

Pickard LSD Case/Court Transcripts

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF KANSAS
3 TOPEKA, KANSAS
4 UNITED STATES OF AMERICA,)
 ----- Plaintiff,))
5)) Case No.
)) 00-40104-01/02
6 WILLIAM L. PICKARD and)
))
7 CLYDE APPERSON,)
 ----- Defendants.)

8 VOLUME XIII
9 TRANSCRIPT OF TRIAL
10 BEFORE
 HONORABLE RICHARD D. ROGERS
11 and a jury of 12
 on
12 January 30, 2003

12 APPEARANCES:

13 For the Plaintiff: Mr. Gregory G. Hough
 Asst. U.S. Attorney
14 290 Federal Building
 444 Quincy Street
15 Topeka, Kansas 66683
16 For the Defendant: Mr. William Rork
 (Pickard) Rork Law Office
17 1321 SW Topeka Blvd.
 Topeka, Kansas 66612

18
19 For the Defendant: Mr. Mark Bennett
 (Apperson) Bennett, Hendrix & Moylan
20 5605 SW Barrington Court S
 Topeka, Kansas 66614

21
22 Court Reporter: Kelli Stewart, RPR, CRR, RMR
 Nora Lyon & Associates
 1515 South Topeka Avenue
23 Topeka, Kansas 66612
24
25

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1 THE COURT: I believe I will have the
2 attorneys approach the bench first and I'll
3 give a couple of orders and then we can take up
4 any other matters you have.
5 (THEREUPON, the following
6 proceedings were held at the bench and
7 outside of the hearing of the jury).
8 THE COURT: I want to make a couple
9 of rulings on things that arose yesterday.
10 First, in regard to Exhibit 800, the Defendants

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11 have objected to the introduction of Exhibit
12 800. The Court will sustain this objection.
13 The Court does not believe that its
14 introduction is necessary. The Court is not
15 persuaded that it addresses any issue of
16 importance to the jury. Moreover, the Court
17 has some concern that the exhibit might be
18 viewed by the jury as the Court's approval of
19 Gordon Todd Skinner's testimony. Accordingly,
20 the Court shall not allow its introduction. So
21 you can-- that will be just like any other
22 order that I have issued during this-- this
23 trial.

24 MR. HOUGH: I will withdraw it.

25 THE COURT: All right. And next, we

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1 have the Defendant's motion for a mistrial and
2 to dismiss for the failure of the Government to
3 timely provide the defense with the required
4 materials. Yesterday the Defendants sought a
5 mistrial or a dismissal based upon the
6 Government's failure to timely provide them
7 with necessary material. The Defendants
8 mentioned that during the trial they have
9 received a number of documents from the
10 Government. These documents include some 42
11 pages that were received on Tuesday. These
12 pages-- these pages list a variety of matters
13 concerning the investigation that continues in
14 San Francisco related to this case.

15 After a careful review of the
16 circumstances here, including the recently
17 provided 42 pages, the Court shall deny the
18 Defendants' motion-- Defendants' motions. The
19 Court is not persuaded that the Government has
20 engaged in any misconduct or has failed to
21 deliberately provide information required by
22 the Federal Rules of Criminal Procedure, Brady,
23 Giglio or the orders of this Court.

24 The Court believes that some of the
25 information provided has been available to the

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1 Defendants for some period of time. The Court
2 further believes that other information has
3 been provided upon the request of the
4 Defendants. Finally, the Court finds nothing
5 in the recent 42-page material that constitutes
6 Rule 16, Brady or Giglio matters. To the
7 extent that any of the provided materials
8 should have been given to the Defendants
9 earlier, the Court is thoroughly convinced that
10 the Defendants have not been prejudiced.

11 The Defendants have had ample time during

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12 the course of this trial to investigate, study
13 and research any of the materials provided by
14 the Government. As such, the Court shall deny
15 the Defendants' motions. That will be the
16 order on that-- on that.

17 All right. Now, we might then if you
18 want to go back and make anything else you want
19 to make. I-- I didn't know who would be in
20 here at this point.

