

Volume 10

Pages 1930 - 2140

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jeffrey S. White, Judge

|                                 |   |                     |
|---------------------------------|---|---------------------|
| UNITED STATES OF AMERICA,       | ) |                     |
|                                 | ) |                     |
| Plaintiff,                      | ) |                     |
|                                 | ) |                     |
| VS.                             | ) | NO. CR 11-00573 JSW |
|                                 | ) |                     |
| WALTER LIEW; ROBERT MAEGERLE;   | ) |                     |
| and USA PERFORMANCE TECHNOLOGY, | ) |                     |
| INC.,                           | ) |                     |
|                                 | ) |                     |
| Defendants.                     | ) |                     |
|                                 | ) |                     |

San Francisco, California  
Monday, January 27, 2014

**TRANSCRIPT OF PROCEEDINGS**

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I N D E X

Monday, January 27, 2014

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1 Monday - January 27, 2014

9:11 a.m.

2 P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard out of the presence of the jury:)

5 **THE COURT:** Good morning. Everybody. Please be  
6 seated.

7 **ALL:** Good morning, Your Honor.

8 **THE COURT:** Please call the case.

9 **THE CLERK:** Calling Case Number CR-11-573,  
10 United States versus Walter Liew, United States versus Robert  
11 Maegerle, and United States versus USAPTI.

12 Counsel, please state your appearances.

13 **MR. HEMANN:** Good morning, Your Honor. John Hemann,  
14 Pete Axelrod, and Richard Scott for the United States.

15 **THE COURT:** Good morning.

16 **MR. GASNER:** Good morning, Your Honor. Stuart Gasner,  
17 Simona Agnolucci for Walter Liew and USAPTI. Mr. Liew is  
18 present.

19 **THE COURT:** Good morning. Good morning, Mr. Liew.

20 **MS. AGNOLUCCI:** Good morning, Your Honor.

21 **MR. FROELICH:** Good morning, Your Honor. Jerry  
22 Froelich for Mr. Maegerle, and Mr. Maegerle is present standing  
23 next to me.

24 **THE COURT:** Good morning. Good morning, Mr. Maegerle.  
25 All right. So I understand you have an issue with respect

1 to Mr. Gibney?

2 **MR. GASNER:** Yes, Your Honor. He's an expert as to  
3 whom we moved in limine on the grounds of -- that he would be  
4 duplicative of Mr. Fisher. So duplication is going to be less  
5 an issue since Gibney is going first, but he is not an  
6 engineer. He's a businessperson.

7 And I do just want to alert the Court that I'm going to  
8 want to voir dire on his qualifications before he expresses his  
9 opinions. And we haven't really had that come up yet, so I  
10 want to make sure that we go about it in the proper way that  
11 the Court is used to.

12 But I do think that the Government will ask him for  
13 opinions that I don't think he has true expertise in, and I  
14 think the Court needs to hear his qualifications in order to be  
15 able to make rulings as his testimony proceeds.

16 **THE COURT:** All right. Yes, Mr. Froelich?

17 **MR. FROELICH:** Yes, Your Honor, I agree. I don't  
18 think he's an expert. He's a businessman and he's coming in  
19 here, one, to try and repeat what we've heard now for two  
20 weeks. And, so, I think 403 keeps it out, and I also think  
21 it's going to drag out the trial.

22 But, more importantly, I don't think he's an expert on  
23 what the Government wants to put him up for. He's a  
24 businessman. He's not an engineer; and as a businessman, he  
25 doesn't know the inside workings of anything.

1           **THE COURT:** Counsel?

2           **MR. HEMANN:** Well, I think this -- number one, the  
3 Court has addressed this issue already, in addition to arguing  
4 that he is duplicative of Mr. Fisher. (reading)

5           "The Defendants" -- I'm quoting from the Court's  
6 order, which the Court may be reading right now --  
7 "Defendants also move to exclude Mr. Gibney's testimony on  
8 the basis that he is not qualified to opine on TiO2  
9 technology, DuPont's internal practices," and a number of  
10 other items.

11           The Court reviewed his qualifications, determined that he  
12 was, in fact, qualified based on the proffer made by the  
13 Government, which he will repeat today, and concluded that the  
14 proper remedy is to challenge his opinions via vigorous  
15 cross-examination rather than exclusion.

16           I don't think, under the circumstances and given this has  
17 been raised by the defendants, that voir dire is appropriate.

18           **THE COURT:** All right. Well, I did review the Court's  
19 ruling, and I did also indicate that, obviously, you know, I  
20 was not ruling out any particular objection. I was making a  
21 ruling based upon the record presented to the Court.

22           And the defendants have a right to voir dire the witness.  
23 The Government made certain representations. Obviously that  
24 has to be tested to the Court.

25           And with respect to any given question, although the Court

1 made certain categorical rulings, clearly a foundation has to  
2 be set forth in front of the jury and the Court so the Court  
3 can rule on each question.

4 So I guess what I'm saying is, I will entertain -- I will  
5 not exclude the witness. I've already made that decision  
6 pursuant to, I will take it as a renewed motion by Mr. Maegerle  
7 and that will be denied.

8 But with respect to Mr. Gasner's request to voir dire the  
9 witness, that will be granted. And then with respect to any  
10 objections that Mr. Gasner has to the qualifications of the  
11 witness and any particular question, then I'll certainly rule  
12 on those as they present themselves.

13 So I think that's all I can do at this point.

14 **MR. HEMANN:** Your Honor, and if I could ask a question  
15 about the Court's preference. Would the Court like the  
16 Government to offer Mr. Gibney as a witness [sic]?

17 There's a divergence of practice amongst judges now.  
18 Many, as the Court knows, like the proffering party to stand up  
19 and say, "We offer him as an expert in such and so."

20 And I will tell the Court we would offer him as an expert  
21 in the titanium dioxide business and industry; but I'm  
22 certainly fine to end his qualifications and not do that. And  
23 I'm certainly happy to adhere to the Court's preference.

24 **THE COURT:** Well, I do it sort of kind of a hybrid  
25 way, which is, I ask the offering party to offer the witness as



1 an expert and in the area indicated for a couple of reasons.  
2 Number one, so the jury knows why he or she is being offered;  
3 number two, it's a signal to the Court that you believe you  
4 have laid a proper foundation under Rule 703, and that triggers  
5 Defendants' ability to voir dire the witness.

6 What I don't do is what is done in State Court practice; I  
7 don't make a ruling or accept the witness. I simply tell the  
8 jury that his testimony is to be judged like any other witness,  
9 and I will give a more fulsome instruction at the end of the  
10 case.

11 So please do offer the witness because the jury has a  
12 right to know why he's being offered, and that also gives the  
13 defendant sort of a context in which to voir dire the witness  
14 in an effort to, perhaps, present an alternative or contrary  
15 view about his qualifications.

16 **MR. HEMANN:** Thank you, Your Honor.

17 **THE COURT:** So that's the way we'll do it, and I'll  
18 allow you to voir dire the witness.

19 **MR. GASNER:** Thank you, Your Honor.

20 **THE COURT:** Anything further that needs to be brought  
21 up this morning?

22 **MR. HEMANN:** There are two other issues that I think  
23 will be briefer. Briefer now, perhaps more complicated later.

24 One of them has to do with a witness by the name of Jian  
25 Liu, L-I-U, who will be testifying later this week, either

1 tomorrow or Wednesday. Amongst the Defense exhibits are a  
2 series of emails between Mr. Liu and his attorney, Mark  
3 Bernstein. Those emails were obtained by the Government in a  
4 search warrant of Mr. Liu's Hotmail account.

5 We went through a lengthy process of privilege review. We  
6 had an agent designate them as privilege. They were  
7 inadvertently produced to the Defense by a -- in the technical  
8 production process.

9 We reviewed those emails with Mr. Liu's attorney, Mary  
10 McNamara, over the weekend. She does take the position that  
11 they are privileged and should not have been produced.

12 I did not look at them until I began looking at the  
13 Defense exhibits over the weekend believing that they had been,  
14 in fact, excluded from the production. In fact, we're not able  
15 to look at the originals now because they have been segregated  
16 from the database that we're allowed to look at.

17 I raise this now because I anticipate that the Defense  
18 will seek their admission. I think that it's appropriate for  
19 us to take steps to protect the privilege.

20 I'd also observe that the emails themselves are hearsay.  
21 They're communications between Mr. Liu and his attorney; but I  
22 think the primary issue is the inadvertent production during  
23 discovery by the Government, no fault of Mr. Liu or his  
24 attorney.

25 **THE COURT:** Well, I think procedurally any privilege

1 belongs to the witness; and if he has a problem with it, then  
2 his attorney needs to file some sort of a motion. I don't  
3 think the Government really -- I appreciate the Government  
4 taking appropriate steps that may be prudent in light of, you  
5 know, the fact the way the Government obtained these; but to  
6 the extent that Mr. Liu himself has an objection, putting aside  
7 any hearsay issues or foundation, I think Mr. Liu needs to file  
8 a timely motion, which I will consider, and then decide, you  
9 know, how I'm going to deal with it.

10 **MR. HEMANN:** And, Your Honor, so thank you for that.  
11 And I wanted to raise it and ask the Court how the Court would  
12 like to deal with it.

13 We will advise Ms. McNamara of that this morning, and  
14 allow her to respond accordingly.

15 **THE COURT:** Well, she needs to file an expedited  
16 motion sooner rather than later. I don't want to get this at  
17 the last minute. I mean, she needs to file it today.

18 **MR. HEMANN:** I was going to suggest that, Your Honor.

19 **THE COURT:** And then I will look at that and, at a  
20 proper break point, give the defendants an opportunity to  
21 respond if they wish to object or oppose the request to  
22 preclude use of the documents.

23 And it's going to be a very quick turnaround time, because  
24 it doesn't take -- this is not a very complicated issue.

25 **MR. HEMANN:** No, Your Honor.

1           **THE COURT:** Although, I should ask Ms. Agnolucci.  
2 Just to give the Court a preview, what's the Defendants'  
3 position going to be with respect to these?

4           **MS. AGNOLUCCI:** Your Honor, without getting into the  
5 content of the email, I will say that they are highly  
6 exculpatory of our client, and we will be seeking their  
7 admission.

8           We will respond to any motion that's filed, but we think  
9 that there are sort of two issues here. One is the issue of  
10 the privilege, and the other is the issue of how any such  
11 privilege would interact with Mr. Liew's right to a fair trial.  
12 So we do ask for the opportunity to respond to any briefing by  
13 Mr. Jian Liu's attorney.

14           **THE COURT:** All right. Well, what I'm -- again, I am  
15 kind of loath to set a deadline for a person who's not here,  
16 but you can tell -- when do you anticipate Mr. Liu will  
17 testify?

18           **MR. HEMANN:** I think that we could probably arrange --  
19 I was thinking that he would probably begin on direct tomorrow  
20 based on some assumptions about how things will go, but  
21 probably not get to cross tomorrow.

22           **THE COURT:** All right. Well, then, what I would like  
23 to do is have Ms. McNamara file her -- again, I'll sort of have  
24 you tell her, I'll put it in the minutes, that she needs to  
25 respond -- she needs to file any motion by 4:00 o'clock today,

1 and I'll give the Defendants till 4:00 o'clock tomorrow to file  
2 any response or earlier, 4:00 o'clock will be the latest, so  
3 the Court will have a chance to look over it, you know, late  
4 afternoon, early evening, and make a ruling tomorrow on  
5 cross-examination.

