

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

2003 MAR 11 P 1:16

1 UNITED STATES OF AMERICA,)
2 ----- Plaintiff,)
3 vs.)
4 WILLIAM L. PICKARD and)
5 CLYDE APPERSON,)
6 ----- Defendant.)

RALPH L. DESSACH
CLERK
BY: [Signature] DEPUTY
Case No. AT TOPEKA, KS.
00-40104-01/02

7
8 VOLUME II
9 TRANSCRIPT OF TESTIMONY OF
10 CARL NICHOLS
11 UPON CROSS-EXAMINATION BY MR. BENNETT
12 HAD DURING THE JURY TRIAL
13 BEFORE
14 HONORABLE RICHARD D. ROGERS
15 and a jury of 12
16 on
17 March 4, 2003

18 APPEARANCES:

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W I T N E S S

ON BEHALF OF PLAINTIFF: PAGE

CARL NICHOLS

Cross-Exam (Contd.) By Mr. Bennett 50

1 CARL NICHOLS,
2 called as a witness on behalf of the Plaintiff,
3 was previously sworn, and testified upon
4 cross-examination by Mr. Bennett as follows:

5 CROSS-EXAMINATION (Contd.)

6 BY MR. BENNETT:

7 Q. Agent Nichols, yesterday I asked you some
8 questions with regards to your experience and
9 use of informants. Do you recall those
10 questions?

11 A. Generally.

12 Q. Do you recall that subject matter?

13 A. I recall that we did discuss that, yes.

14 Q. All right. Based on your experience as an
15 agent, Agent Nichols, you've learned that when
16 an informant is in serious trouble or thinks
17 he's about to be in trouble, they will often do
18 anything they can to get out of trouble or stay
19 out of jail. Would you agree?

20 A. They often do, yes.

21 Q. Okay, and you would agree, would you not, that
22 informants are often cunning, devious,
23 treacherous, and they lie?

24 A. Yeah, I would agree so.

25 Q. Okay, and you know from experience, do you not,

1 that informants will often blame innocent
2 individuals in order to divert attention from
3 themselves or their own illegal activity or to
4 avoid prosecution?

5 A. That's not been my experience with informants,
6 no.

7 Q. You've never experienced that?

8 A. I won't say I've never experienced that, but
9 that has not been my general experience with
10 informants.

11 Q. But you have experienced that, have you not?

12 A. I can't recall any specific incident where I
13 have personally experienced that. Basically,
14 as information comes to me, I attempt to
15 corroborate it, and I can't recall any incident
16 where somebody has accused another person of
17 doing something and it has been unfounded.

18 Q. Excuse me. You're talking about your own
19 personal experience, or are you talking about
20 generally, that's never happened, to your
21 knowledge?

22 A. I'm talking my own person experience.

23 Q. You know that it has happened with DEA
24 informants in the past, do you not?

25 A. I don't know whether I know it. I believe I've

1 heard.

2 Q. Okay, that's good enough. If an informant lies
3 to you during an investigation, that's damaging
4 to the investigation, is it not?

5 A. It could be.

6 Q. And as an agent, you don't like to be put in
7 the position of having to tell a jury or have a
8 jury find out from some other source that an
9 informant who receives something in return for
10 information was not truthful with you, do you?

11 A. I don't like telling a jury that, no, but if I
12 have to, I certainly will.

13 Q. I understand, and you have done that in this
14 case, haven't you?

15 A. I believe I have, and I believe I will continue
16 to.

17 Q. Right, but you don't like to have to do that,
18 because it is, in your opinion, damaging to the
19 case, is it not?

20 A. It certainly can be.

21 Q. And that's because once an informant has lied
22 to you about something, and you know that he's
23 lied to you about something, you have questions
24 about everything else that he's told you, don't
25 you?

1 A. Not necessarily. What it says to me is there
2 may be some questions about what he has said to
3 me, but what it says to me is I have to go and
4 do additional work and further corroborate or
5 eliminate that statement-- I'm sorry, I can't
6 think of a word-- but discredit that
7 statement--

8 Q. Okay.

9 A. -- the informant has said to me. So I have to
10 do some additional work to verify or discredit.

11 Q. Okay, and sometimes that additional work
12 results in you verifying that he lied to you,
13 doesn't it?

14 A. Sometimes it does.

15 Q. Okay, and that happened in this case, didn't
16 it? You went out and did some more work with
17 regards to these additional 26 cans of ET, and
18 you had to do some more interrogation and do
19 some further investigation, and when you got
20 that all done, it confirmed that he lied to
21 you, didn't it?

22 A. I'm trying to remember the timing of things.
23 Once we had received the 26 cans, and the
24 further, the subsequent investigation of those,
25 then, the 40 cans we had, I confirmed that

1 there was but one delivery of those cans. I
2 did talk with Michael Hobbs, who corroborated
3 Mr. Skinner's story, the story he had given to
4 us after he delivered the second set of cans,
5 the second cans, the last two cans. So he had,
6 certainly, he had lied to me about his
7 possession of the 26 cans. By the time he had
8 given the 26 cans to me, I believe we had the
9 story of what had happened.

10 Q. Well, at the time that he gave you the last two
11 cans-- he gave you 24 and then he gave you two,
12 right?

13 A. That's correct.

14 Q. And at the time he gave you the last two, you
15 continued to interrogate him at that time about
16 whether or not he had now turned over
17 everything to you, didn't you?

18 A. I believe we did, yes.

19 Q. All right, and as the result of that
20 interrogation, or at the conclusion of that
21 interrogation, you still were of the opinion
22 that he had not provided you with all of the
23 cans that he had, were you not?

24 A. I don't recall my thoughts at that time. What
25 I recall is we had 40 cans seized either

1 October 31st, November 18th, that time period,
2 and the 26 cans Mr. Skinner brought to us. We
3 had four boxes, wooden boxes we found in the
4 laboratory during the seizure. Those boxes
5 contained at some point, it was my belief, ten
6 cans, Pringles cans. Given the four boxes, I
7 believe there were probably 40 cans. That's
8 what Mr. Skinner had told us, there were four
9 boxes. There certainly were questions in my
10 mind. Did he have additional precursor? Was
11 he hiding stuff? And I certainly questioned
12 him about that. Where, if there was anything,
13 where was it hidden? I was sick and tired of
14 this crap, and I didn't want to hear any more
15 of it. So, yes, I asked him about this. Yes,
16 I reprimanded him about this, but the
17 subsequent investigation I did revealed to me
18 that there was one delivery of cans that
19 matched these cans.

20 Q. But you were still of the opinion after you
21 conducted that interrogation on the 22nd of
22 January, when he turned the two cans over to
23 you, you were still of the opinion at that
24 time, based on your interrogation, that he was
25 holding out on you, weren't you?

1 A. He didn't turn over two cans to me on January
2 22nd.

3 Q. All right, maybe I got the wrong date, but at
4 the time, whatever the date was that you
5 received the two cans from him and continued to
6 interrogate him, at that time you were still of
7 the opinion, were you not, that he'd held
8 something-- he was holding out on you.

9 A. I was of the opinion that he could possibly--
10 he could be holding something out from us.

11 Q. All right.

12 A. Yes.

13 Q. Now, Agent Nichols, yesterday I asked you about
14 Exhibit 801, which was the confidential source
15 agreement. Do you recall that?