21 MR. HOUGH: Judge, we could just do
22 it here unless you--

23 THE COURT: It doesn't make any
24 difference to me.

25 MR. HOUGH: We're here. It's what's

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1 most convenient for you.

2 MR. BENNETT: Judge, the-- the matter
3 that I want to take up is-- is-- part of it was
4 included in the motion at the time I made the
5 motion for a mistrial or dismissal, and that
6 had to do with credentials that were presented
7 to the Court in Seattle by Gordon Todd Skinner.
8 And I-- I would like to have those provided to
9 us.

10 Secondly, with regards to the Secret
11 Service report that the Court-- I don't
12 remember if the Court ordered it or if it was
13 just produced, but we got that report
14 yesterday. And in that regard, it makes
15 reference to Gordon Todd Skinner calling the
16 Secret Service agent, Quinn I believe his name
17 is, and Agent Quinn tape-recorded that phone
18 conversation. That I would move the Court for
19 an order directing the Government to-- to
20 provide us with a copy of that tape recording.

21 Now, that tape recording was just
22 subsequent to the January 9th arrest. I
23 believe the phone conversation was on January
24 the 18th and-- when Mr. Skinner contacted Quinn
25 and they had a conversation about what had

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1 happened on January the 9th.

2 MR. HOUGH: You're talking about 2000
3 for the record?

4 MR. BENNETT: Yeah, 2000.

5 THE COURT: Mr. Hough, what about
6 that?

7 MR. HOUGH: Credentials presented to
8 the Court by Skinner in Seattle, it's a state
9 court matter. On the videotape that they
10 provided to us Friday, Mr. Skinner provided
11 documents to the Court. My recall of that
12 video is that the Court entered a ruling and

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13 returned the documents to the attorney for Ms.
14 Treadway that Mr. Skinner was there on behalf
15 of. We don't have them. Any of the-- well, we
16 don't have them. And the events occurred in
17 King County District Court in the State of
18 Washington, not in federal court. No federal
19 government involvement whatsoever, that they're
20 not in the possession of the Government.
21 That's the status of that.

22 As to the January, 2000 matters on Mr.
23 Skinner. After Defendants' request the other
24 day, my secretary called the Secret Service in
25 Wichita and asked them to provide us whatever

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1 they had on the case. They sent us a report,
2 which is a summary report that was disclosed to
3 both attorneys. The policy, practices and
4 procedures of the Secret Service are not unlike
5 other agencies. After a case that's been
6 investigated has been indicted and sentenced
7 and disposed of, all the evidence that they've
8 got is destroyed and they keep for their file a
9 summary report, much like they gave us and was
10 disclosed the other day.

11 So it's our assumption that because the
12 Skinner case has long since passed, that Secret
13 Service would have treated that misdemeanor
14 matter not unlike anything else they do, and
15 that all that exists is what they gave us in
16 response to our request. So that's where we
17 are.

18 THE COURT: You've given that to the
19 Defendants?

20 MR. HOUGH: We've given that over.
21 Now, that report, that summary report,
22 references other reports. It-- it references
23 the credentials that Skinner had, one or two
24 references of a tape recording of a
25 conversation with Skinner. We assumed for the

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1 reasons I've just stated that that stuff has
2 long since been destroyed. And we believe that
3 it's a safe assumption.

4 But prior to the Court taking the bench
5 today, I had the case agent go down and have my
6 secretary contact Secret Service once again to
7 confirm that. And we should know later today
8 the status of that on the one hand. On the
9 other hand, because impeachment with the
10 specific-- or the specifics of the event is not
11 appropriate, we would submit that because it's
12 out there, their summary report covers
13 everything that happened, that that is all

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14 that's necessary for disclosure relative to it.

15 MR. BENNETT: Well, Judge, with
16 regards to-- number one, if they check and--
17 and they say that that's what's happened and
18 it's destroyed, it's destroyed. And I
19 understand that. And-- but I would like the
20 Court to-- to enter an order-- or not an order,
21 but direct the Government to make an effort to
22 ascertain whether or not it still exists.