6 But since I'm not going to allow a reply, I may allow oral  
7 argument, but given that there will not be a reply, I think she  
8 needs -- she's a very prominent member of the Defense bar, she  
9 needs to address -- anticipate the issue that Ms. Agnolucci  
10 raised, which is, how, if at all -- how does the Court deal  
11 with the issue of proper cross-examination, right to  
12 confrontation, et cetera, versus -- due process versus the  
13 privilege. And I don't have a position on that right now  
14 because I haven't looked at it.

15 So you might want to tell her that Defense counsel did  
16 raise that as an issue, and I'm sure she will anticipate that  
17 those two are going to have to be reconciled by the Court.

18 **MR. HEMANN:** Indeed, Your Honor.

19 **THE COURT:** All right. So the only thing I would say  
20 is, again, there's a whole body of law that exists, that I'm  
21 sure Defense counsel are aware of, about Defense counsel even  
22 looking at these documents.

23 Defense Counsel run quite a substantial risk, and there's  
24 been Bar opinions on this, there's been cases on this, and the  
25 law is evolving on what counsel's obligation is who receives

1 what is obviously or could reasonably be determined to be  
2 inadvertently produced. And I think both sides have to  
3 tread -- pending a ruling by the Court, need to tread pretty  
4 lightly on how they have used or use these documents because  
5 they may very well implicate other issues for the Court,  
6 ethical issues.

7 And, again, this may not be the time to raise that -- to  
8 adjudicate that, but I wanted to advise the parties that there  
9 is a very, I would think, pretty in flux but developing body of  
10 law on the right of a litigant, certainly in a civil case, I  
11 don't know about a criminal case, to review such documents at  
12 all if they believe they were inadvertently produced and they  
13 may be privilege.

14 So that's all going to have to be worked out, and I  
15 appreciate the parties bringing that up. It's an interesting  
16 issue, and I'll deal with it.

17 **MR. HEMANN:** Thank you, Your Honor.

18 **THE COURT:** All right. But I would say to  
19 Ms. McNamara, if you speak to her, that given the nature of the  
20 trial and the schedule, that the Court cannot be much more  
21 flexible with respect to briefing unless the Government -- she  
22 persuades the Government, if she happens not to be available to  
23 file and maybe even appear on the Court's schedule, that the  
24 Government may consider delaying this witness to accommodate  
25 Ms. McNamara's schedule. Because I could order that certainly.

1 I'd rather not. I'd rather let the parties try the case the  
2 way they plan to do it.

3 So I don't want to hear any argument on that now. Let's  
4 just -- you said you had another issue?

5 **MR. HEMANN:** The final issue, Your Honor, we spoke  
6 last week prior to Special Agent Pattillo beginning to testify  
7 about this article that was located in Mr. Maegerle's drawer;  
8 and based on the information that the Court had last week, the  
9 Court indicated that we should go ahead and lay the foundation  
10 but not discuss the contents of the article.

11 We've subsequently learned two things about the article.  
12 Number one, that it was published in November of 2007, which is  
13 before Mr. Maegerle began sending this number of emails  
14 regarding Kuan Yin that have been suggested. So we believe the  
15 timing of that weighs in favor of admissibility.

16 Second of all, it was found in a folder, in a particular  
17 folder, that is entitled "Correspondence To" with no to whom.  
18 There's another article in the same folder, which is an article  
19 that the Defense has not yet offered but is on their list and  
20 they intend to offer, again going to state of mind.

21 We believe that, to the extent that that article goes to  
22 his state of mind, this one would go to his state of mind as  
23 well.

24 Our proposal, Your Honor, is to redact the text of the  
25 article other than the first paragraph of the article, which is

1 all of the inflammatory, confusing, irrelevant matters that the  
2 Court was scanning through last week.

3 I think the Court's question about the timing of the  
4 article was apropos, and I feel badly for not knowing it  
5 earlier; but I do think, if it's just the headline and the  
6 first paragraph, it ought to be admitted.

7 **THE COURT:** Can I see the article, please?

8 **MR. HEMANN:** Yes, Your Honor. Feel free to take it  
9 out of the bag that it's in. This is the actual cut-out of the  
10 article from the desk drawer.

11 **THE COURT:** All right. Thank you.

12 (Pause in proceedings.)

13 **THE COURT:** All right. So I guess my question is --  
14 I'm not going to spend a lot of time on this at this point.

15 So if the article was redacted, the headline would say:  
16 "Jail Time Imposed in DuPont Spy Case." And then the  
17 subheading is, "Scientist Admitted Stealing Trade Secrets."  
18 And then the first paragraph is: (reading)

19 "Wilmington. On Tuesday the Government closed its  
20 case against an ex-DuPont senior scientist who admitted to  
21 stealing more than \$400 million in trade secrets when he  
22 left for another company," unquote.

23 So to what -- I understand you say it's relevant to  
24 Mr. Maegerle's state of mind, but how so?

25 **MR. HEMANN:** We believe it's consciousness of guilt



1 evidence, Your Honor. He went to the trouble of cutting out an  
2 article, and he wouldn't -- and it's an original article for  
3 the record, as the Court can see, cut out of the newspaper and  
4 placed in his file drawer with the rest of the work that he is  
5 doing with Mr. Liew and his activities with the Chinese  
6 companies.

7 I believe that it is particularly so, given the fact that  
8 when interviewed, as the Court heard on Thursday,  
9 Mr. Liew [sic] denied any involvement in Kuan Yin, both earlier  
10 or professionally, which he had had; but also that he had had  
11 any used -- or had any involvement with Kuan Yin as to  
12 Mr. Liew, notwithstanding the vast amount of physical evidence  
13 that we have that that is not the case.

14 **THE COURT:** All right. Mr. Froelich?

15 **MR. FROELICH:** Well, Your Honor, first of all, that's  
16 incorrect and that's misleading.

17 And this is highly prejudicial. It doesn't go to state of  
18 mind. In fact, it talks about someone who's admitted things  
19 and is going to jail. It is so prejudicial, you'll never get  
20 it out of the jury, and it's just not relevant to state of  
21 mind. It comes out of a local newspaper, and that's -- and,  
22 so, Your Honor has ruled that way, and I think Your Honor  
23 should say that.

24 They're saying we're putting in some other newspaper that  
25 goes to state of mind. Well, then that's an issue they can

1 deal with then, and it shouldn't be conditioned. They can come  
2 back with it then if that's what they're saying.

3 **THE COURT:** What's the other article relate to?

4 **MR. HEMANN:** The other article is an article with  
5 regard to the licensing of the Ashtabula factory in 1968. It's  
6 another article that is in the same -- it's a copy, not a  
7 cut-out, being from 1968, but it's in the same folder.

8 And how that goes -- I mean, if that goes to his innocent  
9 state of mind, the Government would submit that this goes to  
10 his guilty state of mind; and it's a fair point for us to make  
11 given where the articles were located and given Mr. Maegerle's  
12 obvious interest in this subject matter.

13 **MR. FROELICH:** What the articles -- the other article  
14 says is that DuPont says that it is selling its Ashtabula --  
15 it's building for Sherwin-Williams the Ashtabula plant, and it  
16 is licensing it for 10 years because it believes that its TiO<sub>2</sub>  
17 technology is getting old and has been acquired -- you know,  
18 been gotten by competitors, and this is a way at least ensuring  
19 for the next 10 years that it makes money off its TiO<sub>2</sub> process  
20 because it's going to get a percentage from Sherwin-Williams of  
21 the amount of product -- you know, a dollar amount for the  
22 amount that's produced. We haven't put it in yet.

23 **THE COURT:** All right. Well, the Court's ruling is  
24 that I'm going to exclude this. I think that it is probative,  
25 but the prejudicial -- the probative value does not clearly

1 outweigh the prejudicial effect. We're talking about -- you  
2 know, even with the redactions, it's talking about jail time,  
3 it's talking about a spy case; and I think that it cuts both  
4 ways as far as perhaps Mr. Maegerle wanted to be careful about  
5 making sure he didn't do the same thing.

6 And, so, I think that if Mr. Maegerle were to testify, and  
7 I don't presume to know whether he is or not or care at this  
8 point, but if he is, then this may very well be appropriate  
9 cross-examination material, but I'm not ruling on that either.

10 I think that although this article, which is marked as  
11 Trial Exhibit 691, is somewhat probative, but I think it's  
12 ambiguous and it's prejudicial; and at this point -- now, there  
13 may be other places in the trial that it may come up. If  
14 there's expert testimony, this may be proper to use on proper  
15 cross-examination of an expert witness. I can't judge every  
16 single possibility; but coming in through Agent Pattillo just  
17 as is, that it was found, is not appropriate.

18 You can properly authenticate it; and then if at the  
19 appropriate time it comes up, it will have been properly  
20 authenticated without having to call Agent Pattillo again.

21 So that's the Court's ruling on this article.

22 **MR. GASNER:** Your Honor, if I might add on behalf of  
23 Mr. Liew, first of all, I think Mr. Hemann inadvertently  
24 misspoke when he described statements made in connection with  
25 this document. I think he said Mr. Liew. I think he meant

1 Mr. Maegerle in context.

2 **THE COURT:** Right.

3 **MR. GASNER:** My other concern about the foundation and  
4 then future reference, this whole idea that it's in a folder  
5 marked "Correspondence To" with no indication where it comes  
6 from I think leads to an unfair inference that this was going  
7 to be or intended to be correspondence to Mr. Liew, because --

8 **THE COURT:** Well, you may be right, but right now I'm  
9 not admitting it. So if I reconsider, then you can make that  
10 argument at this point. But it's been brought to my attention  
11 now, and I'm not going to -- under the current circumstances,  
12 I'm not going to allow the substance to be revealed through  
13 Agent Pattillo.

14 **MR. GASNER:** And I would ask, Your Honor, that  
15 Mr. Hemann not ask questions about the "Correspondence To"  
16 location of it given that it may never be admitted. We would  
17 stipulate, if it's admissible later, as to where it was found;  
18 but I think to bring it up now --

19 **THE COURT:** Well, I think if it's merely that the  
20 exhibit was found in a file that says "Correspondence To,"  
21 that's hardly prejudicial, and I'm not going to -- I'll  
22 overrule that objection. They can certainly say, "We found  
23 Exhibit 691 in a file named such and such," and leave it at  
24 that at this point. We'll all know what it is.

25 **MR. GASNER:** We did stipulate to it, but I understand

1 the Court's ruling.

2 **THE COURT:** All right. Let's get the jury.

3 **MR. HEMANN:** And, Your Honor, if I could just ask the  
4 Court, when we -- so it will be a bit unusual, if the Court  
5 could just advise the jury that it's the Court's direction that  
6 we not reveal the context at this point and the jury  
7 shouldn't --

8 **MR. FROELICH:** We can just stipulate. Your Honor, she  
9 doesn't have to go into it. If it gets admissible, we'll  
10 stipulate.

11 **THE COURT:** All right. So defendants are willing to  
12 stipulate it was found in this file named "Correspondence To"  
13 without prejudice to objecting later should it be offered.

14 **MR. FROELICH:** That's right.

15 **THE COURT:** So now you don't have to go into it. Now  
16 you've won that.

17 **MR. FROELICH:** We'll stipulate where it was found and  
18 who found it if it becomes admissible.

19 **MR. GASNER:** That's fine.

20 **MR. FROELICH:** In other words, you don't have to  
21 recall Agent Pattillo.

22 **THE COURT:** All right.

23 **MR. HEMANN:** We certainly accept that stipulation,  
24 Your Honor.

25 **THE COURT:** Okay. Let's get the jury.

1           **MR. HEMANN:** Thank you for your time.

2                                   (Pause in proceedings.)

3           (Proceedings were heard in the presence of the jury:)

4           **THE COURT:** Please be seated.

5           Good morning, ladies and gentlemen. I hope you had a  
6 pleasant weekend, and thank you for your punctuality again.

