitting on top of the stereo.

14 Q. Was that all there was in that area, just the
15 stereo and the can?

16 A. Oh, I think there was a grand piano in there.
17 There were other miscellaneous personal items.
18 I don't recall specifically what was in there,
19 but nothing of real substance, maybe a couple
20 of rugs.

21 Q. Mr. Skinner told you, did he not, that he had
22 set that out there so you would, in effect,
23 believe him or this would corroborate what he'd
24 told you?

25 A. Yes.

1 Q. So he violated your rules when he did that,
2 correct?

3 A. Yes, he did, and he was reprimanded for it.

4 Q. All right. And in your opinion, that could
5 jeopardize the lawfulness of the subsequent
6 search, correct?

7 MR. HOUGH: Well, Judge, we'll
8 object. The Court has previously ruled that it
9 was an appropriate search. This is res
10 judicata.

11 THE COURT: I'll sustain the
12 objection.

13 Q. (By Mr. Bennett) When you saw-- who-- where
14 were you when you first observed this can on
15 the stereo?

16 A. I think, as I testified before, I was coming
17 with the other agents around the corner from
18 the reconstructed bathroom, which would have
19 been to the left of the missile bay, coming
20 around the corner. As we came around the
21 corner, Mr. Skinner showed the stereo to us and
22 then, therefore, showed us the can sitting on
23 top of the stereo.

24 Q. Did he point out the can to you?

25 A. Yes, he did.

1 Q. What did he say when he pointed it out to you?

2 A. Something like, "Here's some evidence that I
3 have ET," or, "that I have the ET," or, "that
4 I'm telling you what I-- I'm telling you the
5 truth."

6 Q. Did he tell you when he put it on the stereo
7 before you came through on the 27th?

8 A. Well, it was sometime after he arrived in
9 Wamego, after we had talked with him, after we
10 had done the undercover operation out in Marin
11 County on the 23rd, after he had arrived back
12 in Wamego at the base, but before we had
13 arrived at the base to do the walk-through or
14 to come through that day.

15 Q. Did he tell you whether or not he had put it
16 out before or after the trip to Tulsa?

17 A. The trip to Tulsa came after we arrived at the
18 missile base. The trip to Tulsa was six days
19 later.

20 Q. What was the date?

21 A. The trip to Tulsa was November 3rd.

22 Q. Okay, so it was between the Marin County and
23 the Tulsa situation?

24 A. Well, it was between Marin County on October
25 23rd and our arrival at the base on October

1 27th, prior to October 27th, my understanding.

2 Q. Did you, you or anyone else, take any
3 photographs of that one can sitting on that
4 stereo?

5 A. No, not that I recall. I don't think we--

6 Q. Was there ever-- excuse me. Didn't mean to
7 step on you.

8 A. I don't think we photographed anything at that
9 point.

10 Q. Was there a reason that you didn't take a
11 photograph of this can that he had set out
12 there for you?

13 A. I don't recall having a camera at the time.

14 Q. All right. Do you know whether or not anyone
15 else had a camera?

16 A. I don't.

17 Q. Do DEA agents carry cameras as part of their
18 equipment in the car, in their vehicle?

19 A. Most do, not always, and the people who were
20 coming in were coming in from out of state, so
21 if Tim McKibben was there-- and I don't recall
22 specifically, I believe he was-- but if he was
23 there, and then the other agents, Arthur
24 Hubbard and Jack Zajac, John Zajac, we were all
25 coming in from out of state. Whether we had

1 cameras or not, I don't recall.

2 Q. All right. What if anything was done with the
3 can that was there on the 27th, other than you
4 standing over it and looking down and
5 formulating an opinion as to what was in it or
6 may be in it?

7 A. It was left there. I told Mr. Skinner to leave
8 it there, not to touch it, and that at some
9 point we hoped to get a search warrant, and
10 then once the search warrant came, we would
11 seize that can.