23 With-- now, he's also raised this issue
24 whether-- and I think what he's talking about
25 is 608(b) and the extrinsic evidence issue.

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1 And our position is going to be, and I have
2 some authorities that we're in the process of
3 getting together right now, that I would submit
4 generally the-- the principle is that we can go
5 into extrinsic evidence with regards to Mr.
6 Skinner's direct testimony and we can put
7 extrinsic evidence on, even though he's
8 admitted doing certain things or committing
9 certain crimes, whatever.

10 There's a line of cases that stands for
11 the proposition that-- that once it's opened up
12 on direct-examination, it's fair game and--
13 and-- and the-- the-- what do I want to say?
14 That 608(b) doesn't apply and that we are--
15 should be allowed to go into those issues. As
16 I say, I've got some cases, I don't have them
17 right here right now, but I've got-- I've had
18 somebody doing work on that yesterday while I
19 was here.

20 MR. HOUGH: Well, Judge, the
21 foundation of this case is such that based upon
22 the prior rulings that the Court has made, the
23 Court has ruled that it's not going to allow
24 mini-trials as to each of these issues. The
25 Court's also issued those orders. And within

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1 the context of that ruling or those rulings, it
2 would naturally flow that counsel are not going
3 to be able to go into, naturally, the specific
4 facts and circumstances of the events. Because
5 were that to occur, that's exactly what you
6 have is a mini-trial on each one of those
7 issues.

8 The rule as to not allowing extrinsic
9 evidence is on its face very, very clear. And
10 it does state that's in the discretion of the
11 Court. The Court can accept the primary rule
12 in very limited circumstances. Well, because
13 the witness has admitted the conduct, it's
14 obvious that those types of circumstances don't

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15 exist here. If the witness were to adamantly
16 deny the fact of an event, then obviously it
17 would be appropriate for counsel to be allowed
18 to go into the extrinsic proof. And those are
19 the types of circumstances that the exceptions
20 are designed for.

21 MR. BENNETT: Judge, those cases that
22 I'm making reference to directly address that
23 issue and directly indicate that it's-- it's
24 appropriate and proper to do that. And I can
25 give the cases to the Court, I think I can get

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1 them during the break and--

2 THE COURT: Well, we'll look at the
3 cases and that-- as always, there's always
4 cases on the other side for sure.

5 MR. BENNETT: Well--

6 THE COURT: I assume. I've never
7 found a situation where there-- where there
8 weren't. But in regard to the credentials
9 you're talking about, the Government says they
10 do not have them, it was a state case. I'm not
11 going to order them to-- for the discovery in
12 this case, I will deny-- I will deny the-- the
13 first point.

14 MR. BENNETT: Could I ask the Court
15 if the Court would consider entering an order
16 that-- that directs the prosecutor out there to
17 provide that information or a-- a subpoena
18 that--

19 THE COURT: Well, it's a civil case--
20 I mean, it's a state case.

21 MR. BENNETT: I understand.

22 THE COURT: And I have-- I have no
23 authority to order the prosecutor to-- to do
24 anything on that. So I-- I am just going to
25 deny that-- that request. Now, if you want me

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1 to wait on number two, I-- I will do that, I
2 will wait on number two and see what--

3 MR. BENNETT: Well, I would like--

4 THE COURT: -- what further comes up
5 and you can furnish what you want to.

6 MR. BENNETT: I will provide that
7 later.

8 THE COURT: That will be my ruling.
9 Now, does that take care of everything we have?

10 MR. RORK: So far.

11 MR. HOUGH: Yes, sir. Well, Judge,
12 we-- based upon the state of the record, the
13 travel records of Ms. Kruglova that were
14 withdrawn apparently early on yesterday by the
15 Court at the Defendants' request, we would ask

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16 that based upon Mr. Skinner's testimony and the
17 state of the record so far that it would be
18 appropriate to reinclude those. Plus we would
19 note that there is additional evidence to come
20 relative to Ms. Kruglova's travel.