16 A. I do recall you asking me that.

17 Q. Were there any other written agreements between
18 the government and Mr. Skinner, other than
19 Exhibit 801?

20 A. Well, there was his immunity agreement with the
21 Department of Justice.

22 Q. And who would have been the parties to that, if
23 you know?

24 A. The Chief of the Criminal Division at Main
25 Justice, John Roth. He was the attorney who

1 authorized the immunity of Mr. Skinner. Tom
2 Haney, who was Mr. Skinner's attorney at the
3 time. Mr. Skinner was party to that, and I
4 believe those are the three people who were
5 primarily party to it. There were other people
6 who knew about it.

7 Q. All right. Would that agreement have been
8 entered into before the confidential source
9 agreement or subsequent to the execution of the
10 confidential source agreement?

11 A. Well, I think the timing was this. Mr. Skinner
12 came out to Sacramento, and he was to be
13 interviewed by agents, by me and another agent.

14 Q. That was on October 17th and 18th?

15 A. On October 17th and 18th, and based on that
16 interview, we were to relay back to Mr. Roth
17 our findings and our beliefs on that, and at
18 that point, Mr. Roth would, my understanding,
19 make a decision whether Mr. Skinner should be
20 granted immunity, and based on our phone calls
21 back to Mr. Roth, Mr. Skinner was granted
22 immunity. The paperwork may not have been
23 signed immediately that day. From what I
24 recall, there was a document Mr. Skinner may
25 have signed, and then that was sent back over

1 to Mr. Haney, and he finalized it, but Mr.
2 Skinner would not tell us specific details of
3 the operation until he received his immunity
4 agreement, and so that was at some point during
5 the conversation midday of October 18th, and
6 then when we talked with Mr. Roth and told him
7 that we believed-- at this point, we believed
8 that he did have some verifiable, actionable,
9 credible information, Mr. Roth gave a verbal
10 approval for immunity.

11 Q. But which came first, though, the written CS
12 agreement or the written agreement signed by
13 Mr. Roth, if you know?

14 A. Well, I think-- I believe the CS agreement was
15 signed on the 18th of October, and then the
16 immunity agreement was signed maybe the 19th or
17 may have been a later date.

18 Q. Now, other than those two, were there any other
19 written agreements entered into between Mr.
20 Skinner and the government with regards to his
21 serving in the confidential source or informant
22 capacity?

23 A. Anything that Mr. Skinner signed?

24 Q. Yeah, or that Mr. Haney signed on behalf of Mr.
25 Skinner.

1 A. You know, I don't recall anything. I mean,
2 there could be, but I really don't recall
3 anything.

4 Q. You don't recall, that's fine. On October 17th
5 and 18th, at the meeting in Sacramento, who all
6 was present during that debriefing? I know you
7 were and Mr. Skinner was.

8 A. Right.

9 Q. Who else?

10 A. Nancy Carter, who was an intelligence analyst.

11 Q. All right. Where does she office presently?

12 A. I believe she is in the Miami Field Division at
13 the current time.

14 Q. All right, and who else, if anyone?

15 A. John, Jack Zajac, who was a special agent.

16 Q. And where is he located now?

17 A. At the time, he was assigned to DEA
18 headquarters in the dangerous drugs desk. He
19 is now retired.

20 Q. Who else, anyone?

21 A. Robert Dey, D-E-Y.

22 Q. And who is Mr. Dey?

23 A. He was the ASAC, Assistant Special Agent in
24 Charge of the Sacramento district office. He
25 is now retired.

1 Q. Anyone else?

2 A. No, that's it.

3 Q. Okay. Who was, if there was one person in
4 charge of the debriefing or the interview, who
5 would that have been? Would that have been you
6 or--

7 A. Well, initially, it would have been Mr. Dey.
8 He was covering some of the bases in the first
9 part of it, asking a few questions, and then at
10 some point Mr. Skinner presented some evidence
11 to me that was really an indication I knew he
12 was knowledgeable about this organization, and
13 at that point I took over the invest-- I took
14 over the questioning.

15 Q. All right. During that discussion on October
16 17th and 18th in Sacramento, did anyone, you or
17 anyone else that was there, suggest or tell Mr.
18 Skinner to place that can of ergocristine or ET
19 out where it could be seen during the
20 walk-through?

21 A. No.

22 Q. Okay. At the time of the walk-through, did
23 anyone indicate to Mr. Skinner that the can
24 wasn't out and he needed to put the can out?

25 A. No, not at all.

1 Q. Okay. Now, I think you told me yesterday, but
2 I apologize, I'm going to ask you again. On
3 the walk-through, there was yourself, Agent
4 McKibben you believe, and who else?

5 A. I believe Mr. McKibben was there. He may not
6 have been.

7 Q. All right.

8 A. He may have arrived shortly after that.

9 Q. That's what you indicated yesterday. Who else?

10 A. John, Jack Zajac and Arthur Hubbard.

11 Q. Were they all present when the can was first
12 seen by someone?

13 A. Yeah, we were all taking a tour. Mr. Skinner
14 was leading the tour of the base.

15 Q. And who was leading the tour, Mr. Skinner?

16 A. Mr. Skinner was.

17 Q. Now, I know yesterday you testified that you
18 went over to the can and stood over it and
19 looked down into it. Is that right?

20 A. Yes.

21 Q. And it had an opaque top on it?

22 A. Yes, it did.

23 Q. When you say opaque top, I've got my idea what
24 opaque is, but can you tell us what you mean
25 when you use the term "opaque"?

- 1 A. It's a plastic top. It's not clear, so you
2 can't see through it clearly, but it's-- if you
3 held it up to the light, you could certainly
4 see light through it, you could certainly--
- 5 Q. You mean if you held the top up to the light?
- 6 A. If you held the lid, the plastic lid to the
7 light, you could see through it.
- 8 Q. How were you able to determine the color
9 through that opaque top?
- 10 A. I don't know. With my eyes. I mean, I looked
11 at it. I could see there was a ring of powder.
- 12 Q. All right. Did you pick it up and open it?
- 13 A. No.
- 14 Q. Did anyone else?
- 15 A. Not to my knowledge, no.
- 16 Q. Did you at any time smell of it or attempt to
17 smell it?
- 18 A. Not likely, because I know that ergocristine--
19 or, well, excuse me-- ergotamine tartrate
20 causes convulsions, so I doubt I smelled it.
- 21 Q. Mr.-- or Agent Nichols, were you at the base
22 when the trust documents were discussed?
- 23 A. Yes.
- 24 Q. And who was present when those-- when that
25 occurred?

1 MR. HOUGH: Judge, we'll object to
2 this as irrelevant. The Court has previously
3 determined that the consent, the warrants, the
4 ownership issue is appropriate. That's a legal
5 question the Court's previously determined.

6 MR. BENNETT: Judge, could we
7 approach?

8 THE COURT: Yes, I would like to have
9 you approach.

10 (THEREUPON, the following proceedings
11 were held at the bench and outside of the
12 hearing of the jury.)

13 THE COURT: Before we get into that,
14 Mr. Bennett, I was about ready to get into that
15 can thing. We've gone over that can. Well,
16 you didn't object for being repetitious. We
17 have covered that can enough times. I couldn't
18 understand what you were doing, but I was just
19 about--

20 MR. BENNETT: Well, Judge, excuse me.

21 THE COURT: Well, I know you've got
22 some purpose, but my purpose is to finish this
23 trial and not to just go over and over and over
24 and over things. Now, what's your point on
25 this?

1 MR. BENNETT: Well, my point with
2 regard to this, Judge, is that I don't think
3 that the record has fully established what has
4 occurred with regard to these trust documents,
5 and all I wanted to do was to establish what
6 was looked at, who looked at it, who was
7 present, and move on.