7 And just to remind you, we're going to be going until  
8 2:00 o'clock today.

9           And we're still in the direct examination of Special Agent  
10 Pattillo of the FBI.

11           You may continue.

12                                   **KATHERINE PATTILLO,**

13 called as a witness for the Government, having been previously  
14 duly sworn, testified further as follows:

15           **MR. HEMANN:** Thank you very much, Your Honor. May I  
16 proceed?

17           **THE COURT:** Yes, you may.

18                                   **DIRECT EXAMINATION** (resumed)

19 **BY MR. HEMANN:**

20 **Q.** Good morning, Special Agent Pattillo.

21 **A.** Good morning.

22 **Q.** Last week when we left off, you had been describing an  
23 interview that you conducted of Mr. Maegerle. Do you recall  
24 that?

25 **A.** Yes, I do.

1 Q. And then we proceeded to talk a little bit about the  
2 beginning of the search process. Do you remember that?

3 A. Yes, I do.

4 Q. Could you -- and you mentioned that Mr. Maegerle had asked  
5 some questions about the search. Do you remember that?

6 A. Yes.

7 Q. Could you describe the questions that Mr. Maegerle asked  
8 and the responses that you gave him?

9 A. Certainly. At this point in time I was sharing with him  
10 that we had a search warrant that we would be executing, and we  
11 had a conversation about sort of what that entailed and the  
12 logistics of that execution, especially given the fact that  
13 there were two homes that we would be searching at the site.

14 And during the course of that explanation, Mr. Maegerle  
15 asked a couple of logistical questions. I can't remember  
16 specifically what they were, but they were pertaining to how  
17 things were going to happen. And I answered those questions,  
18 and we proceeded.

19 Q. As part of the FBI's search procedure, are photographs  
20 typically taken?

21 A. Yes, they are.

22 Q. And could you describe for the jury the reason and the  
23 type of photographs -- the reason for taking photographs and  
24 the type of photographs that are taken of the premises?

25 A. Sure. After we arrive at a location, one of the first

1 things we do when executing a search warrant is to designate  
2 each room with a letter so that we understand, when we're  
3 talking about locations, what room we're all talking about  
4 because we'll refer to it by letter.

5 And then we subsequently go through the home or the site,  
6 and we take photographs of the rooms in the site with the  
7 letter so that we have a visual record as well as a written  
8 record of each letter that was assigned to a particular area in  
9 a location.

10 **Q.** Did an FBI employee, an agent or somebody assisting in the  
11 search, take photographs of the Maegerle residence at the time  
12 of the search?

13 **A.** Yes.

14 **MR. HEMANN:** Your Honor, may I approach the witness  
15 with what's been marked as Exhibit 4008.

16 **THE COURT:** Yes, you may.

17 (Trial Exhibit 4008 marked for identification)

18 **BY MR. HEMANN:**

19 **Q.** Special Agent Pattillo, I've handed you what's been marked  
20 for identification as Exhibit 4008. Do you recognize that?

21 **A.** (Witness examines document.) Yes, I do.

22 **Q.** And what is it?

23 **A.** These are copies of photographs taken during the course of  
24 our search of Mr. Maegerle's home.

25 **Q.** Were they taken on July 19th, 2011?



1     **A.**    Yes, they were.

2     **Q.**    And do you recognize the photographs as accurate  
3    representations of the way the residence -- certain parts of  
4    the residence looked on that day?

5     **A.**    Yes, I do.

6             **MR. HEMANN:**  Your Honor, the United States moves  
7    Exhibit 4008 into evidence.

8             **MR. FROELICH:**  No objection, Your Honor.

9             **THE COURT:**  Admitted.

10            (Trial Exhibit 4008 received in evidence)

11            **MR. HEMANN:**  Your Honor, may I retrieve it for the  
12    purpose of putting it on the display?

13            **THE COURT:**  Yes, you may.

14            **MR. HEMANN:**  Thank you.

15     **Q.**    I'm just going to ask you, Special Agent Pattillo, about a  
16    couple of these photographs.

17            You had mentioned that you had interviewed Mr. Maegerle in  
18    a certain part of the house.  Do you remember that?

19     **A.**    Yes, I do.

20     **Q.**    What part of the house is that?

21     **A.**    At the beginning of the interview, we spoke with  
22    Mr. Maegerle in his office.

23     **Q.**    Is this the office or a picture of the office?

24     **A.**    Yes, it is.

25     **Q.**    And if you could -- I don't know if we should give this a

1 try or not -- indicate to the jury where -- there's a way to  
2 draw on the screen there.

3 **A.** Oh, no.

4 **Q.** If you could just mark --

5 **A.** Okay. I feel like this is an opportunity for disaster.

6 **Q.** -- with your finger where you and Mr. Maegerle sat during  
7 the course of the interview.

8 **A.** I'm not clear on the technical way this works.

9 **THE COURT:** Just use your finger.

10 **THE WITNESS:** Oh, I'm sorry. I thought there was -- I  
11 see.

12 **THE COURT:** It will make a red mark.

13 **THE WITNESS:** Okay. It might be better in this  
14 particular instance if I just state that the other agent and I  
15 sat on the couch.

16 **BY MR. HEMANN:**

17 **Q.** Okay. And where did Mr. Maegerle sit?

18 **A.** Mr. Maegerle sat in his desk chair, which is obscured by  
19 the lampshade.

20 **Q.** That's the little shadow or little object right sticking  
21 up above the lampshade is the desk chair?

22 **A.** Correct.

23 **Q.** If you push clear -- there you go. I can clear it.

24 And, Special Agent Pattillo, I'm showing you the second  
25 page of the document. What does this show?

1   **A.**   This is a picture of Mr. Maegerle's desk and accompanying  
2   bookshelves.

3   **Q.**   Did the desk have file drawers?

4   **A.**   Yes.  There are files on the left side of the desk that  
5   were cropped out of the photo.

6   **Q.**   Did the agents taking the photographs take pictures of the  
7   file drawers?

8   **A.**   Yes, they did.

9   **Q.**   How many pictures in this packet, do you remember, are of  
10  file drawers?

11  **A.**   At least one.

12  **Q.**   There's --

13  **A.**   Perhaps two, yes.

14  **Q.**   -- one here (indicating).  What is that?  I'm showing the  
15  fourth page.

16  **A.**   Right.  This is a photograph of -- Mr. Maegerle had an  
17  excellent filing system, and we had -- a majority of our  
18  evidence was seized during the search from this drawer.

19  **Q.**   And is there a drawer above this?

20  **A.**   From the office.  Most of it from the drawer.

21       I'm sorry?

22  **Q.**   I'm sorry.  Is there a drawer above this?

23  **A.**   Yes.

24  **Q.**   And page 6, is this the drawer above it?

25  **A.**   Yes.

1 Q. You mentioned, Special Agent Pattillo, that over the  
2 course of the search you moved to a different part -- when the  
3 search began, you moved to a different part of the house?

4 A. Yes, that's correct.

5 Q. Where was it that you moved?

6 A. We moved to a room on the back of the home. I would  
7 describe it as sort of a sunroom, and we stayed there for the  
8 remainder of the search.

9 Q. And is this a picture of the sunroom that you sat in for  
10 the remainder of the search?

11 A. Yes, it is.

12 Q. And that's the final page of the exhibit.

13 Thank you, Special Agent Pattillo.

14 Now, you mentioned --

15 MR. HEMANN: Ms. Ottolini, if you could switch it to  
16 our computer, please.

17 THE CLERK: Sure.

18 BY MR. HEMANN:

19 Q. You mentioned last week that Mr. Maegerle had specifically  
20 denied that he had information regarding the Kuan Yin, Taiwan,  
21 plant. Do you remember that?

22 A. Yes, that's correct.

23 Q. During the search of the Maegerle residence, did the FBI  
24 find information, locate information, in the Maegerle residence  
25 regarding DuPont's Taiwan Kuan Yin plant?

1 A. Yes, we did.

2 Q. There's been discussion in the trial of something called a  
3 Kuan Yin Basic Data Document. Are you familiar from your  
4 participation in the case with the Kuan Yin Basic Data  
5 Document?

6 A. Yes, I am.

7 Q. Was a copy of the Kuan Yin Basic Data Document located in  
8 Mr. Maegerle's house?

9 A. No, we did not locate that.

10 MR. HEMANN: Your Honor, may I approach the witness  
11 with a copy -- I'm sorry, with Exhibit Number 53?

12 THE COURT: Yes.

13 BY MR. HEMANN:

14 Q. Do you recognize Exhibit 53, Special Agent Pattillo?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is a binder full of process and instrumentation  
18 drawings.

19 Q. Where was it located?

20 A. This was located in Mr. Maegerle's office.

21 Q. And does it contain items in it that reference Kuan Yin?

22 A. Yes, I believe it does.

23 MR. HEMANN: Your Honor, the United States will move  
24 into evidence Exhibit Number 53.

25 MR. FROELICH: No objection.

1           **THE COURT:** Admitted.

2           (Trial Exhibit 53 received in evidence)

3           **BY MR. HEMANN:**

4           **Q.** Could you please turn to page 135 of the documents?

5           And, Ms. Mahoney, if you could be so kind as to put up  
6 Exhibit 53, page 135.

7           **A.** (Witness examines document.)

8           **Q.** Do you have that on your screen yet?

9           **A.** Yes, I do have it on my screen.

10          **Q.** Okay. Is there a reference on this page to the Kuan Yin  
11 factory?

12          **A.** Yes, there is.

13          **Q.** And where is that reference?

14          **A.** The top half of the document basically, that references  
15 Kuan Yin as a "2 chlorinator plant," and then proceeds to list  
16 some additional information.

17          **Q.** If you could turn a couple pages along, Special Agent  
18 Pattillo, to page 138 of this binder. Is there another  
19 reference to Kuan Yin?

20          **A.** Yes, there is.

21          **Q.** And where is that reference on page 138?

22          **A.** It is, again, at the top of the page. It references the  
23 Kuan Yin chlorinator.

24                 **MR. HEMANN:** Your Honor, may I approach with  
25 Exhibits 53 -- I'm sorry, 55, 56, and 58, which are already in

1 evidence?

2 **THE COURT:** Yes, you may.

3 **BY MR. HEMANN:**

4 **Q.** Special Agent Pattillo, you've got in front of you three  
5 documents: 55, 56, and 58. Do you see those?

6 **A.** Yes.

7 **Q.** And before your testimony today, have you had a chance to  
8 look at these documents?

9 **A.** Yes, I have.

10 **Q.** And do each of these three documents contain references to  
11 Kuan Yin?

12 **A.** Yes, they do.

13 **Q.** Where were they located?

14 **A.** They were located in Mr. Maegerle's home in his office.

15 **Q.** And you had a chance to look at them all again just now?

16 **A.** Yes.

17 **MR. HEMANN:** Your Honor, may I approach with Exhibit  
18 Number 59?

19 **THE COURT:** Yes, you may.

20 **BY MR. HEMANN:**

21 **Q.** I've handed you what's been marked as Exhibit 59, Special  
22 Agent Pattillo. Do you recognize that document?

23 **A.** Yes, I do.

24 **Q.** What is it?

25 **A.** This is a handwritten document that was found in

1 Mr. Maegerle's home. It does reference Kuan Yin.

2 **MR. HEMANN:** Your Honor, the United States moves  
3 Exhibit 59 into evidence.

4 **MR. FROELICH:** No objection.

5 **THE COURT:** Admitted.

6 (Trial Exhibit 59 received in evidence)

7 **MR. HEMANN:** And, Ms. Mahoney, could you please put up  
8 Exhibit 59, page 1?

9 **Q.** Where is the reference on this page?

10 **A.** It references -- this page references Kuan Yin on the  
11 second line of handwriting.