21 Additionally, based upon the state of the
22 record and Mr. Skinner's testimony regarding
23 the intrinsic evidence of Mr. Pickard's prior
24 conviction, we would ask that Exhibit 568, 570
25 and 571, which are items seized from Mr.

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1 Pickard's storage locker in Somerville,
2 Massachusetts, that directly relate to that
3 issue and which are corroborative of Mr.
4 Skinner in the-- what he's testified regarding
5 that yesterday, we would ask now that the Court
6 reconsider and admit those items.

7 MR. RORK: Well, Judge, irregardless
8 of what Mr. Skinner has testified to, the rules
9 of evidence don't just disappear. And again,
10 we believe that their admission and the Court's
11 ruling initially on that testimony, while we
12 objected, we don't think the record-- you made
13 your decision, he's talked about it, hasn't
14 been denied, it hasn't been put in dispute at
15 this point in time, we believe, such that any
16 extrinsic can be offered as relates to Mr.
17 Pickard's letter of discharge of parole and the
18 newspaper articles, number one.

19 Number two, we have yet to challenge the
20 legality of their seizure from the storage
21 locker looking for drugs. I don't think the
22 newspaper article is a, quote, drug or equation
23 of that. But beyond the-- the challenge of the
24 search warrant, number one, Judge, it then--
25 the relevance and the probative value

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1 substantially outweighs their prejudice. We
2 believe that the Court should, as-- as always,
3 deny it, take it under advisement pending
4 further proceedings.

5 With respect to Ms. Kruglova, who is
6 Natasha, is his now wife. Again, Judge, those
7 documents-- the Court can admit any relevant
8 evidence. And I object to the introduction of
9 those records based upon, one, hearsay. Based
10 upon, two, not in furtherance of the
11 conspiracy. Based upon, three, not able to
12 confront and examine her. Based upon marital
13 privilege, number four, that they're married.

14 Under Rule 106, Judge, if we're going to
15 introduce and you're going to allow those
16 records, I want the Government to produce for

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17 me the check issued by Gardner Springs or
18 Bellagio for the money that Mr. Skinner then
19 provided her after the cash was seized to pay
20 the UCLA for her tuition. And, again, for all
21 those reasons, I would ask that you deny the
22 Government's motion.

23 MR. HOUGH: Judge, first off, it's
24 not hearsay because it is the-- the documents
25 received directly from Southwest Airlines, and
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1 the Defendant stipulated early on that they
2 were, in fact, the actual documents of record.
3 Two, Ms. Kruglova-- well, the 106 argument we
4 would submit is frivolous because it's totally
5 unrelated to the travel records. And they're
6 obviously relevant, they're not hearsay and
7 they corroborate what Mr. Skinner has said to
8 date.

9 I mean, you look at-- if you were to just
10 look at the airline tickets themselves or the--
11 the travel, the multiple travel and the
12 thousands of dollars incurred in travel and
13 look at that in light of the fact of Mr.
14 Skinner's testimony that she was essentially
15 laundering drug money when she came through
16 Kansas City, it was-- and it was seized. She's
17 unemployed and she's a college student. This
18 is obviously laundered money that she's
19 traveling on because there's no independent
20 evidence that we have found nor that can be
21 produced that would substantiate this
22 unexplained wealth of this woman, who is now--
23 once paramour, now wife of Mr. Pickard.

24 The other thing is that the marital
25 privilege as it relates to purposes of planning
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1 and commission of a crime is not recognized in
2 federal court.

3 MR. RORK: Judge, this-- in-- in
4 regard to that, the-- the relevancy that the
5 trip is the event that the Government wants to
6 introduce, as well as the acts of funds and the
7 trip with respect to the funds was supposedly
8 by Skinner to pay her tuition. I don't know
9 how you launder money by paying tuition, number
10 one. But number two, his replacement with a
11 check for those funds to either UCLA or to her,
12 again, is a matter that helps explain and
13 further doesn't distort the travel documents
14 themselves and the event. But we defer to your
15 ruling.

16 THE COURT: Well, I will take these
17 three-- these three matters, 568, 570, 571

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18 under advisement and we'll look at it again a
19 little bit more and as well as whatever comes
20 along on the-- this.