8 MR. HOUGH: Well, Judge, we went
9 through all that in a pretrial hearing, if the
10 Court will recall, and the Court ruled relative
11 to motions to suppress and dismiss by both
12 defendants. The Court's considered that. That
13 is a legal issue the Court has determined.
14 It's res judicata, so it's irrelevant now for
15 purposes of the jury.

16 THE COURT: Well, what does this man
17 know about the legal aspects of a trust
18 agreement, which most of them are phony anyway,
19 so what--

20 MR. BENNETT: Well, Judge, I wasn't
21 going to ask him about the legal aspects. I
22 was just going to ask him about the
23 circumstances surrounding it and what was
24 there, and if--

25 MR. HOUGH: Well, Judge, I believe

1 that there was some questioning yesterday about
2 the trust documents being there because of
3 debts, and so this would be cumulative.

4 MR. RORK: Well, Judge, I did ask
5 about some of the issues regarding the trust
6 documents, and when Kendall was moved, and some
7 facts about who went to the bank, and some
8 other things but, I mean, that's what I asked
9 and that was some yesterday and some the other
10 day, but not specifically.

11 THE COURT: Well, I'm going to allow
12 you to go ahead, but I tell you, I'm frankly
13 amazed. But all right, let's go ahead.

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

17 Q. (By Mr. Bennett) Who was present, Agent
18 Nichols, at the time these trust documents were
19 discussed?

20 A. Agent Hubbard was, Task Force Officer Sorrell,
21 I was, Agent Zajac, there were a number of
22 other people, agents from the Kansas City
23 office who were present.

24 Q. And you reviewed them, did you?

25 A. I did.

1 Q. All right. And in the course of reviewing
2 them, were you able to determine or did you
3 determine who had an interest, a beneficial
4 interest in the trust?

5 A. Without looking at the trust documents again, I
6 mean, what I specifically recall is Graham
7 Kendall was the trustee and that Graham Kendall
8 was the property owner, the deed holder on the
9 base. Bill Wynn's name was in the trust
10 document. There were a couple of other names,
11 but without looking at the document, I don't
12 specifically remember.

13 Q. Was either Mr. Pickard's or Mr. Apperson's name
14 in the document?

15 A. No, neither one.

16 Q. With regards to the taped, both phone
17 conversations and body pack, what I call body
18 pack recordings, do you know what I'm talking
19 about?

20 A. A recorder.

21 Q. Yes. With regards to those recordings, was
22 there anything-- well, you heard them played
23 here for the jury-- was there anything deleted
24 from those recordings by you or anyone else, to
25 your knowledge, between the time they were

1 initially made and they were presented as
2 evidence in this case?

3 A. No.

4 Q. Well, you say that somewhat hesitantly. I
5 accept the answer, but I'd like you to go a
6 little further with it.

7 A. Well, I say that hesitantly because I'm not
8 sure that-- I believe that the tapes were
9 played in entirety, or the tapes that we did
10 play. Now, not all of the recordings were
11 played because there were phone calls we made
12 to a phone number Mr. Pickard gave to us.

13 Q. That weren't completed?

14 A. That weren't completed or were, I mean, they
15 weren't wrong numbers. They weren't completed.

16 Q. I understand that. That's not really my
17 question. My question was whether or not there
18 had been anything either accidentally or
19 purposely deleted from any of those tapes.

20 A. There is one tape, and I believe it's Exhibit
21 N-19, where it is a one-sided conversation with
22 Mr. Skinner.

23 Q. You've already testified about that, haven't
24 you?

25 A. I don't believe I have.

1 Q. Okay, go ahead then.

2 A. That tape, when I gave Mr. Skinner the phone
3 and asked him to record that phone call, he
4 either put the microphone in the wrong ear, put
5 the phone up to the wrong ear, or the
6 microphone fell out, but somehow it did not
7 work. It did not record both sides of the
8 conversation. When I listened to the tape--
9 and this is my policy and the policy of my
10 agency, that once a recording is made, we
11 should go back, listen to the tape, verify what
12 the informant said to us was on the tape, and
13 then put a trailer on it to say, this recording
14 was made at such-and-such a time, such-and-such
15 a place. I did that, and when I did that, I
16 inadvertently recorded over part of that
17 conversation. I believe I recorded over part
18 of that conversation to give that trailer.
19 When I went back and reviewed it, I thought
20 because it was a one-sided conversation,
21 because there was a long pause, I thought the
22 conversation had ended and so, therefore, I put
23 the trailer in there. I later found out, after
24 reviewing the tape, that I was mistaken, and I
25 had put the trailer in the middle of the

1 conversation, not at the end.

2 Q. Had you been privy to that conversation at the
3 time it was occurring? I mean by that, were
4 you able to overhear that conversation?

5 A. Well, I was able to overhear Mr. Skinner's
6 portion of the conversation. I was not able to
7 overhear the other end of the conversation.

8 Q. And what was taped over was the other end of
9 the conversation, or part of Mr. Skinner's
10 conversation?

11 A. Part of Mr. Skinner's conversation. It's a
12 one-sided conversation.

13 Q. All right.

14 A. It was a conversation I directed Mr. Skinner to
15 have with Mr. Pickard or Mr. Apperson, whoever
16 would answer that phone, to let them know that
17 they had forgotten and not picked up the ET,
18 that they did not look in the proper place to
19 get it, and we directed them to look in the
20 Quonset hut.

21 Q. And that conversation that you're talking about
22 was a conversation between Skinner and who,
23 Pickard?

24 A. Mr. Skinner told us it was between him and Mr.
25 Pickard.

1 Q. Okay. Now, there was also the tape that-- and
2 the audio that didn't record at all on the trip
3 to Tulsa. Right?

4 A. There were two tapes that did not record, yes.

5 Q. All right. Now, is it-- do I understand your
6 testimony, then, correctly that other than the
7 incident you just told us about and the Tulsa
8 incident, nothing else has been deleted from
9 any of those tapes?

10 A. That's correct.

11 Q. Okay. I want to go back to, I think, where we
12 left off yesterday. You had testified in your
13 direct examination about some Pac Bell or
14 Pacific Bell records that were obtained
15 pursuant to a subpoena. Am I correct, was it
16 pursuant to a subpoena?

17 A. Yes.

18 Q. All right.

19 A. It was, it would have been.

20 Q. And those Pac Bell records, at least some of
21 them, pertain to Mr. Apperson and his phones.
22 Is that correct?

23 A. Yes, they do.

24 Q. And you didn't find anything in those Pac Bell
25 records of any phone calls or conversations

1 between Clyde Apperson and Mr. Pickard, or Mr.
2 Savinelli, or Mr. Skinner, or Mr.-- or Petaluma
3 Al, or James Miller, did you?

4 A. Well, they were subscriber records, so they
5 were records of who subscribed to the
6 telephone--

7 Q. Well--

8 A. -- requested.

9 Q. Well, the subscriber records had all the phone
10 conversations made from the subscriber's phone,
11 didn't it?

12 A. No.

13 Q. I mean, not the conversation, but it had the
14 phone numbers that were-- the long distance
15 numbers that were called, didn't it?

16 A. No, absolutely not. That's not what we
17 requested.

18 Q. What did you request?

19 A. We requested subscriber records.

20 Q. All right, and what--

21 A. And I believe that's what is presented to the
22 Court in the Pacific Bell records.

23 Q. All right. Tell us what you mean when you say
24 subscriber records.

25 A. Subscriber record is the person who subscribes

1 to the telephone. It is not toll records,
2 which would be the telephone calls made from a
3 telephone.