12 **Q.** Up towards the top?

13 **A.** Correct.

14 **Q.** Thank you.

15 **MR. HEMANN:** Your Honor, may I approach the witness  
16 with Exhibit Numbers 61 -- 60, 61, and 62?

17 **THE COURT:** Yes.

18 (Pause in proceedings.)

19 **BY MR. HEMANN:**

20 **Q.** Special Agent Pattillo, I'm going to go through each one  
21 of these with you, but I'd like to do so fairly quickly.

22 **A.** Okay.

23 **Q.** Please look at Exhibit Number 60. What is this?

24 **A.** This is a handwritten document found in Mr. Maegerle's  
25 home.



1 Q. And does this reference Taiwan?

2 A. Yes, it does.

3 Q. And where is that reference?

4 A. It's on the second half of the page at the beginning of  
5 the second paragraph of handwriting.

6 MR. HEMANN: And, Your Honor, the United States offers  
7 Exhibit 60 into evidence.

8 MR. FROELICH: No objection.

9 THE COURT: All right. Admitted.

10 (Trial Exhibit 60 received in evidence)

11 BY MR. HEMANN:

12 Q. And does it refer to something particular about Taiwan?

13 A. It refers to the chlorination operation.

14 Q. Thank you.

15 If you could please look at Exhibit 61.

16 A. (Witness examines document.)

17 Q. Can you tell me what Exhibit 61 is?

18 A. This is a handwritten document entitled "Chlorinator," and  
19 it subsequently references Taiwan.

20 Q. Where was this document located?

21 A. This was located in Mr. Maegerle's home.

22 MR. HEMANN: Your Honor, the Government offers  
23 Exhibit 61.

24 MR. FROELICH: No objection.

25 THE COURT: Admitted.

1 (Trial Exhibit 61 received in evidence)

2 **BY MR. HEMANN:**

3 **Q.** And in the writing on this, does it refer to a particular  
4 aspect of the Taiwan -- in handwriting does it refer to a  
5 particular aspect of the Taiwan operation?

6 **A.** Yes. I presume it is written reference to the  
7 chlorinator.

8 **Q.** And, Ms. Mahoney, could you please put up Exhibit 61,  
9 page 2?

10 And do you see -- can you direct the jury to the two  
11 references to Taiwan that appear on this page?

12 **A.** Certainly. The first reference is outlined there; and  
13 there is another reference halfway down, "Spirals/Taiwan."

14 **Q.** Thank you.

15 And this particular reference to Taiwan refers to, what's  
16 the word just to the left of "Taiwan"?

17 **A.** In the first reference?

18 **Q.** In the second reference. I'm sorry.

19 **A.** It's -- I'm not clear on your question.

20 **Q.** What's the word just to the left?

21 **A.** Oh, "spirals."

22 **Q.** Thank you.

23 Could you please have a look at Exhibit Number 62?

24 **A.** (Witness examines document.) Yes.

25 **Q.** What is that?

1   **A.**   This is a handwritten document, "Cost Reductions from  
2   Taiwan Base," found in Mr. Maegerle's home.

3   **Q.**   And does it refer to Taiwan?

4   **A.**   Yes, it does.

5           **MR. HEMANN:** Your Honor, the United States moves  
6   Exhibit 62 into evidence.

7           **MR. FROELICH:** No objection.

8           **THE COURT:** It's admitted.

9           (Trial Exhibit 62 received in evidence)

10          **MR. HEMANN:** Thank you.

11          May I approach the witness with Exhibit Number 57?

12          **THE COURT:** Yes.

13                           (Pause in proceedings.)

14   **BY MR. HEMANN:**

15   **Q.**   Do you recognize Exhibit 57, Special Agent Pattillo?

16   **A.**   Yes, I do.

17   **Q.**   What is it?

18   **A.**   It is a handwritten document found at Mr. Maegerle's home.

19   **Q.**   Does it reference the Kuan Yin facility?

20   **A.**   (Witness examines document.) It references Taiwan, yes.

21   **Q.**   Oh, I'm sorry.

22           And that's on the second page?

23   **A.**   Correct.

24           **MR. HEMANN:** Your Honor, the United States moves  
25   Exhibit 57 into evidence.

1           **MR. FROELICH:** No objection.

2           **THE COURT:** Admitted.

3           (Trial Exhibit 57 received in evidence)

4           **MR. HEMANN:** Ms. Mahoney, could you please put up  
5 page 2? And could you highlight the text at the bottom  
6 starting with "General"?

7           **Q.** For some reason, Special Agent Pattillo, the screen is  
8 yellow, and we are trying to figure out why that is.

9           **A.** Okay.

10          **Q.** And if you would be so kind as to, either from the  
11 original, which is maybe a little easier to read, or from the  
12 screen, read the two paragraphs under "General."

13          **A.** Certainly. (reading)

14                 "The most difficult equipment to identify will be the  
15 spray machine for the spray condenser. This has been" --

16          **Q.** And can I ask you just, some of the words, read it exactly  
17 as it appears? And I should have said this before, read it  
18 just exactly as it appears on the page rather than what --

19          **A.** Filling --

20          **Q.** -- filling in blank stuff.

21          **A.** Okay. Beginning again: (reading)

22                 "The most difficult equipment to identify will be the  
23 spray machine for the spray COND. This has been a  
24 DuPont-designed item manufactured in," "partnered" is  
25 crossed out, "selected" is written above, "machine shops.

1 If your Taiwan contact knows the source of the Kuan Yin  
2 machine, we could contact," under that "possibly," "them  
3 for a quote."

4 **Q.** And then there's another bullet point, if you will,  
5 directly underneath that.

6 **A.** Sure. (reading)

7 "Process flow sheets and equipment details for the  
8 package we will need a process knowledgeable chem ENGR and  
9 a pressure vessel knowledgeable equipment designer."

10 **Q.** Thank you.

11 When you interviewed Mr. Maegerle on July the 19th, 2001,  
12 did you discuss with him the civil suit that had been filed by  
13 that time by DuPont against Mr. Liew and others?

14 **A.** Yes, we did.

15 **Q.** And did Mr. Maegerle offer any commentary to you during  
16 your conversation with regard to that civil suit?

17 **A.** Yes, he did.

18 **Q.** And what was the substance of what he had to say to you?

19 **A.** Mr. Maegerle did not find the contents of the civil suit  
20 to be particularly compelling. He thought that the technology  
21 described in the civil suit by DuPont was publicly available.

22 I recall that he specifically mentioned being aware of  
23 literature publicly available that discussed chlorine catch  
24 tanks.

25 **MR. HEMANN:** Your Honor, may I approach -- let me ask

1 a question first.

2 **Q.** Special Agent Pattillo, did you locate during -- did the  
3 FBI locate during its search of Mr. Maegerle's home documents  
4 that referenced the DuPont civil suit?

5 **A.** Yes, we did.

6 **MR. HEMANN:** Your Honor, may I approach the witness  
7 with Exhibit 678?

8 **THE COURT:** Yes, you may.

9 (Pause in proceedings.)

10 **BY MR. HEMANN:**

11 **Q.** And before you look at that, I actually asked you a bad  
12 question there or a misleading question.

13 Did the FBI conduct, in addition to the search of  
14 Mr. Maegerle's home, searches of his Yahoo! email account  
15 pursuant to a search warrant?

16 **A.** Yes, we do.

17 **Q.** And are you familiar with the documents related to  
18 Mr. Maegerle that were seized during the execution of that  
19 Yahoo! search warrant?

20 **A.** Yes.

21 **Q.** Thank you.

22 Exhibit 678 in front of you, without going into the  
23 substance of it, can you describe what it is?

24 **A.** This is an email from Mr. Maegerle from his Yahoo! account  
25 to Walter Liew at another Yahoo! account.

1 Q. What is the date on that email?

2 A. Friday, April 8th, 2011.

3 Q. And what is the subject of that email?

4 A. The subject of the email is "DuPont Civil Suit."

5 MR. HEMANN: Your Honor, the United States moves  
6 Exhibit 678 into evidence.

7 MR. FROELICH: No objection.

8 THE COURT: Admitted.

9 (Trial Exhibit 678 received in evidence)

10 MR. HEMANN: Ms. Mahoney, would you be so kind as to  
11 put page 1 of that up on the screen and highlight the text?

12 Q. And, Special Agent Pattillo, will you please read the  
13 text?

14 A. Certainly. (reading)

15 "Walter,

16 "I plan to use your Yahoo! email for comments on this  
17 Summons. Charges appear to assume technical information  
18 from Kuan Yin were obtained. The actual scope basis for  
19 Jinzhou was the Ashtabula plant which DuPont built for  
20 Sherwin-Williams in the late 1960s; and after two resales,  
21 that plant is now owned by Cristal Global Millennium, the  
22 world's number two TiO2 producer. This 30K 'sold  
23 technology,'" in quotations, "plant is also the scale-up  
24 basis for our current 100K proposed plant. No Kuan Yin  
25 design information has ever been obtained for our current

1 design; and the 40-year-old Ashtabula technology, made  
2 available to the public, should not constitute an  
3 infringement on DuPont's current operations.

4 "To follow-up, we should:

5 "Determine the author of the 8/2010 letter to DuPont.

6 "Determine the legality of hacking into John's  
7 computer mail.

8 "Tabulate the many errors in the listed charges.

9 "Bob."

10 **Q.** Thank you.

11 Did you find in your -- did the FBI find in its search of  
12 the Yahoo! email accounts additional documents with regard to  
13 the DuPont civil suit?

14 **A.** Yes, we did.

15 **Q.** I'm handing --

16 **MR. HEMANN:** May I approach, Your Honor?

17 **THE COURT:** Yes, you may.

18 **MR. HEMANN:** Thank you.

19 **Q.** I'm handing you what's been marked as Exhibit 679. Is  
20 that one of those emails?

21 **A.** (Witness examines document.) Yes, it is.

22 **Q.** And without going into the content yet, can you generally  
23 describe what the email is?

24 **A.** This is an email from Robert Maegerle using his Yahoo!  
25 account to Walter Liew using his Yahoo! account sent on the 9th



1 of April 2011.

2 **Q.** And the subject matter?

3 **A.** The subject is "Comments on Complaint."

4 **Q.** Does this document, this email, have an attachment to it?

5 **A.** Yes, it does.

6 **MR. HEMANN:** Your Honor, the United States moves  
7 Exhibit 679 into evidence.

8 **MR. FROELICH:** No objection.

9 **THE COURT:** It's admitted.

10 (Trial Exhibit 679 received in evidence)

11 **MR. HEMANN:** And, Ms. Mahoney, could you please first  
12 put up page 1?

13 **Q.** Is that the cover page of the email, Special Agent  
14 Pattillo?

15 **A.** Yes, it is.

16 **Q.** And if you could go to, please, page 2, Ms. Mahoney, and  
17 highlight the first four paragraphs that are numbered item 1,  
18 2, 3, and 7 at the top.

19 If you could please read that, Special Agent Pattillo.

20 **A.** Yes. (reading)

21 "1. Trade secret materials have not been wrongfully  
22 obtained. DuPont detailed specifications have not been  
23 obtained.

24 "2. DuPont sold its," quotation, "'superior  
25 process,'" end quotation to Sherwin-Williams in the late

1 1960s, and that plant is now owned by Cristal Global  
2 Millennium, DuPont's chief competitor.

3 "3. Dr. Liew initiated independent development of  
4 the chloride TiO<sub>2</sub> process in 1997 using published data and  
5 the expertise of various consultants. Construction of a  
6 30K T/Y plant based on USAPTI engineering is expected to  
7 be complete in 2012. Many engineering and design man  
8 hours have gone into this effort.