21 MR. BENNETT: Judge, I think with
22 regards to those cases, the authorities that I
23 was talking about, if we could come back in
24 after the morning break before you bring the
25 jury back in, I think I can provide those to

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1 you by then.

2 MR. RORK: And show films all day.

3 MR. HOUGH: Judge, I believe it was--
4 739 was the Kruglova travel records in addition
5 to those three.

6 THE COURT: 739?

7 MR. HOUGH: I believe that's
8 accurate.

9 MR. RORK: And also, Judge, and I--
10 we can get to it later, but there's some rental
11 car records that are also entered by her, but
12 we can get to that later, we don't have to do
13 it now.

14 THE COURT: All right. Let's bring
15 the jury in now and we'll--

16 (THEREUPON, the bench conference was
17 concluded; WHEREUPON, the testimony of
18 Gordon Todd Skinner held before the jury
19 was ordered transcribed and is contained
20 in a separate binder; WHEREUPON, the
21 following proceedings were had after
22 lunch outside of the presence of the
23 jury).

24 THE COURT: Did the attorneys have
25 something you wanted to talk to me about?

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1 MR. BENNETT: Yes, Your Honor. I-- I
2 guess I could start. Early on I requested--
3 and by early on I mean before this trial. I
4 requested the Secret Service reports regarding
5 Mr. Skinner's arrest on January 9th. Nothing
6 was forthcoming. During this trial, I asked
7 for the reports again, and-- and Mr. Hough said
8 he would get them. And he's given me one
9 report, which is a summary report, it's not the
10 individual agent's report.

11 Then this morning I asked for the tape
12 after I got the report, and Mr. Hough
13 represented to the Court that he didn't think
14 there was any tape, that they have a document--
15 they get rid of documents after the cases are
16 closed, et cetera, et cetera, et cetera. Now
17 he's told me he's got the tape, and I'm going
18 to get that tomorrow. And I said, "What about

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19 any other reports?" And he's indicated, "Well,
20 you didn't ask for any other reports." So I
21 just want to clarify on the record I'm asking
22 for everything that the Government has, whether
23 it's in the U.S. Attorney's Office or the
24 Secret Service, all of the reports relating to
25 Mr. Skinner's arrest on January the 9th, 2000

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1 at Harrah's Casino for allegedly falsely
2 impersonating a Secret Service agent or an
3 Interpol agent or any other kind of a federal
4 officer.

5 And I'm-- I'm slowly getting it
6 piecemeal, but I've asked for it all. And then
7 we get up and we argue about a-- one particular
8 item and then Mr. Hough comes back and says,
9 "Well, you didn't ask for the rest of it," and
10 I have asked for it. But I want to make sure
11 the record is clear so he understands what I'm
12 asking for.

13 THE COURT: All right. You-- you
14 have it on the record. That's fine.

15 MR. BENNETT: Thank you.

16 MR. HOUGH: Judge, so that I'm-- as a
17 matter of housekeeping, the two transcripts
18 that Mr. Rork asked for before the lunch break
19 were xeroxed and both him and Mr. Bennett were
20 provided with copies before you took the bench
21 today. The request for-- as the record will
22 reflect, I asked that my secretary call the
23 Secret Service, they indicated to me over the
24 lunch hour that they have a copy of the
25 audiotape that was requested, and that's going

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1 to be overnighted. It will be here tomorrow so
2 that we can disclose that.

3 What Mr. Bennett is proposing now is a
4 fishing expedition into the entire Secret
5 Service file, which we would submit he's not
6 entitled to because-- under 608(b) because Mr.
7 Skinner has admitted that conduct and that
8 conviction. The extrinsic evidence is not
9 admissible about it. So we would ask the Court
10 not to sanction and authorize a fishing
11 expedition into the files of the matter that
12 are not going to be admissible.

13 MR. RORK: Judge, I just want to note
14 for the record, one, I join in the motion and
15 want to correct the record. It wasn't when you
16 took the bench today, it was just before you
17 took the bench this afternoon at 1:30 that Mr.
18 Hough handed us N-3 and N-4. And I have some
19 other matters when Mr. Bennett gets done.