4 Q. Did you obtain the toll records for Pac Bell?

5 A. I did obtain toll records for some telephones
6 from Pacific Bell. I don't recall if we
7 obtained toll records for Mr. Apperson's
8 telephone.

9 Q. Let me ask the question this way. You didn't
10 obtain any toll records from any phone company
11 that revealed any phone calls from Mr.
12 Pickard-- or from Mr. Apperson to Mr. Pickard,
13 or to Alfred Savinelli, or to Skinner, or
14 Petaluma Al, or James Miller, did you?

15 A. There are some cell phone records, and I would
16 have to review those records to be certain. I
17 don't recall. There were cell phones we
18 subpoenaed, we obtained records for.

19 Q. Okay.

20 A. That cell phone, yeah, I would really have to
21 review my notes on that before I answer that
22 accurately.

23 Q. All right. Your answer, then, would be you
24 don't recall at this time. Is that right?

25 A. No. I do recall telephone records, and what I

1 believe I recall is that there were records
2 subpoenaed from a cellular telephone that was
3 in possession of Mr. Apperson, and it showed
4 phone calls to another cellular telephone that
5 was in possession of Mr. Pickard, but I need to
6 review the records before I can accurately make
7 that statement.

8 Q. Well, can you-- we'll give you the opportunity
9 to do that, but can you recall or do you recall
10 that you found no records of any calls-- leave
11 Pickard out of it for right now-- you found no
12 calls between Mr. Apperson, Mr. Skinner, Mr.
13 Savinelli, Petaluma Al, or James Miller, did
14 you, to the best of your recollection?

15 A. Not that I recall, no.

16 Q. Okay. You also testified on direct examination
17 about some records that were obtained from the
18 Belagio Casino in Las Vegas and the Paris
19 Casino in Las Vegas. Do you recall that
20 testimony?

21 A. Yes.

22 Q. And you didn't find any records at either of
23 those-- from either of those entities
24 indicating, number one, that Clyde Apperson had
25 ever been there, did you?

1 A. No.

2 Q. Okay, and you didn't find any records in either
3 the Belagio or the Paris Casino records that
4 indicated that Clyde Apperson had exchanged any
5 Guilders for United States currency at either
6 of those entities, did you?

7 A. No, I did not.

8 Q. Okay. The Native Scent records that you
9 obtained didn't show any contacts or orders
10 being placed or picked up by Clyde Apperson
11 from Native Scents, did they?

12 A. The records, no, they did not.

13 Q. Okay. And Mr. Savinelli told you he didn't
14 even know Clyde Apperson, didn't he?

15 A. That's my recollection.

16 Q. Okay. Now, this vehicle that-- this truck that
17 Mr. Apperson was in at the time of his arrest,
18 that was a Ryder truck, correct?

19 A. Yes, it was.

20 Q. All right. And you obtained the records for
21 that, did you not?

22 A. Yes, we did.

23 Q. And it was rented in Clyde Apperson's true
24 name, was it not?

25 A. It was.

1 Q. And it gave his true address, did it not?

2 A. From what I recall, it did.

3 Q. It gave his true driver's license number, did
4 it not?

5 A. Yes.

6 Q. And the investigation revealed that there was
7 no attempt made by Mr. Apperson to hide his
8 identity in renting that truck. Would you
9 agree?

10 A. Not in renting that truck, no. I would agree
11 that he did not hide his identity in renting
12 that truck.

13 Q. Okay, and the same thing is true with regards
14 to the automobile. That was also rented in his
15 name, was it not?

16 A. It was rented in his name.

17 Q. And again, he gave his true address and his
18 true driver's license number. Correct?

19 A. To the best of my recollection, yes.

20 Q. Okay. Now, I don't recall which storage locker
21 it was, but the one that the \$170,000 in cash
22 was found, do you recall which locker that was,
23 the name of the company?

24 A. The name of the company was National Self-
25 Storage in Roseville, California.

1 Q. All right, and were you present in the course
2 of that-- of the opening of that locker and the
3 search of that locker?

4 A. I was not.

5 Q. Okay. You have seen the reports and discussed
6 it with the agents that were, have you not?

7 A. Yes, I have.

8 Q. And there was nothing found in that locker that
9 in any way linked it to Clyde Apperson, was
10 there?

11 A. No.

12 Q. And in the course of this investigation, there
13 were a number of storage facilities that you or
14 other agents working on the investigation were
15 involved in opening and searching or seizing
16 items from, correct?

17 A. That's correct.

18 Q. And based on your overview and your
19 participation in this investigation, there
20 weren't any documents obtained from any of
21 those lockers that indicated Clyde Apperson had
22 any interest in any of them, were there?

23 A. I need to think about it a second or two.

24 Q. Okay, take as much time as you want.

25 A. Not that I recall, no.

1 Q. Okay. You also knew, you or someone involved
2 in the investigation obtained gaming control
3 records from the State of Nevada. Is that
4 correct?

5 A. That's correct.

6 Q. What was the purpose for obtaining the gaming
7 control records?

8 A. Well, it's an additional resource of records
9 for the casinos. It would be to see if there
10 were additional casinos where Mr. Skinner and
11 others went to game.

12 Q. Did you locate other casinos other than the
13 Belagio and the Paris Casino where Mr. Skinner
14 and others went to gamble?

15 A. I did.

16 Q. Mirage?

17 A. The Mirage and the Horse Shoe. There may have
18 been other casinos. I don't recall
19 specifically.

20 Q. You didn't obtain or find in the records that
21 you obtained from the Gaming Control Agency in
22 the State of Nevada, you didn't find any
23 records relating to Clyde Apperson, did you?

24 A. I don't believe so, no.

25 Q. Okay. Then I believe you testified that you

1 had obtained some records from May of 1999 from
2 the Santa Fe Hilton. I believe it was Exhibit
3 746. Do you recall that?

4 A. Yes.

5 Q. You didn't find any records in May of 1999 at
6 the Santa Fe Hilton that would indicate that
7 Clyde Apperson was present or staying there at
8 that time, did you?

9 A. I don't believe I did.

10 Q. And you also testified, I believe, on direct to
11 some obtaining of some records, I think it
12 was-- I think you called it Windom Peak records
13 in Telluride?

14 A. It's the Peaks Hotel. It's run by Windom
15 group--

16 Q. All right.

17 A. -- in Telluride.

18 Q. Do you remember what time period you obtained
19 those records for?

20 A. Well, I believe the subpoena was a request for,
21 generally, stays by people who were-- we had
22 identified were involved in the conspiracy.

23 Q. So did you have--

24 A. -- from--

25 Q. Excuse me.

1 A. From what I recall, the response back was
2 during the period 1998, August of 1998. There
3 may have been an additional response for
4 another time, but I don't recall specifically.

5 Q. All right, but you-- the records that you
6 received didn't indicate that Clyde Apperson
7 was at that location at any time during the
8 period that you requested records for?

9 A. The records do not show that.

10 Q. Do not show that he was present?

11 A. Do not show he was present, no.

12 Q. All right. Now, you found in the course of
13 your investigation no airline records, no car
14 rental records, or no hotel records indicating
15 that Clyde Apperson was in either Aspen or
16 Telluride during the time that there was
17 allegedly an LSD lab in Aspen, did you?

18 A. I don't recall finding anything, no.

19 Q. Now, in the course of your investigation, Agent
20 Nichols, you sought out airline travel records
21 of Mr. Apperson for a certain period of time,
22 did you not?

23 A. We sought out airline and travel records. Yes,
24 there probably was a time frame on it.

25 Q. Okay.

1 A. I don't recall specifically what the subpoena
2 said.

3 Q. Do you have something that you can look at so
4 you can tell us what period of time you
5 requested that those records be provided to
6 you?