12 Q. And did that occur then?

13 A. It did on the 31st.

14 Q. Was that can seized from the location that you
15 had originally seen it on the 27th?

16 A. It was there on the 31st, yes.

17 Q. All right. Now, when you saw the can, this one
18 can, was there any conversation about any other
19 cans at that point in time?

20 A. Well, I believe there was generally, that Mr.
21 Skinner said, "See, here's a can, and this is
22 evidence of other cans that I have. This is
23 evidence of cans of ET," or, "These are similar
24 to the other cans that I have."

25 Q. Now, you say you reprimand him for setting it

1 out there. Was that right there at that time,
2 or was it at some later time?

3 A. It was right there at that time.

4 Q. All right. Did you tell him-- strike that.
5 Did you ask him where the other cans that he
6 said that he had were?

7 A. You know, I may have. I don't recall. I don't
8 recall if he-- he had told us about the storage
9 area, the concealed storage area underneath the
10 bathroom. He told us there was a refrigerator
11 and freezer in there and that there were some
12 items in there. He may have told me there were
13 additional cans in that area at that point. I
14 don't recall specifically.

15 Q. Did you or anyone else on the 27th go and look
16 in that area?

17 A. No, because we did not have a search warrant
18 and because, had I done that, that would have
19 been a search.

20 Q. All right. After he told you that there were
21 other cans, did you press him or push him on
22 how many and where they were?

23 A. You know, I don't remember specifically
24 pressing him on how many. I remember him
25 telling me there were more, and I vaguely

1 recall him telling me there were more in the
2 lab. I don't recall any more specifics than
3 that, that based on his conduct at that point,
4 I did not want him going-- running up somewhere
5 and saying, "Well, here's a box of ET." I was
6 directing him to tell me: Did he have any
7 more? If he did, I needed to know about it. I
8 probably asked him where it was. I don't
9 recall specifically, but I specifically told
10 him I did not want him going to find it,
11 bringing it to us, before we had-- before we
12 had a search warrant; that we would find it, he
13 could tell us where it was, and we could find
14 it once we had a search warrant.

15 Q. Agent, did you put anything in any report about
16 Mr. Skinner having set this one can out on the
17 stereo in violation of your instructions or
18 directions to him?

19 A. I believe I-- in the affidavit, I put out that
20 he had shown it to us.

21 Q. When you say in the affidavit, you're talking
22 about the affidavit for a search warrant?

23 A. The affidavit for a search warrant.

24 Q. All right, go ahead.

25 A. I don't recall that I put it into any specific

1 report.

2 Q. Did you put in the affidavit that at the time
3 this occurred and he set it out for you that he
4 was acting as an agent of the government?

5 MR. HOUGH: Well, Judge, we'll
6 object. That's irrelevant.

7 THE COURT: Sustained.

8 Q. (By Mr. Bennett) Did you indicate in the
9 report, any report, that Mr. Skinner had told
10 you there were additional ET or ergocristine,
11 whatever you thought it was at that point in
12 time, at the missile site?

13 A. I'd have to look at the affidavit. I don't
14 recall specifically. What I recall is talking
15 about the can of ET, Mr. Skinner showing the
16 can of ET to us, what he thought was ET, and
17 that Mr. Skinner said there was an LSD
18 laboratory contained in military containers at
19 his missile silo, missile base.

20 Q. On that occasion, at the time of the walk-
21 through and at the time of seeing this one can
22 that was pointed out, did Mr. Skinner indicate
23 to you whether or not that had been moved to
24 the Wamego site from the site in Ellsworth?

25 A. That was his portrayal to me.

1 Q. Okay.

2 A. That, yes, this has been-- originally had been
3 in the laboratory he had seized-- he had taken
4 it from the laboratory in Salina and then moved
5 it to Wamego.

6 Q. And the same thing was true with regards to the
7 other cans that he said were now in the lab at
8 Wamego?

9 A. Yes.

10 Q. When you found the-- were you present when the
11 cans, the other cans were found at the time of
12 the search in Wamego, the other 13 cans?