9 "7. Dr. Walter Liew has a Ph.D. in engineering, and  
10 is a citizen of the U.S.A. His past experience in China  
11 include the design and installation of polymer facilities  
12 and upgrading Sulfate plant operations."

13 **Q.** Ms. Mahoney, could you go down to -- let me just ask you  
14 to summarize a little bit.

15 Does the next -- do the subsequent paragraphs and the next  
16 page refer to particular aspects of the DuPont Complaint?

17 **A.** Yes, they do.

18 **Q.** And does Mr. -- does the attachment make reference to both  
19 Ashtabula and Kuan Yin in other parts of the next two pages?

20 **A.** (Witness examines document.) Yes, they do.

21 **Q.** If you could please turn to page 4, Ms. Mahoney, and  
22 highlight the text that appears.

23 And I'd ask you, Special Agent Pattillo, to please read  
24 the text that appears on that page.

25 **A.** All of it?

1 Q. Yes, please.

2 A. Okay. (reading)

3 "58. DuPont released its technology to the  
4 competition in 1978 as previously documented. Process  
5 improvements made by DuPont since that date are unknown  
6 and are not a part of USAPTI design. DuPont's competitive  
7 edge in TiO<sub>2</sub> production is in the age of their plants and  
8 the experience of their operators. Plant investment has  
9 escalated sharply in recent years giving older plants a  
10 significant return on investment advantage.

11 "61. The USAPTI TiO<sub>2</sub> process, although similar to  
12 DuPont's 1968 technology, does not incorporate  
13 improvements claimed by DuPont since that time. It is  
14 expected that a USAPTI China plant will undergo many of  
15 the developmental problems experienced by DuPont after  
16 their initial 1948 installation.

17 "62. Building a chloride TiO<sub>2</sub> plant for another  
18 company does not appear to be a," quotation mark,  
19 "'reasonable effort,'" end quote, "to maintain the secrecy  
20 of its chloride TiO<sub>2</sub> process.

21 "Summary.

22 "DuPont compromised their own technology with the  
23 building of a chloride TiO<sub>2</sub> plant for Sherwin-Williams in  
24 Ashtabula in 1968. This plant had a 10-year payback to  
25 DuPont and a 10-year protection of technology agreement.

1 After the expiration of this 10-year period, this plant  
2 was sold twice with the facilities available for all  
3 competitors to view. USAPTI design contains no Kuan Yin  
4 technology, but has similarities to the Ashtabula  
5 facility. The cementation process will be a part of a  
6 future design in China, but at this time no USAPTI scope  
7 exists, and design will probably be contracted to a China  
8 cement company."

9 Q. Thank you.

10 MR. HEMANN: And, Your Honor, just as a housekeeping  
11 matter, I think I did not formally move Exhibit 59 -- 57 into  
12 evidence.

13 THE COURT: All right. Any objection?

14 MR. FROELICH: No objection.

15 THE COURT: It's admitted.

16 (Trial Exhibit 57 received in evidence)

17 MR. HEMANN: Thank you, Your Honor.

18 May I approach with Exhibits 682 and 683?

19 THE COURT: Yes.

20 MR. HEMANN: Thank you, Your Honor.

21 (Pause in proceedings.)

22 BY MR. HEMANN:

23 Q. I'm showing you two more emails, Special Agent Pattillo.

24 Do you recognize those from the email search that the FBI

25 conducted of the Yahoo! email account of Mr. Maegerle?

1     **A.**    Yes, I do.

2     **Q.**    Could you please first briefly describe Exhibit 682?

3     **A.**    Yes.  This is an email from Robert Maegerle to Walter Liew  
4    sent on the 24th of April 2011, and the subject is  
5    "Technology."

6     **Q.**    Does it refer to Ashtabula?

7     **A.**    Yes, it does.

8             **MR. HEMANN:**  Your Honor, the United States moves  
9    Exhibit 682 into evidence.

10            **MR. FROELICH:**  No objection.

11            **THE COURT:**  Admitted.

12            (Trial Exhibit 682 received in evidence)

13            **MR. HEMANN:**  If you could expand the text of this  
14    email, Ms. Mahoney, Exhibit 682, page 1.

15     **Q.**    And I'd ask you, Special Agent Pattillo, to read the text  
16    of the email.

17     **A.**    Certainly.  (reading)

18            "Walter,

19            "I did a little web surfing this morning and found a  
20    1978 court case where DuPont was charged with monopolizing  
21    TiO2 world production.  In a 1980 verdict, it was ruled  
22    DuPont did not violate their antitrust status.  In stating  
23    their position, DuPont stated that," quotation mark,  
24    '"they were under no obligation to license their  
25    technology to their competitors, there being no reason the

1 other companies couldn't develop their own technologies,'" end quotation.  
2

3 "I would like to be referred to as your," quotation  
4 mark, "'consultant on Ashtabula TiO2 technology,'" end  
5 quotation, "in discussions with DuPont lawyers, Chevron  
6 personnel, or private investigators. When the Court  
7 requests my name, feel free to identify me at that time.  
8 My experience with court cases at Gaylord Chemical is  
9 never to give any more information than a question  
10 requires.

11 "Bob."

12 **Q.** If you can refer to Exhibit 683.

13 **A.** (Witness examines document.)

14 **Q.** What is that?

15 **A.** This is another email from Robert Maegerle to Walter Liew  
16 sent on May 10th, 2011, "Subject: Comments on Response."

17 **MR. HEMANN:** Your Honor, the United States moves  
18 Exhibit 683 into evidence.

19 **MR. FROELICH:** No objection.

20 **THE COURT:** Admitted.

21 (Trial Exhibit 683 received in evidence)

22 **MR. HEMANN:** If you could put 683, page 1, on the  
23 screen, please, Ms. Mahoney.

24 **Q.** And if you could please read the text of that email,  
25 Special Agent Pattillo.

1     **A.**     (reading)

2             "Walter,

3             "My initial comments on the response are as follows:

4             "Par. 25. We should not deny that the vast majority  
5             of TiO<sub>2</sub> manufactured in China comes from the sulfate-route  
6             process. We should deny any knowledge of China's  
7             five-year plan.

8             "Par. 31. It is probably best to list Kuan Yin as a  
9             large capacity plant and Jinzhou as a small capacity," in  
10            parentheses, "(30K T/Y)," end parentheses, "plant.

11            "I see no additional problems, but will continue to  
12            review.

13            "Bob."

14     **Q.**     Thank you.

15            You said earlier Thursday when you were describing the  
16            interview that you conducted with Mr. Maegerle, that  
17            Mr. Maegerle had denied that he had been provided any DuPont  
18            proprietary information by Mr. Liew. Do you remember that?

19     **A.**     That is correct.

20            **MR. HEMANN:** I'd like to approach the witness, please,  
21            Your Honor, with Exhibit Number 5 and Number 10.

22            **THE COURT:** All right.

23            **MR. HEMANN:** I believe these are already in evidence,  
24            although I can --

25            **THE CLERK:** 5 is and 10 is, yes.

1           **MR. HEMANN:** 5 and 10 are already in evidence,  
2 Your Honor. I would like to hand the witness copies of  
3 Exhibit 5 and Exhibit 10, if that's okay.

4           **THE COURT:** Very well.

5           **MR. HEMANN:** Thank you.

6           And, Ms. Mahoney, could you please put up Exhibit 5?

7           **Q.** What is Exhibit 5, Special Agent Pattillo?

8           **A.** Exhibit 5 is a schematic from the Edgemoor plant.

9           **Q.** And what is Exhibit 10?

10          **A.** Exhibit 10 is a schematic as well marked "DuPont  
11 Confidential Special Control" also from the Edgemoor plant.

12          **Q.** Where were these documents located?

13          **A.** These documents were found on a thumb drive, which was  
14 located in Mr. Maegerle's left desk drawer in his office.

15          **Q.** Do the files, Exhibit 5 and Exhibit 10, have names?

16          **A.** Yes, they do.

17          **Q.** And could you tell the jury the name of Exhibit -- the  
18 file path name of Exhibit Number 5?

19          **A.** Exhibit Number 5 is called "Oxidation PFD" but is found in  
20 a folder called "Flow Sheets from Walter."

21          **Q.** Could you please also look at Exhibit Number 10 and  
22 describe to the jury the file name?

23          **A.** Yes. Exhibit 10 is called "Chlorination PFD" and is also  
24 from the folder "Flow Sheets from Walter."

25          **Q.** There's a -- if you could just rotate that. Thank you.



1 The file name as it's up on the screen right now sort of  
2 runs down the right-hand side; is that correct, Special Agent  
3 Pattillo?

4 **A.** Yes, that's correct.

5 **Q.** There is a -- there's a box down in the bottom right-hand  
6 corner.

7 **A.** Yes.

8 **Q.** Ms. Mahoney, could you blow up the box, the legend that's  
9 down in the right-hand corner, sort of as large as you can?

10 Do you see a name "Drawn By" in this box?

11 **A.** Yes, I do.

12 **Q.** And can you read it from the screen?

13 **A.** It says -- I believe it says, "Sheehand."

14 **Q.** In your search of the Maegerle residence, did you locate  
15 any references to a Sheehand?

16 **A.** Yes, we did.

17 **MR. HEMANN:** Your Honor, may I approach the witness  
18 with Exhibit Number 63?

19 **THE COURT:** Yes, you may.

20 (Pause in proceedings.)

21 **BY MR. HEMANN:**

22 **Q.** What is that, Special Agent Pattillo?

23 **A.** This is a handwritten letter found in Mr. Maegerle's home.

24 **Q.** And is it dated?

25 **A.** It's dated March 2nd, 2008.

1 Q. And is it -- to whom is it directed, and from whom is it  
2 from?

3 A. It's written in a memo format, and it is to Jack Sheehand  
4 from Bob Maegerle.

5 MR. HEMANN: Your Honor, the United States moves  
6 Exhibit 63 into evidence.

7 MR. FROELICH: No objection.

8 THE COURT: It's admitted.

9 (Trial Exhibit 63 received in evidence)

10 MR. HEMANN: And 63, page 1, please, Ms. Mahoney. And  
11 if you could blow up the subject line and the first  
12 paragraph -- actually, the subject line and the text, please.

13 Q. What is the subject?

14 A. The subject is "Oxidation Reactor for China TiO2."

15 Q. And if you could please blow up the text of this letter,  
16 please, Ms. Mahoney.

17 And I'd ask you, Special Agent Pattillo, to please go  
18 ahead and read this?

19 A. (reading)

20 "I have tried to design a China 30,000 T/Y oxidation  
21 reactor from memory. Enclosed is my first attempt. I  
22 would like you," crossed out, "to have your comments if  
23 you feel so inclined. If you would rather not, just throw  
24 it away and I will understand.

25 "I've enclosed a return envelope for any comments.

1 If you comment, please let me know how much time you spent  
2 so you can be compensated.

3 "Hope you and Melva are doing well. We hope to see  
4 you when we are in Newark.

5 "Take care.

6 "Bob."

7 **Q.** Did you locate -- did the FBI locate in the search of  
8 Mr. Maegerle's residence any other correspondence between  
9 Mr. Maegerle and former DuPont employees?

10 **A.** Yes, we did.

11 **MR. HEMANN:** Your Honor, may I approach the witness  
12 with Exhibit 698?

13 **THE COURT:** Yes, you may.

14 (Pause in proceedings.)

15 **BY MR. HEMANN:**

16 **Q.** And, again, I asked you the same incorrect question. And  
17 this refers not to the search of the residence but the search  
18 of Mr. Maegerle's Yahoo! email.

19 Did you locate correspondence between Mr. Maegerle and any  
20 other former DuPont employees in your search of the Yahoo!  
21 email account of Mr. Maegerle?