7 A. If I could look at the records, I might be able
8 to. The original or a copy of the original
9 subpoena might be in the records.

10 MR. BENNETT: Well, my problem is I
11 didn't write fast enough, and I don't have the
12 number down. Do you know what number that is,
13 counsel?

14 MR. HOUGH: I should be able to find
15 it. I'd do that in exchange for a Kleenex.

16 THE CLERK: Which exhibits are you
17 looking for?

18 MR. BENNETT: I'm going to give you a
19 whole box of Kleenex, so I expect a whole box
20 of records.

21 MR. HOUGH: 733.

22 MR. BENNETT: 743?

23 MR. HOUGH: 733 is the America West.
24 Southwest is 739, 753, and that's it.

25 MR. BENNETT: Thank you.

1 MR. BENNETT: 733, 39 and 53.

2 THE CLERK: Thirty-three?

3 MR. BENNETT: Thirty-three-- 733,

4 739.

5 THE CLERK: Thirty-nine?

6 MR. BENNETT: Thirty-nine and 753.

7 Thank you.

8 Q. (By Mr. Bennett) Agent Nichols, I want to show
9 you Government's Exhibit 733, which at least
10 the first page relates to America West
11 Airlines; 739, which relates to Southwest
12 Airlines; and 753, which relates to United
13 Airlines. And could you look in those and see
14 if you can determine what the time period was
15 that you requested information or records for?

16 A. For the Southwest Airlines, Exhibit No. 739,
17 there is no subpoena or no copy of the subpoena
18 in here. So, no, I can't tell you specifically
19 what the subpoena said. What I generally
20 remember is the subpoena covered at least a
21 couple years' time from 2000 back. It may have
22 covered as many as five years' time. I don't
23 recall specifically.

24 Q. All right. Look at the others then.

25 A. Again, the same thing for America West

1 Airlines, Exhibit No. 733.

2 Q. You think it was about the same time period,
3 though?

4 A. Probably the same time period, and what the
5 response letter says is that, "our computer
6 records only go back two years." So--

7 Q. Which would--

8 A. Which indicates to me that the subpoena was for
9 a much broader period than two years. For
10 United Airlines, Exhibit No. 753, there is a
11 copy of the face page of the grand jury
12 subpoena, but there is not an attachment to it
13 which would indicate the date range of this.

14 Q. Well, based on your normal mode of operation,
15 would you expect that the time period for all
16 three airlines would have been the same or
17 approximately the same?

18 A. Approximately the same period of time. This
19 actually has dates going back to 1994, but what
20 I generally recall was it was requested for
21 records 1995 forward.

22 Q. All right, and when you say, "this," you're
23 talking about Exhibit 753?

24 A. For 753.

25 Q. Now, once you received those records, did you

1 determine that Mr. Apperson had made a number
2 of trips to Albuquerque?

3 A. Yes, I did.

4 Q. And you also determined in the course of your
5 investigation, did you not, that some of the
6 tickets that were purchased weren't actually
7 used?

8 A. I would have to look at the records again. I
9 don't recall determining that. I'll look at
10 the America West first. (Pause.) It appears
11 from the America West Airlines records, Exhibit
12 No. 733, that those tickets were used.
13 (Pause.) I'm sorry for taking so long, but the
14 Southwest tickets are-- their printouts are a
15 little bit confusing.

16 MR. BENNETT: Judge, I know it's a
17 little early, but maybe we could kill two birds
18 with one stone and take a recess now and let
19 him look through those, or--

20 THE COURT: Yeah, that may save us
21 some time. Ladies and gentlemen, let's take a
22 15-minute recess at this time, then we'll come
23 back for further questioning.

24 MR. BAILIFF: All rise. Court will
25 stand in recess for 15 minutes.

1 (THEREUPON, a recess was had.)

2 THE COURT: All right, I believe
3 we're all present. You may continue.

4 Q. (By Mr. Bennett) Agent Nichols, have you now
5 had sufficient time to look through those
6 records?

7 A. I believe I have had time.

8 Q. I believe that the question that prompted the
9 necessity of looking at the records was whether
10 or not you had determined that some of the
11 tickets purchased or some of the flights that
12 tickets were purchased for weren't used. Did
13 you-- were you able to determine, from
14 reviewing those documents, an answer?

15 A. It appeared-- yes, I was.

16 Q. Okay, and what did you determine?

17 A. Well, it appears that a flight-- and this is in
18 the Southwest Airlines record, and that is
19 Exhibit No. 739-- that a flight on September
20 10th of 1999 from Albuquerque to San Francisco
21 was not used.

22 Q. All right. Any others?

23 A. I don't have anything marked on my notes.

24 Q. All right. Do you recall, during the course of
25 the investigation and the seizure of items from

1 Mr. Apperson, whether or not there were any
2 unused airline tickets that were recovered from
3 his possessions?

4 A. I don't recall anything. There may have been,
5 but I just don't recall anything.

6 Q. All right. Now, I indicated to you over the
7 break that there was another question that I
8 was going to ask you and gave you a heads-up on
9 it so you could look at the records with
10 regards to that as well. In the records that
11 you have there, did you determine or were you
12 able to determine what the pattern of travel to
13 Albuquerque was as shown by those flights, that
14 is, the periods of time or approximate periods
15 of time that Mr. Apperson was in Albuquerque
16 when he flew on the flights that he did fly on?

17 A. Well, there's some travel in 1999, there's some
18 travel in 2000, and several of the trips are
19 two-day, possibly three-day trips.

20 Q. All right, and that was kind of the pattern
21 that you picked up from looking at those
22 records. Is that right?

23 A. Generally the pattern, yes.

24 Q. All right. Now, in the course of the
25 investigation, I believe you indicated in

1 response to a question yesterday or the day
2 before that you found some phone records or
3 some phone numbers for a lady by the name of
4 Teresa Marquez. Do you recall that?

5 A. Yes. What I recall is I found a computer
6 generated letter with the name Teresa Marquez
7 and address on it in Albuquerque.

8 Q. And that's the lady that you first indicated
9 you thought lived in Santa Fe, but then when I
10 showed you your report, you changed it to
11 Albuquerque. Is that right?

12 A. That's right.

13 Q. Now, in the course of your investigation did
14 you determine that Mr. Pickard-- or not--
15 strike that-- Mr. Apperson and Ms. Marquez had
16 a relationship?

17 A. No, I didn't determine that. Basically, when
18 Mr. Skinner was testifying, and I was reviewing
19 some of these records during his testimony, it
20 struck me that, based on his testimony that Mr.
21 Apperson had a girlfriend in the Santa Fe area,
22 that Ms. Marquez might be that person--

23 Q. All right.

24 A. -- but I never determined that.

25 Q. And-- excuse me-- did you determine in the

1 course of your investigation that the occasions
2 that Mr. Apperson flew to or from Albuquerque
3 were days that-- or were flights that coincided
4 with meetings or get-togethers that he would
5 have with his girlfriend?

6 A. I never talked to her, so I couldn't, no; and I
7 didn't talk to your client, so I couldn't
8 ascertain that.

9 Q. Okay. You wouldn't-- you don't know of any--
10 well, strike that. I'll withdraw it. When you
11 say you didn't interview her, to your
12 knowledge, did anyone interview her?

13 A. Not to my knowledge. No one interviewed her.
14 As I said, it didn't really strike me until Mr.
15 Skinner's testimony that this might have been
16 the girlfriend Mr. Skinner was talking about
17 that Mr. Apperson had.