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20 MR. BENNETT: No, no, I've got one
21 other. Judge, I have those cases now.

22 THE COURT: Yeah.

23 MR. BENNETT: Mr. Hough just made
24 reference to it's-- under 608(b) it's not
25 admissible. I've got the cases.

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1 THE COURT: Well--

2 MR. BENNETT: Mr. Haley had suggested
3 that we get them tomorrow or at the end of the
4 day today, but I just want the Court to know
5 I've got cases here that-- to rebut his
6 position and-- and we would like an opportunity
7 before the Court decides on that issue to
8 present this.

9 THE COURT: Well, I'm waiting for--
10 I'm waiting for the cases and I'm waiting for
11 his reply and--

12 MR. HOUGH: Judge, our reply is going
13 to be based upon United States versus Olivo, 80
14 F.3d 1466, which is Tenth Circuit, 1996. And
15 United States versus Michael Lipp, 54 F.Supp.2d
16 1025. That is Judge Crow in the F.Supp., May
17 18th, 1999 published disposition. Clearly, it
18 would be a miscarriage of the 608(b) to allow
19 what Mr. Bennett is proposing. We would also
20 reference the note to subprovision B, the
21 footnote of the very rule itself that is found
22 in the Federal Criminal Code and rules.

23 THE COURT: Well, you-- you can just
24 turn these in to me. I'm-- whenever you-- each
25 side has them ready, turn me in something and

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1 we'll look at it.

2 MR. RORK: Judge, I had some
3 preliminarily objections to you before Mr.
4 Hough started playing the tapes this afternoon.
5 Do you want us to go to the bench?

6 MS. HILL: No, he was just handing
7 something to me.

8 MR. RORK: Oh. Judge, I believe that
9 the Government is going play, and I don't have
10 the number, but it deals with three
11 conversations that were made at the missile
12 base on November 4, 2000. All I have down is
13 N-13, N-15 and N-14. And these are
14 conversations that based upon information just
15 provided to me and expanded upon a little bit,
16 Mr. Skinner was a Government agent on November
17 4, 2000, when working for the Government, as
18 per Exhibit 800. And we would object to the
19 introduction of these three conversations based
20 upon he lacked the authority to be there as a

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21 Government agent. And the Government intends
22 to rely upon any consent signed by Graham
23 Kendall for Mr. Skinner to be on the property
24 or any guest that he have. I've been provided
25 information and I have reason to believe that
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1 Mr. Kendall was advised that Mr. Nichols and
2 other agents of the DEA were represented to him
3 as being potential buyers of the premises by
4 Mr. Skinner. Mr. Skinner introduced them as
5 potential buyers. I will note for the record
6 Mr. Skinner is present in the courtroom.

7 THE COURT: Who were the
8 conversations between?

9 MR. RORK: The agents, Skinner and
10 Graham Kendall, the trustee, who signed a
11 consent for Mr. Skinner and any of his guests
12 to be on the property at any time they desired.
13 It's an exhibit that previously was marked and
14 given to you in a hearing prior concerning
15 authority to be on the base.

16 THE COURT: All three of the
17 conversations are between those people?

18 MR. RORK: They're between Mr.
19 Skinner, Mr. Pickard and-- I'm not sure if Mr.
20 Apperson-- Mr. Apperson also, yes, is on the
21 conversation with the wire Mr. Skinner is
22 wearing. And he was on the missile base as a
23 Government agent without proper authority, he
24 did not own the base, he had a purported
25 consent to be there by Graham Kendall to
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1 authorize him on the base. Graham Kendall is
2 the trustee.

3 Graham Kendall, as I understand it, will
4 testify that he was-- signed this, quote,
5 consent for Mr. Skinner under the auspices that
6 Mr. Skinner introduced who he now believes to
7 be Nichols, Hanzlik, Sorrell and others as
8 potential buyers of the missile base, not as
9 DEA agents. And that he signed this consent
10 for Mr. Skinner to bring these, quote,
11 potential buyers onto the property. That's
12 what Mr. Skinner was relying on to be on the
13 property when he was wearing a recorder that
14 then gave him the permission or the-- the
15 authorization to have these recorded.