22 **A.** Yes, we did.

23 **Q.** Can you generally describe what Exhibit 698 is?

24 **A.** This is an email from the account of Tony and Judi Pezone  
25 to Robert Maegerle's Yahoo! account, "Subject RE: Engineering

1 ASST on China TiO2." And it was sent March 24th, 2006.

2 **MR. HEMANN:** Your Honor, the United States moves  
3 Exhibit 698 into evidence.

4 **MR. FROELICH:** No objection, Your Honor.

5 **MS. LOVETT:** I object on grounds of relevance and 403  
6 and hearsay.

7 **THE COURT:** All right. May I see it, please?

8 **MR. HEMANN:** I'm handing a copy to Your Honor.

9 **THE COURT:** All right.

10 (Pause in proceedings.)

11 **THE COURT:** The objection is overruled.

12 **MR. HEMANN:** May the document be admitted, Your Honor?

13 **THE COURT:** Yes, it may.

14 **MR. HEMANN:** Thank you.

15 **THE COURT:** It's admitted.

16 (Trial Exhibit 698 received in evidence)

17 **MR. HEMANN:** Ms. Mahoney, could you please put up  
18 Exhibit 698, page 1, and blow up just the text, please?

19 **Q.** And I'd ask if you'd be so kind as to read that, Special  
20 Agent Pattillo?

21 **A.** Yes. (reading)

22 "Bob,

23 "Ethically I would rather not work on this project  
24 because of the work that I did with the White Pigment  
25 Group just after I retired and their new process. In

1 addition, I don't know enough about the competing  
2 reactions for chlorine and the extent of reactions, as  
3 well as the reaction products, and Cl loss through the  
4 steps. The person who should be doing this is the one who  
5 will be doing the flow sheets. As you know, if the flow  
6 sheets and the eventual plant don't agree with what you  
7 tell the Chinese now about chlorine consumption, there  
8 will be problems.

9 "Sorry.

10 "Tony."

11 **Q.** Thank you.

12 I'd like to just change gears a little bit, Special Agent  
13 Pattillo, and ask you whether the FBI seized financial  
14 information regarding Mr. Maegerle's search -- Mr. Maegerle's  
15 work with Walter Liew?

16 **A.** Yes, we did.

17 **MR. HEMANN:** Your Honor, may I approach with  
18 Exhibit 333.

19 **THE COURT:** Yes, you may.

20 **BY MR. HEMANN:**

21 **Q.** Special Agent Pattillo, do you recognize Exhibit 333 from  
22 the search of the Maegerle residence?

23 **A.** Yes, I do.

24 **Q.** What is it?

25 **A.** It is a series of invoices covering a range of time from

1 1997 to, I think, the end of 2010.

2 **Q.** And do the invoices relate to particular work that  
3 Mr. Maegerle performed?

4 **A.** Yes. These are invoices related to Mr. Maegerle's  
5 consulting work for Walter Liew and USAPTI.

6 **MR. HEMANN:** Your Honor, the United States moves  
7 Exhibit 333 into evidence.

8 **MR. FROELICH:** Excuse me, Your Honor. No objection.

9 **THE COURT:** They're admitted -- it's admitted. Sorry.

10 (Trial Exhibit 333 received in evidence)

11 **MR. HEMANN:** And, Your Honor, before I ask any  
12 questions about this document, I'd also like to approach with  
13 Exhibits 334 and 336.

14 **THE COURT:** Very well.

15 (Pause in proceedings.)

16 **BY MR. HEMANN:**

17 **Q.** Special Agent Pattillo, do you recognize Exhibit 334?

18 **A.** Yes, I do.

19 **Q.** And what is it?

20 **A.** This is an invoice from Pinewater Designs, Inc., which was  
21 the name that Robert Maegerle used for his consulting practice,  
22 to USAPTI.

23 **Q.** And the date?

24 **A.** The date is October 20th, 2009.

25 **Q.** And what does this invoice pertain to?

1   **A.**   This is an invoice for the transfer of technical drawings  
2   and text to USA Performance Technology.

3           **MR. HEMANN:**   Your Honor, the United States moves  
4   Exhibit 334 into evidence.

5           **MR. FROELICH:**   No objection.

6           **THE COURT:**   Admitted.

7           (Trial Exhibit 334 received in evidence)

8   **BY MR. HEMANN:**

9   **Q.**   And if you could please look at Exhibit 336 as well,  
10   Special Agent Pattillo.

11   **A.**   (Witness examines document.)   Uh-huh.

12   **Q.**   Do you have it in front of you?

13   **A.**   Yes, I do.

14   **Q.**   What is that document?

15   **A.**   It is an invoice dated November 15th, 2010, and it is from  
16   Mr. Maegerle to USA Performance Technology for the transfer of  
17   technical drawings and text.

18           **MR. HEMANN:**   Your Honor, the United States moves  
19   Exhibit 336 into evidence.

20           **MR. FROELICH:**   No objection.

21           **THE COURT:**   It's admitted.

22           (Trial Exhibit 336 received in evidence)

23   **BY MR. HEMANN:**

24   **Q.**   Special Agent Pattillo, have you had a chance to study  
25   Exhibit 333, 334, and 336?

1 A. Yes, I have.

2 Q. And could you tell the jury what those exhibits show with  
3 regard to the way in which Mr. Maegerle invoiced Mr. Liew?

4 A. Mr. Maegerle generally charged Mr. Liew \$125 an hour for  
5 his consulting services, and then Mr. Liew generally reimbursed  
6 him for travel expenses and things of that nature as well.

7 Q. In addition to the invoices, the hourly invoices, was  
8 there another form of invoice contained in these three  
9 exhibits?

10 A. Yes. There were three, what I would term, lump-sum  
11 payment invoices, which were for the transfer of technical  
12 drawings and text to USA Performance Technology from  
13 Mr. Maegerle.

14 Q. What exhibit is the first one of those in?

15 A. The first of the payments is in Exhibit 333.

16 Q. Ms. Mahoney, could you please put up Exhibit 333, page 28?  
17 Is that one of the three lump-sum payments?

18 A. Yes, it is.

19 Q. If you could highlight the "To" line and the text all the  
20 way through the second paragraph.

21 Could you please read that, Special Agent Pattillo?

22 A. (reading)

23 "To USA Performance Technology, Inc., 1300 Clay  
24 Street, Suite 600, Oakland, CA 94612-1425.

25 "For: Transfer of technical drawings and text to



1 USA Performance Technology for construction of  
2 manufacturing plants to produce titanium dioxide pigment  
3 by the chloride process route. Upon payment of this  
4 invoice, all drawings and text produced by Robert J.  
5 Maegerle prior to February 5, 2008, will be the permanent  
6 property of USA Performance Technology, Inc.

7 "Invoice amount: \$50,000 payable to  
8 Pinewater Designs, Inc."

9 **Q.** What was the date of that invoice?

10 **A.** February 6th, 2008.

11 **Q.** If you could go to Exhibit 334, page 1, please,  
12 Ms. Mahoney.

13 Is this the next of the lump-sum invoices?

14 **A.** Yes, it is.

15 **Q.** And is the text of it -- the date of this is what?

16 **A.** The text is the same. The date covers the time period  
17 between February 7, 2008, and October 20, 2009.

18 **Q.** And the amount of this invoice? Is it the same?

19 **A.** It's \$50,000, yes.

20 **Q.** Please go to Exhibit 336, page 1.

21 Is this the third of three lump-sum invoices?

22 **A.** Yes, it is.

23 **Q.** What's the date on this one?

24 **A.** The date is November 15, 2010.

25 **Q.** Is the text roughly the same?

1 A. It is. Yes, it is roughly the same with a different time  
2 period.

3 Q. And the amount of this invoice?

4 A. Is \$25,000.

5 Q. So the total amount of the lump-sum payments was \$125,000?

6 A. Correct.

7 Q. Did you have a chance in reviewing Exhibit 333 to  
8 determine the rough amount of the additional hourly invoices?

9 A. Yes.

10 Q. And what was the approximate amount of the additional  
11 hourly and expense invoices?

12 A. It was just under -- in total for the time period from --

13 Q. 1997 to 2010.

14 A. It was just under \$400,000. It was approximately  
15 \$370,000.

16 Q. Did you have an opportunity to go through and break that  
17 down at all by year?

18 A. Yes, I did.

19 Q. And, more particularly, did you break it down into  
20 periods --

21 A. Yes, I did.

22 Q. -- during that time frame? Yes?

23 A. Yes.

24 Q. Focusing on the period of 1997 to 1998, what was the  
25 amount that was billed by Mr. Maegerle to Mr. Liew?

1     **A.**    The amount was less than \$2,000.

2            And just as a point of clarification, this is amount paid  
3     for his time.  This does not include reimbursement of expenses.

4     **Q.**    So the approximately \$370,000 does not include expense  
5     reimbursement?

6     **A.**    That is correct.

7     **Q.**    For the period 1999 through 2003, how much did  
8     Mr. Maegerle invoice Mr. Liew for Mr. Maegerle's time?

9     **A.**    No money.  He received no money contained in his invoice  
10    inventory that we found during that time period.

11    **Q.**    And for the period 2004 through 2010, what did you find  
12    with regard to the amounts that Mr. Maegerle invoiced to  
13    Mr. Liew?

14    **A.**    Excluding the lump-sum payments, he received approximately  
15    \$40,000 a year during that time period.  There were some --  
16    there was one year where I think he received 28,000, and then  
17    the top of the range was about 58,000.

18    **Q.**    But your review suggested that it was about -- worked out  
19    to about \$40,000 a year?

20    **A.**    Correct.

21            **MR. HEMANN:**  Thank you, Your Honor.

22            If I may have one moment.

23            **THE COURT:**  Yes.

24                           (Pause in proceedings.)

25            **MR. HEMANN:**  Your Honor, the United States has no

1 further questions at this time for Special Agent Pattillo.

2 **THE COURT:** All right. While Mr. Froelich is getting  
3 in position, let's take a stretch break.

4 **MR. FROELICH:** Your Honor, may we approach the bench,  
5 please?

6 **THE COURT:** All right. You may stretch, ladies and  
7 gentlemen.

8 (The following proceedings were heard at the sidebar:)

9 **THE COURT:** Okay.

10 **MR. FROELICH:** Your Honor, I was trying to avoid  
11 getting in trouble with the Court, so I wanted to bring the  
12 issue up.

13 **THE COURT:** All right.

14 **MR. FROELICH:** I had said early on, if the Government  
15 puts in my client's statement, I had a right to go into the  
16 circumstances behind it.

17 The agent has testified she came there -- that when she  
18 came in, that the wife was there and that the wife had a health  
19 aide. I intend to go -- and I also know that they did an  
20 investigation and that she has testified previously that they  
21 did an investigation. They knew she was sick.

22 I also know from other -- from both -- from what she has  
23 said earlier, that my client kept the door open because he had  
24 to watch his wife and everything. And I intend to go into the  
25 circumstances of her health and everything else because it

1 reflects on -- they're saying my client omitted things and  
2 things like that.

3 And they walk into a house where my client's got a  
4 hospice -- his wife is in a chair with a hospice aide, and he's  
5 got a door open trying to watch her and they're interviewing  
6 him; and I think that's critical as to the state of mind and  
7 the circumstances of which they're talking to him.

8 They've opened the door by a health aide, and plus they've  
9 opened the door into my client saying he forgot things and  
10 things like that, and I need the circumstances surrounding it.

11 And I had said that earlier, but I didn't want to do  
12 something that --

13 **THE COURT:** All right. Mr. Hemann?