18 Q. All right. Now, some of the-- I've looked at
19 some of the exhibits and some of the records,
20 travel records, hotel records, car rental
21 records that have been marked and admitted as
22 exhibits in this case. Some of them that
23 relate to Mr. Apperson are for travel to Kansas
24 City and Topeka after or subsequent to November
25 the 6th, 2000, aren't they?

1 A. Well, there are travel records before and
2 after, yes.

3 Q. Right.

4 A. My assessment of those records would be it was
5 travel for Mr. Apperson to attend court
6 appearances.

7 Q. All right, and so the fact that they're marked
8 as part-- or a part of some exhibit that's
9 marked, you're not asserting or taking the
10 position that the travel to Topeka or Kansas
11 City or the car rentals or the hotels had to do
12 with any illegal activity, are you, after
13 November the 6th?

14 A. For the records that are after November 6th,
15 no, I am not.

16 Q. Okay. Now, there was some testimony-- you gave
17 some testimony, I believe, on direct
18 examination about two Exhibits, 681 and 682,
19 which were letters from Mr. Pickard to you. Do
20 you recall that?

21 A. I do recall that.

22 Q. Do you recall generally the content of those
23 letters?

24 A. Yes, generally.

25 Q. All right. There was no reference in either of

1 those letters to you that indicated that--
2 where Mr. Pickard indicated that Mr. Apperson
3 had any complicity in any conspiracy or
4 manufacturing of LSD, did it?

5 A. There was no reference in those letters.

6 Q. Now, you also testified with regards to Mr.
7 Pickard's reported income or lack of reported
8 income. Do you recall that testimony?

9 A. I do.

10 Q. And I believe your testimony also dealt with
11 tax returns or the lack of tax returns by Mr.
12 Pickard. Is that correct?

13 A. Generally, those were one and the same.

14 Q. Did you make an identical investigation with
15 regards to Mr. Apperson and his tax returns and
16 his reported income?

17 A. We did request tax returns for Mr. Apperson,
18 yeah.

19 Q. All right. Now, in the investigation, what, if
20 anything, did you determine with regards to Mr.
21 Apperson's employment for the years back prior
22 to November 6 of 2000?

23 A. Well, you know, I would specifically have to go
24 to the records to make-- to lay that out, to
25 review those.

1 Q. What records would you need to look at?

2 A. Well, I would have to look at the tax records.
3 If you're asking me about tax records, I would
4 have to look at those.

5 Q. Well, my question just right now is: Did you
6 make a determination as to whether or not he
7 was employed?

8 A. Off and on, yes.

9 Q. What do you mean off and on?

10 A. Well, generally, he was employed, and I can't
11 remember the specific date, up until a specific
12 date. And I can't remember if it was 1999 or
13 2000 where there's some-- up to that point,
14 there are employment records, and at some point
15 there are, from what I recall, no employment
16 records.

17 Q. All right. At some point you determined,
18 though, did you not, that he went from being
19 employed by a company or companies to self-
20 employment?

21 A. What I recall from the search, the records,
22 that he was employed, self-employed, and then
23 went to other companies, but it could be vice
24 versa. It could be that he started at a
25 company, self-employed, and then went back to

1 another company.

2 Q. Do you recall the names of any of the
3 employers?

4 A. Bliss Industry was one employer, Lobaugh,
5 L-O-B-A-U-G-H, was another employer.

6 Q. All right.

7 A. There may be others. I don't recall.

8 Q. And then at whatever point it was he was self-
9 employed, that was as in the name, business
10 name of C. W. Enterprises?

11 A. That's what I recall.

12 Q. All right. Now, generally, what did you
13 determine with regards to whether or not he
14 filed tax returns for each year, filed them or
15 didn't file them for each year that you were
16 interested in?

17 A. It was my understanding, in reviewing the
18 records, that there were tax returns for the
19 period of time we asked.

20 Q. What period of time did you ask for the records
21 for?

22 A. I believe it was 1995 until, well, at that
23 point the most current filing, which would have
24 been 1999.

25 Q. Did you subsequently go back and get the filing

1 for 2000?

2 A. No, we did not.

3 Q. Okay. And what is your recollection of the
4 amount of reportable income that he set out in
5 those tax returns?

6 A. You know, I don't remember specific numbers,
7 but generally between he and his wife, over
8 \$100,000, in the neighborhood of-- I'm hedging
9 a guess-- between \$120,000 and \$140,000.

10 Q. All right. And in the course of that
11 investigation into his taxes and his reportable
12 income, you didn't find any record or
13 indication that the Internal Revenue Service
14 ever found that there had been any unreported
15 income, did you?

16 A. Not to the best of my knowledge, no.

17 Q. Okay. And you didn't find any indication in
18 the course of your investigation that Mr.
19 Apperson underreported any income, did you?

20 A. Well, I do. I believe he did.

21 Q. My question is, Agent Nichols, you don't find
22 anything in the IRS records that you requested
23 that indicated that he underreported any
24 income, did you?

25 A. I didn't believe that was your question, but--

1 Q. Okay, maybe it wasn't, and I apologize if it
2 wasn't.

3 A. In the IRS records, I don't believe there is
4 any indication of underreporting.

5 Q. Okay. In your direct testimony, you testified
6 about some incidents which--

7 MR. HOUGH: Excuse me. Your Honor,
8 may we approach?

9 THE COURT: Yes, you may.

10 (THEREUPON, the following proceedings
11 were held at the bench and outside of the
12 hearing of the jury.)

13 MR. HOUGH: Your Honor, I just
14 received the risk assessment that the Court had
15 ordered disclosed. For the record, I am
16 disclosing that to counsel now, and I would
17 provide the Court also with a copy, and the
18 adverse information it mentioned is the New
19 Jersey matter, of which we're all aware, and we
20 would ask that the Court continue in its ruling
21 that that not be inquired into in any form or
22 fashion.

23 THE COURT: All right, thank you, and
24 I will stay with that ruling.

25 MR. BENNETT: Well, and I would--

1 Judge, I haven't had a chance to read it, so I
2 don't know if I'm going to try and offer it,
3 but I understand that, and if I were to offer
4 it, I would offer it in a redacted form so that
5 that's not in there.

6 MR. HOUGH: Can you make me a copy of
7 that? That's my last copy.

8 MR. HALEY: Okay.

9 MR. HOUGH: That's all I had, Judge.

10 THE COURT: Okay, thank you.

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

14 Q. (By Mr. Bennett) Agent Nichols, in your
15 testimony on direct examination, you testified
16 about some incidents in which Mr. Skinner stole
17 or availed himself, without authorization, of
18 large amounts of money from Mr. Pickard. Do
19 you recall that testimony?

20 A. I do recall that.

21 Q. Okay. And there wasn't any evidence presented
22 or that you uncovered in the course of this
23 investigation that Mr. Skinner had stolen any
24 money from Mr. Apperson, was there?

25 A. Not that I recall, no.

1 Q. And there wasn't any evidence, or you didn't
2 develop any evidence in the investigation,
3 that-- well strike, that. In the course of
4 your testimony, there was an exhibit introduced
5 that was Exhibit 527. Do you remember that?
6 That's that little red address book.

7 A. Ms. Kruglova's address book?

8 Q. Yes.

9 A. Yes, I do.

10 Q. And you have been through that address book on
11 several occasions, have you not?

12 A. I have. I generated a report based on some of
13 the information in that.

14 Q. And you didn't find Mr. Apperson's name in that
15 book did you?

16 A. I would have to review the report or review the
17 book, if I could do that.

18 MR. BENNETT: Could we have 527,
19 please?

20 Q. (By Mr. Bennett) Agent Nichols, I'm going to
21 hand you what's marked as Government Exhibit
22 527. While you're looking through that, I'm
23 going to be looking at another document, but as
24 soon as you're ready to give me an answer,
25 you've completed your review, let me know, if

1 you would, please.