13 A. I was there at the site. I was inside the
14 site. I was inside one of the encapsulated
15 suits and processing the lab. I don't recall
16 specifically finding the three cans, but I do
17 recall specifically finding and being told
18 where the box containing the ten cans was.

19 Q. Where were the ten cans?

20 A. The ten cans were in the Quonset hut underneath
21 some tile, in a box underneath some tile.

22 Q. Who found those, do you recall?

23 A. I believe I did.

24 Q. Were they-- they were still in the wooden box?

25 A. Yes.

1 Q. And was that-- was ten cans the capacity of the
2 box? Was there any room for any more?

3 A. I'm going to say ten cans was the capacity. It
4 appeared to be full. I mean, it wasn't packed.

5 Q. Where were the three cans from?

6 A. To the best of my knowledge, they were found in
7 the storage area or the concealed area
8 underneath the bathroom next to the freezer.

9 Q. At the time of the walk-through, as I
10 understand it-- and you correct me if I'm
11 wrong-- you did not open any of the metal
12 containers.

13 A. That's correct.

14 Q. You did not see any laboratory equipment?

15 A. Well, what I did see was a helium cylinder and
16 a five-gallon black can, metal can, so not
17 equipment, but--

18 Q. Saw no glassware?

19 A. No, I don't recall seeing any glassware, no.

20 Q. Did you remove anything from the site, anywhere
21 on the missile site, at the time of the
22 walk-through?

23 MR. HOUGH: Judge, we'll object.

24 That's irrelevant.

25 THE COURT: I'm going to sustain the

1 objection. We've spent more time on three cans
2 here-- we've spent almost an hour on three
3 cans. Make your answers more precise, and quit
4 wandering around, and let's try to move this
5 along.

6 THE WITNESS: Yes, sir. I'm trying
7 to.

8 Q. (By Mr. Bennett) At the time you conducted the
9 search of the premises pursuant to the search
10 warrant, you searched the Quonset hut.
11 Correct?

12 A. Yes.

13 Q. You searched the Lester building?

14 A. Yes.

15 Q. You searched the missile launch area. Is that
16 correct?

17 A. Well, we searched the missile base. We went
18 through the missile base and looked for items
19 within the missile base.

20 Q. Well, were you in the living quarters and in
21 the missile site or the missile launch pad
22 area?

23 A. We were in the base. Yes. I mean, if you're
24 asking of the concrete bunker underground, yes,
25 we were in there, and we searched throughout

1 that bunker underground. It was not limited to
2 the missile launch area.

3 Q. All right, I understand. Did you search in the
4 ceilings and the walls?

5 A. In some places, yes.

6 Q. But not all?

7 A. Not necessarily. Didn't necessarily know they
8 were there. If we did, we would have.

9 Q. Now, at that point in time, you asked Mr.
10 Skinner if there was any other ergocristine, ET
11 there. He told you no. Is that correct?

12 A. That's correct.

13 Q. All right, and when was it, then, that he first
14 came clean and told you that there was-- that
15 he had some more?

16 A. January 22nd, when he delivered it to me in
17 Oakland, California.

18 Q. And between October 31st and January-- what did
19 you say, 22nd?

20 A. Yes.

21 Q. He continuously advised you that he knew where
22 there was some but indicated someone else was
23 in possession of it. Is that correct?

24 A. That's correct.

25 Q. The 26 cans that he eventually turned in, based

1 on your training and your experience as a DEA
2 agent, had a value of what?

3 A. Well, my understanding at the time for street
4 value of ergotamine tartrate was about \$100,000
5 per kilo. After the arrest, my understanding
6 is the price went up. To what, I don't know.

7 Q. But we aren't dealing with ET, are we?

8 A. We're dealing with ergocristine, and my
9 understanding from the manufacturer, it costs
10 about \$2,500 per kilogram. The wholesale price
11 from the manufacturer is about \$2,500.