14 **MR. HEMANN:** Your Honor, the only purpose of this is  
15 to engender sympathy. It is not relevant to this case. If he  
16 were able to lay a foundation that Mr. Maegerle appeared to be  
17 distressed, Mr. Maegerle appeared to be -- Mr. Maegerle was  
18 free to come and go as he pleased, which is what Special Agent  
19 Pattillo testified to. They had a very calm conversation over  
20 a long period of time. He did not -- and there was a health  
21 aide in the house at the time. There's no purpose for this  
22 other than to evoke sympathy.

23 Obviously, if Mr. Maegerle were to get up and say -- and  
24 testify and say, "I was so stressed out that I had -- about my  
25 wife," that would be fair for him to say about his own state of

1 mind; but nothing in the foundation that has been laid or that  
2 could be laid would suggest that Mr. Maegerle was in any  
3 distress or concern whatsoever, and there's no reason to  
4 believe that he was.

5 **THE COURT:** Well --

6 **MR. HEMANN:** And let me just add one point to this.

7 Mrs. Maegerle is ambulatory, I think is the right word,  
8 and sat in the chair and had a conversation with two FBI agents  
9 during the interview. I mean, it's not like she's, you know,  
10 going to -- on the verge of death in the house.

11 And, so, I think that this is unfair, and it only is meant  
12 to influence the jury and cause sympathy.

13 **MR. FROELICH:** Well, it's not. It's the circumstances  
14 surrounding.

15 I've never gotten a copy of the interview. He was  
16 concerned because they were interviewing his wife, and he had  
17 the door open. They know that. They knew going in that. They  
18 went in, and they said that they did a background on it.

19 And I have -- I don't have to put a client on the stand to  
20 show the circumstances surrounding what's going on when there's  
21 a hospice nurse there that they interviewed. I've never gotten  
22 a report of the interview.

23 **MR. HEMANN:** I didn't say interview. I said they had  
24 a conversation with her.

25 **MR. FROELICH:** Well --

1           **MR. HEMANN:** They didn't talk to her about anything.

2           **MR. FROELICH:** But she had a hospice nurse there.

3           **THE COURT:** Well, here's the point: The agent did  
4 testify that there was a helper there, the wife was there. I  
5 think Mr. Froelich is entitled to go into that to reinforce  
6 that, that there was a helper and his wife was present, and  
7 those circumstances; and I'll take it question by question.

8           If, Mr. Froelich, if you start getting into she did an  
9 investigation to show that the wife had, you know, some  
10 terminal disease, or something like that, I'm not going to  
11 allow that in. Certainly if she had a helper and she needed a  
12 helper, that's fine.

13           Of course, if you do that, then the Government's going to  
14 be entitled on redirect to talk about the wife's demeanor, what  
15 she looked like, you know.

16           But the point is, I'm not going to let you go beyond what  
17 the agent has volunteered: The wife -- Mrs. Maegerle was  
18 present; she did appear to be, you know, under the care of a  
19 helper; the door was open; and Mr. Maegerle appeared to be  
20 looking at her, because I think that does go to the  
21 circumstances.

22           But I have to balance this issue of undue prejudice,  
23 sympathy, and the like, which this is going to definitely  
24 engender at trial. So I'm going to take it question by  
25 question, but I'm not going to allow a full explication of

1 Mrs. Maegerle's condition because I think it injects a real  
2 prejudicial element to this.

3 **MR. FROELICH:** I understand, Your Honor; but they  
4 brought it in, and I told them from the beginning that if you  
5 go -- my client has a right -- I have a right to explain. They  
6 knew what it was. She knew. They did a background check, and  
7 I think I have a right, because she said that they did a  
8 background. They knew my client's wife was ill. And, so --

9 **THE COURT:** Well, here's the point --

10 **MR. FROELICH:** -- if they knew it and my client --

11 **THE COURT:** Well --

12 **MR. FROELICH:** -- and they have a hospice nurse  
13 there --

14 **THE COURT:** We're going to do this incrementally  
15 because, you know, how the agent approached the interview, if  
16 the agent knew going in that Mr. Maegerle had, you know, a wife  
17 who was ill, I think you can go into that; but I'm not going to  
18 get into what her disease was or that it's terminal. Because I  
19 think it's a fair point.

20 I think any defendant in a case has a right to have the  
21 jury reflect upon, you know, the quality of the Government's  
22 investigation that led to an Indictment in this case. And, so,  
23 I'm going to give Mr. Froelich leeway, but I will -- I'm not  
24 going to give you an open season to get into a lot of detail  
25 about her condition.



1           If they -- I think all that's relevant is that she was  
2 ill, that she was under care, and the agents knew this going  
3 in. I think that's certainly relevant in terms of how they  
4 approach the interview. It's part of the -- it's part of the  
5 whole, if you will, the res gestae.

6           **MR. FROELICH:** I want to at least get out that this  
7 isn't a cold. This is a serious illness. They knew it was a  
8 serious illness.

9           **THE COURT:** Well, you can say "serious illness." I  
10 don't want to get into the substance of it. I don't want to  
11 get into the fact that it's terminal, hospice; but I think the  
12 fact if they knew going in -- and maybe it's an excellent  
13 technique by the Government; but I think to the extent the  
14 Government's going to argue that Mr. Maegerle wasn't fully  
15 forthcoming, even if he doesn't testify -- if he testifies,  
16 it's all fair game -- but if he doesn't testify, I think he's  
17 still entitled to make the argument without testifying that --  
18 the inference that if he was not as forthcoming as he should  
19 have been, it's because he had something else on his mind.

20           That's what the circumstances are. That's what she  
21 brought up, this agent brought up. So I will allow it, but I  
22 will tell you if there's a particular -- I would go -- proceed  
23 cautiously. I have given you an indication I'm not going to  
24 open up the entire condition of Mrs. Maegerle.

25           **MR. HEMANN:** Again, Your Honor, we would ask that the

1 Court direct Mr. Froelich to do this by nonleading questions  
2 because what I'm concerned about is, "Isn't it true that you  
3 knew, blah, blah, blah." That is inflammatory, and he's --

4 **THE COURT:** No. Mr. Froelich is a very experienced  
5 lawyer. He understands the parameters of the Court's ruling.  
6 I am instructing both lawyers, all the lawyers, that I don't  
7 want the specific nature of Mrs. Maegerle's illness to come  
8 out. The fact that she was seriously ill is a relevant factor;  
9 and the fact that the Government, through the FBI, knew it also  
10 may be relevant. And, so, I'll take it question by question.

11 And this is a pretty smart jury. They're pretty  
12 attentive. I'm very good at instructing, and I think the  
13 lawyer who asked the question that gets stricken is the one I  
14 think who takes the lump, and it's not a question of unringing  
15 the bell here.

16 **MR. FROELICH:** Judge, I wasn't trying -- that's why I  
17 approached the bench. I wasn't --

18 **THE COURT:** No, I understand that. I think it's a  
19 fair point; and I think if the interview is relevant, what was  
20 said is relevant. I think the context is relevant as well.  
21 All right.

22 **MR. HEMANN:** Thank you, Your Honor.

23 (The following proceedings were heard in open court:)

24 **THE COURT:** You may cross-examine, Mr. Froelich,  
25 whenever you are ready.

1           **MR. FROELICH:** Your Honor, we have no objection to the  
2 agent having a list of the exhibits and where they were  
3 located.

4           **THE COURT:** Very well.

5           **MR. HEMANN:** For some of the Defense exhibits,  
6 Your Honor.

7           **THE COURT:** Very well.

8           **MR. HEMANN:** Thank you.

9           (Counsel handing documents to the witness.)

10          **THE WITNESS:** Thank you.

11                           **CROSS - EXAMINATION**

12          **BY MR. FROELICH:**

13          **Q.** Agent Pattillo, my name is Jerry Froelich, and I represent  
14 Mr. Maegerle.

15               And we haven't met or talked before, have we?

16          **A.** I believe I did meet you once in your initial visit to  
17 San Francisco.

18          **Q.** To the office or something, okay.

19          **A.** Yes.

20          **Q.** Now, there are no agents in the FBI; isn't that right?  
21 Everybody is a special agent?

22          **A.** That is correct.

23          **Q.** So let's talk about, first of all, some of the -- your  
24 background.

25               How many times have you testified in court?

1 **A.** This is my first time testifying in court.

2 **Q.** Have you testified -- how many searches have you  
3 conducted?

4 **A.** Uhm, I've conducted at least -- or participated in at  
5 least 20 searches.

6 **Q.** And at those searches, how many people have you conducted  
7 interviews with?

8 **A.** Have I personally conducted interviews?

9 **Q.** Yeah, or been present.

10 **A.** Have been present while interviews have been conducted?

11 **Q.** Yes.

12 **A.** Uhm, probably half.

13 **Q.** And what did you do -- what did you review to prepare for  
14 your testimony today?

15 **A.** Uhm, I reviewed the documentation that was created as a  
16 result of the search.

17 **Q.** In other words, the exhibits that you -- that you  
18 testified to about today?

19 **A.** Yes.

20 **Q.** And what else did you review?

21 **A.** Uhm, we create a record, when we conduct a search, of  
22 things like the, uhm, photo log and the photographs that I've  
23 already discussed, things of that nature.

24 **Q.** Okay. What else did you review? We've talked about you  
25 looked at the exhibits, you looked at the photo log. What else

1 did you review?

2 **A.** We write up -- anytime we do an interview, we write up a  
3 documentation of the content covered during the course of that  
4 interview. Internally, we call that a 302. So I reviewed  
5 those.

6 **Q.** So the 302s that you reviewed, those are basically  
7 memorandums of an interview; is that correct?

8 **A.** That's correct.

9 **Q.** And what 302s did you review?

10 **A.** I reviewed the 302 that was written by my counterpart  
11 during the course of the interview, the special agent from the  
12 Palo Alto squad. And I reviewed a series of 302s written by  
13 people who participated in the search in various ways.

14 **Q.** Those 302s, what did they -- what did they reflect, those  
15 302s, that you -- first of all, the one that was written by  
16 your counterpart, is that Koblitzki, is that how you pronounce  
17 it?

18 **A.** It's Koblitz.

19 **Q.** Koblitz?

20 **A.** Yes.

21 **Q.** I'm sorry. That's Agent Koblitz, and he's here in  
22 California?

23 **A.** That's correct.

24 **Q.** All right. And what 302 did you review that he wrote?

25 **A.** Uhm, I reviewed a 302 that he wrote describing the

1 interview.

2 Q. The interview of Mr. Maegerle?

3 A. That's correct.

4 Q. And the 302s of the other agents that you reviewed, what  
5 did they reflect?

6 A. They reflected more logistical documentation associated  
7 with the execution of the search.

8 Q. Like what type of logistics?

9 A. Like who -- we have somebody called a search team lead.  
10 And that's the person who's in charge of documenting when you  
11 arrive on the scene; what items are seized; when you depart a  
12 scene; things of that nature.

13 Q. Now, I want to talk, first of all, about -- I want -- I'll  
14 get to the search and to the interview of my client but, first  
15 of all, I'd like to talk about Exhibits 5 and 10, okay.

16 Now, where were they located?

17 A. Uhm, the exhibits were the -- may I -- were the Edgemoor  
18 schematics, correct?

19 Q. That's correct, the ones, Exhibits 5 and 10, that you  
20 talked about --

21 A. Right.

22 Q. -- and you discussed with Mr. Hemann, where were they  
23 located?

24 A. They were located on a thumb drive.

25 Q. And, in fact, they were located in a drawer with a thumb

1 drive with about six or seven other thumb drives; isn't that  
2 correct?

3 **A.** Yes, that's correct.

4 **Q.** And then there was other discs there; isn't that correct?

5 **A.** There were other discs seized during the search. I'm not  
6 sure, specifically, they were in that drawer.