2 A. (Pause.) I've completed.

3 Q. Are you finished?

4 A. I believe I am.

5 Q. All right. And the question, I believe, was:

6 There's no reference in there to Mr. Apperson,
7 is there?

8 A. Specifically, no; but indirectly, yes. And the
9 references I believe indirectly are February
10 11th of 2000, Ms. Kruglova has written in here
11 about United Airline travel from San Francisco
12 to Denver to Kansas City; and from my review of
13 Mr. Apperson's records, there's also a
14 reference here on February 18th from San
15 Francisco to Kansas City. My review of Mr.
16 Apperson's travel records was that he was in--
17 had rented a vehicle in Kansas City, had flown
18 to Kansas City during that period-- I don't
19 recall the specific days, but somewhere around
20 the-- this may be a little bit broad, but
21 somewhere around the 10th of February until the
22 18th or 19th of February.

23 Q. So-- go ahead.

24 A. And during that time period, Mr. Guinan told us
25 that Mr. Apperson was in-- Mr. Apperson and Mr.

1 Pickard were in Kansas, and they asked Mr.
2 Guinan to exchange some Dutch Guilder for him,
3 and he did that at the Kaw Valley Bank in
4 Wamego. In addition, there's a reference in
5 the back of the journal for an individual by
6 the name of Bill with, in parenthesis, Anton,
7 and closed parenthesis, and it appears that
8 someone, maybe Ms. Kruglova, maybe Mr. Pickard,
9 was supposed to meet Bill at 890 Walsh Street
10 in-- well, what I later determined was that
11 this was in the South Bay of the San Francisco
12 Bay area. I don't recall the exact city,
13 whether it was Menlo Park or Redwood City, or
14 exactly where it was; but further investigation
15 of that individual, that information, along
16 with other information we got from the case,
17 led me to a determination that Bill or Anton
18 was, in fact, William Truitt Roberts, and when
19 we did a search of Mr. Apperson's residence,
20 there were receipts in his residence for a
21 currency exchange on February 16th of 2000 for
22 exchanging Dutch Guilder, 23,000 Dutch Guilder
23 into about \$9,100 U. S. currency. That was
24 done at the San Francisco airport, and the
25 vehicle license plate for the parking receipt

1 was registered to William Truitt Roberts.

2 Q. Well, is it your contention that-- well, go
3 ahead. I didn't mean to interrupt you.

4 A. In addition, there's a reference June 23rd. It
5 appears in here it's across the page from June
6 23rd, maybe June 24th for it says, "See,"
7 S-E-E, "Bill" and then in parenthesis, "Anton."
8 So it's-- to answer what I believe is maybe
9 your next question is that, yes, do I believe
10 there are references to Mr. Apperson in this
11 book.

12 Q. All right, and that's speculation on your part
13 as to what those entries that you have just
14 told us about refer to. Isn't it?

15 A. Well, it's taking the information that I
16 obtained from witnesses and obtained by
17 subpoena and piecing the puzzle together.

18 Q. But it's speculation on your part, isn't it?

19 A. Well, part of it is speculation, but the
20 records seized from Mr. Apperson's residence
21 clearly show there was a currency exchange on
22 February 16th of Dutch Guilder.

23 Q. There's nothing in that book that specifies or
24 specifically refers to Clyde Apperson, his
25 address, his phone number, his e-mail, anything

1 like that, is there?

2 A. No, I don't believe there is.

3 Q. Now, I want to go next to the-- or go back and
4 visit the missile site again, and you indicated
5 on direct examination that you-- that there
6 were some video, audio recording devices
7 present at the base before you ever-- before
8 the government ever became involved in this.
9 Is that right?

10 A. There were items Mr. Skinner had installed,
11 yes.

12 Q. All right, and some of those functioned, and
13 some of them didn't?

14 A. Yes.

15 Q. Is that right?

16 A. At the time I was there, some functioned, some
17 did not.

18 Q. Did you or anyone else on the government's
19 behalf avail yourselves of those video or audio
20 recording devices during any of the period of
21 time that you were involved, either in control
22 of the base, or back and forth to the base?

23 A. Yes.

24 Q. And what did you use those or avail yourselves
25 of those facilities for?

1 A. On November 6th, we had had several
2 conversations-- I should-- we-- Mr. Skinner had
3 several conversations with Mr. Pickard and Mr.
4 Apperson concerning the return of the ET to Mr.
5 Pickard and Mr. Apperson. There was a
6 disagreement, a fight. Mr. Pickard at some
7 point told Mr. Skinner he believed Mr.
8 Skinner-- or they believed Mr. Skinner was
9 under surveillance, that they had seen some
10 vehicles they might-- they believed or
11 suspected were law enforcement vehicles. I
12 mean, that's the context of an assumption or a
13 generalized view of it, about the conversation,
14 that Mr. Pickard and Mr. Apperson were
15 concerned about being discovered. Based on
16 some of those conversations, Mr. Skinner, along
17 with Mr.-- Agent Hubbard, myself, Mr. McKibben,
18 went back over to the base, and we locked
19 ourselves inside the base, and we used the
20 video equipment to observe the goings on
21 outside.

22 Q. All right. And was that-- was the goings on
23 outside recorded?

24 A. No, because the recorder did not work. We
25 attempted to do it. The recorder never worked.

1 Q. Neither the video recorder or the audio
2 recorder worked?

3 A. Well, there was no audio recorder as far as I
4 know. The audio/video recording equipment put
5 into the base was installed by DEA. It was in
6 a room where Graham Kendall had resided. The
7 audio equipment, I believe-- or excuse me-- the
8 video equipment I believe you're talking about
9 was in a separate monitoring room. There was a
10 separate video system, security system for the
11 base. I don't believe it had an audio
12 recording capability. It may have. I didn't
13 see if it did. We used the video, the cameras,
14 to observe what was happening on the base, and
15 even at that, the video-- not all the video
16 cameras worked, and they certainly did not
17 record. We could not get them to record.

18 Q. Were there any cameras that showed any of the
19 interior of the base?

20 A. Not to my knowledge, no.

21 Q. Did you observe on any of those cameras at any
22 time Mr. Apperson attempting to leave and
23 anyone holding a knife to his throat to keep
24 him from leaving?

25 A. I have never heard anything like that. As far

1 as I know, never anything like that ever
2 happened. My understanding was Mr. Apperson
3 was there on the property voluntarily.

4 Q. Well, did you-- do you recall in one of the
5 recordings where Bret Nicholson talks about
6 going and getting his blade?

7 A. I do recall that.

8 Q. Okay. And do you recall on the tape Mr.
9 Nicholson making some comment at some point in
10 time after he'd gotten the blade that now he
11 felt better because he had his blade?

12 A. I don't recall that statement.

13 Q. All right.

14 A. It could be there. I just don't recall it.

15 Q. Now, there was also a camera, as I understand
16 it, installed outside that the government
17 installed up on a power pole in some type of a
18 transformer or what appeared to be a
19 transformer. Is that right?

20 A. That's correct.

21 Q. Were there any recordings made of anything that
22 occurred using that camera?

23 A. I don't believe there were.

24 Q. And that camera was working, was it not?

25 A. It was.

1 Q. Why were there no recordings made of what was
2 going on within the view of the camera?

3 A. I don't know. I don't know.

4 Q. Who was in charge of that camera?

5 A. Well, there was somebody sitting in a motor
6 home where there was a monitor. I don't know
7 if there was a recording device attached to
8 that monitor so that that camera could be
9 recorded, that signal could be recorded.