16 So at that time being a Government agent,
17 we're objecting to his authority to be there.
18 And I can make more of a proffer if you would
19 like in that regard.

20 THE COURT: Well, what about this,
21 Mr. Hough, what's your point?

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22 MR. HOUGH: Judge, the Court has
23 already entertained this argument on the
24 authority issue when the Court held its
25 hearings on the motion to suppress. We believe
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1 that it's res judicata. Mr. Skinner owned
2 and/or controlled the base during the period of
3 time. The conversations are with these two
4 Defendants and Mr. Skinner. We would - for the
5 reasons the Court cited in addressing this
6 control issue and the order relative to the
7 motions to suppress - would respectfully submit
8 that this argument is specious.

9 MR. RORK: And, Judge, that's what I
10 wanted to indicate to you. That while you have
11 ruled on it previously, the information relayed
12 to me that is reported to be represented by
13 e-mails that I'm going to be getting copies of
14 indicate this information wasn't before you
15 when you made your rulings some time ago. And
16 that is that Mr. Kendall only signed the
17 document you had previously authorizing Mr.
18 Skinner and guests to be there, that's the one
19 that the Government agents have testified both
20 in this trial that they went to the bank to
21 find out who owned the property and then, yes,
22 Mr. Nichols, and then entered the property for
23 the-- after the sneak and peek-- for the sneak
24 and peek to do certain things based upon this
25 consent of Mr. Skinner's at the request of the
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1 Government.

2 I'm now informed that Mr. Kendall's
3 testimony under oath would be those individuals
4 were-- were represented by him-- to him by Mr.
5 Skinner as buyers. And that Mr. Skinner needed
6 to have, quote, consent for him and these
7 potential missile base buyers to be on the
8 property. So Mr. Kendall, through the
9 Government, through Mr. Hough and Ms. Silano,
10 needed to give them consent to be there, for
11 Mr. Skinner to be there and others, Mr. Kendall
12 then signed the authorization that you have as
13 another exhibit under the auspices that it was
14 for Mr. Skinner and buyers of the missile base,
15 not DEA agents. And that further, he was
16 instructed to move his property, and they
17 assisted him in moving his personal effects off
18 the base and then emptied it out.

19 So I would renew that objection with
20 respect to everything on November 4 and would
21 also renew it with respect to the other motions
22 as previously made on standing or suppression

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23 based upon that information just revealed to me
24 today.

25 THE COURT: The Court feels that this
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1 new argument you're making makes no new
2 objection, and I will overrule and deny your
3 request to keep this evidence out. And this
4 evidence will be admitted.

5 MR. RORK: That's fine, Judge, and I
6 would just renew it later when Mr. Kendall is
7 here because the last thing that-- oh, Mr.
8 Bennett.

9 MR. BENNETT: Judge, I just would
10 like the record to show that I've joined in
11 that--

12 THE COURT: Fine.

13 MR. BENNETT: -- objection.

14 MR. RORK: Judge, the last thing I
15 have is there's a tape that's been-- it would
16 be marked N-19, Exhibit N-19, which is a
17 November 6, 3 o'clock p.m. approximately phone
18 conversation. And the transcript that I have,
19 again not having the Government's CD ROM and
20 equipment, clearly reflects on the last five or
21 six pages only the one-sided conversation of
22 Mr. Skinner and then colloquy between Mr.
23 Skinner and Agent Nichols. There is no
24 conversation recorded by Mr. Pickard. And Mr.
25 Pickard indicates-- and you'll see by the

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1 transcript of the tape that that's how I say it
2 is.