12 Q. What's your understanding based on your
13 education, training, and experience as to the
14 street value of ergocristine?

15 A. Well, I imagine if it were a substitute for
16 ergotamine tartrate, it would have a similar
17 value, around \$100,000.

18 Q. Similar value to the ET?

19 A. To the ET of around \$100,000 per kilo or more,
20 depending on the availability.

21 Q. All right. Now, you had information that the--
22 that this lab had been moved from Ellsworth to
23 Wamego. Correct?

24 A. Yes.

25 Q. Did you ever-- strike that. Was there a search

1 warrant applied for, for the Ellsworth base?

2 A. Yes, there was.

3 Q. And was that executed?

4 A. Yes, it was.

5 Q. And what-- strike that. Did you search to
6 ascertain whether or not there was any ergo--
7 ergotamine tartrate or ergocristine remaining
8 at that location?

9 A. First of all, I have to say I wasn't present
10 for that, but my understanding of the search
11 warrant that was executed, yes, it was.

12 Q. Who was present for that?

13 A. Oh, Ralph Sorrell, Roger Hanzlik, Tim McKibben,
14 my understanding, he may or may not have been,
15 I'm not sure, but then the Kansas City
16 clandestine lab group. I mean, I don't know
17 who all was present specifically.

18 MR. BENNETT: Judge, I know it's a
19 little before 4:30, but this would be a good
20 time for me to break.

21 THE COURT: All right, let's just
22 stop right now. Ladies and gentlemen, let's
23 recess now until 9:30 in the morning. We will
24 see you here at that time. Mr. Bailiff.

25 THE BAILIFF: All rise. Court will

1 stand in recess until 9:30 in the morning.

2 (THEREUPON, the jury left the
3 courtroom. WHEREUPON, the following
4 proceedings were held at the bench and outside
5 of the hearing of the jury.)

6 MR. BENNETT: Judge, with regards to
7 the hearing that we had in the Court's chambers
8 earlier today, I have here an affidavit that I
9 want to, in effect, proffer as support for the
10 position that I espoused in there. This is an
11 affidavit that was obtained from Gordon Todd
12 Skinner, and by his attorney, and provided by
13 his attorney to me, and I would-- I know this
14 isn't an exhibit that would go to the Court--
15 or, I mean, would go to the jury, but-- this is
16 the only other copy I've got.

17 MR. HOUGH: Well, I would call it
18 mine.

19 MR. BENNETT: Well, I wouldn't, but
20 we can get a copy. I'll get a copy.

21 MR. HOUGH: Judge, we would ask for a
22 copy of the document.

23 MR. BENNETT: Here. You can read it.
24 I don't have a problem with you reading it.

25 (THEREUPON, there was a brief pause

1 in the proceedings.)

2 MR. HOUGH: Judge, I can tell you
3 that what he was shown was the same exhibit
4 sheet that the Court, counsel, and myself have,
5 so he has-- and I would absolutely deny the
6 comment that we were getting inside information
7 from Mary Beth or any other source.

8 MR. BENNETT: Well, Judge, I just--
9 I'm not offering it as an exhibit. I'm just
10 offering it as part of the record in this case
11 in support-- as a proffer in support of the
12 motion that I made earlier today.

13 THE COURT: All right, we have it,
14 and we'll put it in the record.

15 MR. HOUGH: Can you make me a copy?

16 MR. BENNETT: Pat said they'd make a
17 copy.

18 THE COURT: Will you take that?

19 MR. HALEY: Yes. Is it the original?

20 MR. HOUGH: Is that the original?

21 MR. BENNETT: That's the original.

22 MR. HOUGH: They're both signed.

23 MR. BENNETT: Well, they're both
24 signed as the originals, but I think that's a
25 different signature.

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(THEREUPON, the bench conference was
concluded. WHEREUPON, a recess was had.)