10 Q. Well--

11 A. I just don't know, and I don't remember.

12 Q. Was that camera placed there pursuant to the
13 warrant that you obtained for video recording?

14 A. No, it was not.

15 Q. What authority was it placed where it was
16 placed?

17 A. I believe we obtained a court order to do an
18 installation camera, but it was not-- because
19 it was on public property, there was not a
20 warrant obtained. That's a separate warrant
21 for the video/audio installation.

22 Q. All right. It was on a power pole that was off
23 the premises, in effect, is that what you're
24 saying?

25 A. Yes.

1 Q. But you don't-- do you know who made that
2 application for that warrant?

3 A. I don't know. And I don't know-- I know within
4 California the--

5 Q. Well, I don't want to get into the California--

6 A. Well, but--

7 Q. -- unless it has something to do with this
8 case.

9 A. I believe it has something to do with my
10 answer. I know in California the power company
11 requires a court order to do an installation.
12 I believed at the time, and I believe now, that
13 there may have been a court order. I could be
14 mistaken, and there may not be a court order
15 required to install a camera on public
16 property.

17 Q. I don't care if there was a court order or not,
18 and that's not really what I'm getting at, but
19 to your knowledge, there was no recording made?

20 A. To my knowledge, no.

21 Q. Was that camera equipped with an audio as well
22 as a video capability?

23 A. I don't believe so. I believe it was just
24 strictly video.

25 Q. And other than that camera, was there-- were

1 there any other cameras installed at any place
2 on the base?

3 A. Well, there were cameras installed in what was
4 Graham Kendall's room.

5 Q. By the government, I'm talking about.

6 A. By the government. There were cameras
7 installed in what was Graham Kendall's room.
8 There were microphones installed in what was
9 Graham Kendall's room. There were no other
10 cameras, recorders, microphones, to the best of
11 my knowledge, installed anywhere else on the
12 property.

13 Q. To your knowledge, was there any occasion,
14 during the time between the 4th and the 6th of
15 November, where any of the individuals, Gordon
16 Skinner, Clyde Apperson, or William Pickard
17 were in Graham Kendall's room and their
18 activities or conversations recorded that
19 haven't been introduced into this case?

20 A. I don't believe so.

21 Q. Were any of the conversations that have been
22 admitted as exhibits in this case, did they
23 take place, any of the activities or the
24 conversations take place in Graham Kendall's
25 room or in close enough proximity that they

1 were recorded?

2 A. I don't believe so. There could have been. I
3 just don't believe so.

4 Q. Well, you would be the logical person to know,
5 because you were in charge of the case, if it
6 had occurred, would you not?

7 A. Well, that's correct.

8 Q. Okay, and you don't know of any?

9 A. Not that I know of, no.

10 Q. The camera that I believe there's been some
11 testimony-- I don't know if you testified about
12 it-- but the camera that was located outside
13 the Lester building or on one end of the Lester
14 building, do you recall that?

15 A. I recall the testimony about it. I don't
16 recall a camera sitting there. There could
17 have been. I don't recall one. If there was
18 one there, I don't recall it being functional.

19 Q. Would that have been one that was there before
20 the government got involved in this
21 investigation or one that was placed there by
22 the government?

23 A. It would have been one that was there prior to
24 the government arriving, prior to the
25 government being involved in the investigation.

1 Q. And when you say it wasn't-- you don't recall
2 it being functional, what do you mean? Do you
3 mean it wasn't functional to the extent that it
4 could record something, or it wasn't functional
5 to the extent that you could observe something
6 on it but it wouldn't be record, or what?

7 A. Well, first and foremost, I don't recall there
8 being a video camera there. And secondly, if
9 there was a video camera there, I don't believe
10 it sent any video signal that it was functional
11 in that fashion.

12 Q. You testified that you had reprimanded Mr.
13 Skinner for, number one, withholding the ET
14 and, number two, for placing the one can of ET
15 out where it could be observed during the walk-
16 through. Do you recall that?

17 A. There are separate incidents.

18 Q. Yes.

19 A. Several separate incidents, yes.

20 Q. Were there more than those two incidents that
21 you reprimanded him for?

22 A. Reprimanded him on the walk-through on October
23 27th, reprimanded him again on October 31st
24 when he told us he had a surprise, that he
25 wanted to show us something, and in the Quonset

1 hut there underneath the tile, there was a box
2 of ergocristine.

3 Q. Okay.

4 A. And then reprimanded him again on January 22nd
5 for not being truthful with me that he had
6 possession of the ergocristine, reprimanded him
7 again on February 21st when, in the presence of
8 his attorney, he brought into a hotel outside
9 of Kansas City two additional cans of
10 ergocristine.

11 Q. And with regards to at least one of those, I
12 believe you testified on direct-- or on-- maybe
13 it was on cross by Mr. Rork, that you told Mr.
14 Skinner that you would report that indiscretion
15 or activity to Mr. Hough. Did you do that?

16 A. Yes, I did.

17 Q. Was Mr. Skinner disciplined in any way, to your
18 knowledge, after you reported those activities?

19 A. Not to my knowledge, no.

20 Q. Okay. Now, I want-- you reminded me of
21 something, and that's this October 31st
22 incident. As I understand it, that's the day
23 of the search warrant. Correct?

24 A. That's the day of the search warrant.

25 Q. And you and other agents searched the Lester

1 building and other areas of the site, missile
2 site, correct?

3 A. That's correct.

4 Q. And at the point in time when Mr. Skinner came
5 to you and said, "I've got a surprise for you,"
6 had the search been concluded?

7 A. No, it had not.

8 Q. And had the Quonset hut been searched?

9 A. I don't know whether it had been thoroughly
10 searched or whether people-- agents had walked
11 through and looked at things. I can't answer
12 that because I spent most of the day in a fully
13 encapsulated suit inside the laboratory.

14 Q. Inside the Lester building?

15 A. Well, inside the Lester building processing the
16 laboratory.

17 Q. Who searched the Quonset hut, if anyone, prior
18 to Mr. Skinner saying, "I've got a surprise for
19 you guys"?

20 A. I can't answer that. I don't know.

21 Q. Okay, and who did Mr. Skinner report to that he
22 had a surprise for you?

23 A. I believe it was initially Arthur Hubbard, then
24 Arthur approached me and told me, "You need to
25 talk to Mr. Skinner."

1 Q. And did you talk to him?

2 A. Yes, I did.

3 Q. And what was that discussion?

4 A. Well, he said he needed to show me something,
5 that he had a surprise, and he walked me up to
6 the Quonset hut, and underneath some tile in a
7 large, wooden crate, was a smaller wooden box,
8 and inside that box were ten cans of
9 ergocristine.

10 Q. Who else was with you, if anyone, other than
11 Mr. Skinner up to--

12 A. Well, I'm sorry. That day?

13 Q. Who else went with you up to the Quonset hut
14 when Skinner said, "I have a surprise for you,"
15 and you say he walked you up there and pointed
16 that out? Was there anyone else present?

17 A. Yes. I believe Arthur Hubbard was. I believe
18 Ralph Sorrell was. I don't know if there was
19 anyone else present and with us at that point.

20 Q. But at that point in time, the agents, in the
21 course of searching the premises, had not
22 located those cans. Is that correct?

23 A. At that point we had not.

24 MR. BENNETT: Judge, I believe that's
25 all I have.