3 And Mr. Pickard says he had very
4 exculpatory conversations with Mr. Skinner that
5 should have been on that tape. We've listened
6 to the tape and we've compared it to the
7 transcript. You can clearly see where the tape
8 was recorded over, because in between-- in the
9 written transcript, and it would be easier if I
10 showed you, Judge, but Agent Nichols-- it
11 shows-- after a beeping sound and a call to Mr.
12 Pickard, it shows Mr. Skinner stating
13 conversation, then it shows Agent Nichols
14 saying, "Well, the preceding phone call was
15 made by Agent Skinner to Pickard on this date,"
16 and has other language. And then it goes back
17 into Mr. Skinner continuing on with the
18 conversation of whoever he's talking to. And
19 then it says "end."

20 So somewhere from the beginning to the
21 end of this conversation, we have Agent Nichols
22 thinking it's the end of the tape and he
23 interjects on there, "The following

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24 conversation was with the CS and Mr. Pickard,"
25 then we have the continuation of Mr. Skinner's
1873

1 phone conversation. But nowhere do we have the
2 words that Mr. Pickard made and the statements
3 he made on that tape.

4 And for that reason, without further
5 foundation and proffer from Mr. Pickard
6 reference the statements that should have gone
7 on, we would object to-- and now I see it's--
8 well, it's marked N-19, it's the third
9 conversation on there that starts at
10 approximately 6 o'clock p.m. consisting of two
11 pages. So that item we would object to its
12 admission without further foundation, without
13 Mr. Pickard being able to make a proffer and to
14 put in-- interject his side of the
15 conversation, rather than just having Mr.
16 Skinner's side and the interruption.

17 MR. HOUGH: Judge, the recording
18 device failed to record the other side of the
19 conversation. That-- that is true. And the
20 agent when he-- after he had played it back and
21 it came to the point where there was a long
22 dead space in the tape then did the "This is
23 Karl Nichols, this tape was recorded on this
24 date at this time," and then turns it off.
25 Well, it just so happens that there was more

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1 after that dead space, which it was an
2 inadvertent gap by the agent to have
3 interrupted a portion of the one-sided bit of
4 that conversation that was recorded.

5 However, it was a conversation, as
6 counsel has conceded, between Mr. Skinner and
7 Mr. Pickard. It's just that one side was
8 recorded. And for technical reasons, the other
9 side of the conversation failed, which as the
10 Court knows, number one, it's not unusual in
11 the recording mechanisms the DEA has access to
12 in the District of Kansas. And number two,
13 it's not fatal to the admissibility of it.

14 Certainly I will ask Mr. Skinner what was
15 going on on the other side of the conversation.
16 Both attorneys will have an opportunity to
17 cross-examine him on that. So there-- there's
18 no problem as to the admissibility of it. It's
19 an unfortunate gap and--

20 MR. RORK: The only problem we have,
21 Judge, is now this is the third time where
22 there's exculpatory statements being made by
23 Mr. Pickard that the tape doesn't work. And
24 that's our problem. There-- you have in

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25 evidence the tape both on the wire of Mr.

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1 Skinner in Oklahoma and on the-- out in the car
2 separate from the wire that don't work.

3 THE COURT: Well, I will overrule the
4 objection and you may--

5 MR. RORK: I will just note a
6 continuing objection for the record.

7 THE COURT: You may put that into
8 evidence, just--

9 MR. RORK: Just so as not to
10 interrupt the jury, Judge, I would just note a
11 continuing objection to your definitive ruling.

12 THE COURT: Mr. Hough, would you like
13 to-- bring the jury in. Would you like to--

14 MR. HOUGH: Judge, also, as she's
15 doing that, we filed a motion in limine
16 regarding Mr. Skinner citing various citations
17 under Rule 608(b) back in January of '02,
18 citations that we cited there in that motion in
19 limine would, we submit, apply equally to Mr.
20 Bennett's present position, and we would
21 incorporate all of those by reference as though
22 fully restated in response to his earlier
23 argument. Those are already of record and
24 before the Court in our motion.

25 MR. RORK: Judge, I understand you

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1 took it under advisement and I'll just supply
2 you some more later, too.

3 THE COURT: All right. Let's bring
4 the jury in.

5 (THEREUPON, the day's remaining
6 testimony of Gordon Todd Skinner was
7 ordered transcribed and is contained in
8 a separate binder).

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