7 **Q.** Do you remember how many discs that were seized?

8 **A.** I don't.

9 **Q.** About five, six; do you remember?

10 **A.** I don't remember.

11 **Q.** Let's talk, first of all, about a thumb drive. You know  
12 what a thumb drive is; isn't that right?

13 **A.** Yes, I do.

14 **Q.** And a thumb drive they call it because it almost looks  
15 likes a thumb, and you stick it in a computer; isn't that  
16 right?

17 **A.** Yes.

18 **Q.** And a thumb drive is you can either unload from the  
19 computer onto the thumb drive or you can unload from the thumb  
20 drive onto the computer; isn't that correct?

21 **A.** Yes. It's a way to portably transfer documents.

22 **Q.** All right. Now, a thumb drive does not have an internal  
23 clock; is that correct?

24 **A.** I don't know if a thumb drive has an internal clock.

25 **Q.** Well, it doesn't have any operating systems at all, does

1 it --

2 **A.** I think --

3 **Q.** -- such as Windows?

4 **A.** It does not have a Windows software package.

5 **Q.** And it doesn't have the ability, by itself, to either  
6 create, open, or delete files; isn't that right?

7 **A.** I believe that is correct.

8 **Q.** All right. A thumb drive has to work with a computer to  
9 either get its material or to give away its material; isn't  
10 that correct?

11 **A.** I'm not really clear on your question.

12 **Q.** Well, what I'm saying to you is, what's on a thumb drive  
13 either comes from a computer; isn't that correct?

14 **A.** It can, yes.

15 **Q.** And you can release it from a computer -- onto a computer;  
16 isn't that right?

17 **A.** Yes, that's also correct.

18 **Q.** And if you unload the thumb drive on the computer, the  
19 computer has what was on the thumb drive; isn't that correct?

20 **A.** I think you can view files saved on the thumb drive on the  
21 computer. But that doesn't mean the files are transferred to  
22 the computer.

23 **Q.** Doesn't a computer reflect -- the hard drive of the  
24 computer reflect what is gotten off the -- when it's  
25 transferred -- when the thumb drive is opened up, doesn't the



1 computer reflect a time and a date and what was opened up on  
2 the computer?

3 **A.** I think the data from the thumb drive displays on the  
4 computer, but it does not save to the computer.

5 **Q.** Do you know whether the hard drive of the computer, when  
6 you view it on the computer, whether it saves what's on the  
7 thumb drive?

8 **A.** I don't believe it does.

9 **MR. HEMANN:** Objection, Your Honor.

10 **THE COURT:** Sustained.

11 **BY MR. FROELICH:**

12 **Q.** Well, let's talk about the -- let's pull up Exhibit 5.

13 (Document displayed.)

14 **MR. FROELICH:** And can we pull up the second page.

15 (Document displayed.)

16 **BY MR. FROELICH:**

17 **Q.** Now, this is what is the footprint that was found on  
18 the -- on the thumb drive; is that correct?

19 **A.** I think this is information associated with the file from  
20 the thumb drive.

21 **Q.** Okay. So this is what is on the file from the thumb  
22 drive. Do you know what the "Created Date" means?

23 **A.** Uhm, I believe that is date associated with the creation  
24 of the file on the thumb drive.

25 **Q.** Okay. What's the modified date?

1   **A.**   I believe it's referring to a date at which point the  
2   document was re-saved.

3   **Q.**   Okay.  So the date is create -- you have here 1/23/08,  
4   which is the created date, and yet you have an earlier date for  
5   the modified date?

6   **A.**   Yes, that's correct.

7   **Q.**   Can you explain that?

8   **A.**   I can't explain that.

9   **Q.**   How about an access date, do you know what the access date  
10  is?

11  **A.**   Uhm, my understanding is that can refer to the last time  
12  the file was accessed.

13  **Q.**   It can refer to what?

14  **A.**   The last time a file was accessed.

15  **Q.**   Okay.  Do you know -- do you know that, or someone told  
16  you that?

17  **A.**   Uhm, this is my understanding from previous experience  
18  with thumb drives, but I'm not an expert.  Also, my  
19  understanding is that sometimes this is not correct.

20  **Q.**   Okay.  So you know that that may not be correct, and it  
21  may not even be the date the file was opened.  That may be  
22  dates that actually come off the computer that transfer the  
23  information to the thumb drive; isn't that correct?

24  **A.**   I don't know --

25           **MR. HEMANN:**  Objection, Your Honor.

1           **THE WITNESS:** -- if that's correct.

2           **THE COURT:** Sustained.

3 **BY MR. FROELICH:**

4 **Q.** Do you know what that date means?

5 **A.** I don't.

6 **Q.** Okay. Let's go to the other one, to 10.

7           Now, on -- this is -- this is Exhibit 10. If you'll look  
8 at that, what's the created day on that?

9 **A.** The created date is January 23rd, 2008.

10 **Q.** Okay. And that would be the same created date that was on  
11 Exhibit 5; isn't that correct?

12 **A.** Yes, that's correct.

13 **Q.** And what is the modified date?

14 **A.** The modified date is 12/14/2007.

15 **Q.** Okay. And so that's the same date, is that correct --

16 **A.** Correct.

17 **Q.** -- that is on Exhibit 5?

18 **A.** Yes.

19 **Q.** And then we have an access date. What's the access date?

20 **A.** The access date is 6/11/2009.

21 **Q.** Okay. And that access date is different from 8 -- from  
22 the access date on Exhibit 5; is that correct?

23 **A.** Yes, that's correct.

24 **Q.** But they were both found on the same thumb drive; isn't  
25 that correct?

1 **A.** Yes, that's correct.

2 **Q.** Now, there were other -- you talked about some of the  
3 things that you -- that were seized at my client's house.

4 **MR. FROELICH:** May I have the original of 1623,  
5 please.

6 (Defense and government counsel confer off the record, out  
7 of hearing of the jury and the court reporter.)

8 **THE CLERK:** 1623?

9 **MR. FROELICH:** Not sure.

10 (Counsel continue to confer off the record.)

11 **MR. FROELICH:** Exhibit 1561. I'm sorry.

12 **BY MR. FROELICH:**

13 **Q.** I would like to show you what is marked Exhibit 1561, and  
14 ask you to identify that.

15 **THE COURT:** Please remember to ask for permission to  
16 approach.

17 **MR. FROELICH:** I'm sorry, Your Honor, I meant to.

18 **THE COURT:** All right.

19 **THE WITNESS:** Yes, this is a binder that we located at  
20 Mr. Maegerle's home.

21 **MR. FROELICH:** Your Honor, I would move 1561.

22 **MR. HEMANN:** Your Honor, we object on relevance  
23 grounds and hearsay grounds, based on what's contained in the  
24 binder.

25 **THE COURT:** Madam Clerk, would you please get the

1 binder from the witness.

2 (Pause)

3 **THE COURT:** Objection sustained.

4 **BY MR. FROELICH:**

5 **Q.** I'd like you to look at what's been admitted Exhibit 683.

6 **MR. FROELICH:** Can we pull up 683.

7 (Document displayed.)

8 **BY MR. FROELICH:**

9 **Q.** The -- one of the things you were asked about on 683 is  
10 the bottom, where it says page 31 -- paragraph 31. It says:

11 "It's best to list Kuan Yin as a large capacity plant  
12 and Jinzhou as a small capacity plant."

13 Now, Kuan Yin was a large capacity plant; was it not?

14 **A.** It was my understanding it was designed as a 60,000  
15 capacity plant.

16 **Q.** Are you familiar with the complaint that's been admitted,  
17 the civil complaint involving USAPTI, USAPTI and DuPont?

18 **MR. HEMANN:** Your Honor, as a matter of clarification,  
19 the civil complaint has not yet been admitted in evidence.

20 **THE COURT:** He's just asking whether she's aware of  
21 it.

22 **MR. HEMANN:** Yes.

23 **THE COURT:** All right.

24 **BY MR. FROELICH:**

25 **Q.** Are you aware of the complaint?

1     **A.**    I'm aware of the complaint.

2     **Q.**    That complaint involved -- the basics of that complaint  
3     involved Jinzhou; did it not?

4     **A.**    I believe so.  It's been quite some time since I  
5     reviewed --

6     **Q.**    It did not involve Pangang?

7     **A.**    I don't recall.  I haven't reviewed the complaint since  
8     2011.

9     **Q.**    So that's one -- you did not -- you did not review that  
10    when -- before you came to court today?

11    **A.**    Correct.

12            **MR. FROELICH:**  Now, if we could pull up Exhibit 682.  
13    And if we could go to the last paragraph, please.

14            (Document displayed.)

15    **BY MR. FROELICH:**

16    **Q.**    This is a discussion between my client and Walter Liew  
17    about the lawsuit, is that correct, between them?

18    **A.**    That's my understanding from reading the email, yes.

19    **Q.**    And what my client says, what Mr. Maegerle says is that  
20    feel free to identify him if the Court asks or if they're asked  
21    about it; isn't that correct?

22    **A.**    That's my understanding, yes.

23    **Q.**    On 681 -- turn to 681.

24            (Document displayed.)

25            **MR. HEMANN:**  Objection, Your Honor.  This is not in

1 evidence.

2 **THE COURT:** Oh.

3 **MR. FROELICH:** Let me -- Your Honor, I would move --  
4 let me show you -- may I approach?

5 **THE COURT:** Yes.

6 **THE CLERK:** What exhibit are you showing, Counsel?

7 **MR. FROELICH:** I'm going to show her 681.

8 **THE CLERK:** Thank you.

9 **BY MR. FROELICH:**

10 **Q.** I show you what has been marked Exhibit 681. Can you  
11 identify that for me?

12 **A.** This is an email from Robert Maegerle to Walter Liew,  
13 dated 21 April 2011.

14 **Q.** And are you familiar with that email?

15 **A.** Yes, I've read this email.

16 **Q.** And where did that email come from?

17 **A.** This email was -- came about through the email search  
18 warrant of Mr. Maegerle's Yahoo! account.

19 **MR. FROELICH:** Your Honor, I would move 681.

20 **MR. HEMANN:** No objection, Your Honor.

21 **THE COURT:** Admitted.

22 (Trial Exhibit 681 received in evidence.)

23 (Document displayed.)

24 **MR. FROELICH:** Can we blow that up, please?

25 **THE COURT:** Yes.

1 **BY MR. FROELICH:**

2 **Q.** Again, this is my client talking to Mr. Liew about the  
3 complaint; isn't that true?

4 **A.** That's my understanding from reading the email, yes.

5 **Q.** And he -- he's talked -- my client is telling them, again,  
6 about the Ashtabula plant; is that correct?

7 **A.** Yes, this email references the Ashtabula plant.

8 **Q.** And the bottom line, he also says there's no patent  
9 infringement; isn't that correct?

10 **A.** He says, "No patent infringement is specified."

11 **Q.** And he also says that specific trade secrets have not been  
12 enumerated; isn't that correct?

13 **A.** Yes, that's correct.

14 **Q.** Now, I'd like to talk to you about the search of my  
15 client's residence.

16 On July -- first of all, I'd like to talk to you -- I'd  
17 like to ask you about some things that were found and not  
18 found.

19 First of all, the Asian Basic Data Book was not found; is  
20 that correct?

21 **A.** You mean the Kuan Yin Basic Data?

22 **Q.** Well, it's not a Kuan Yin Basic Data, is it? It says --  
23 it doesn't have the words "Kuan Yin" on it, does it?

24 **A.** I don't know. We did not find a Basic Data Document.

25 **Q.** So you didn't find a Basic Data Document.



1 Did you find -- you found a lot of background about my  
2 client. You found his file concerning his employment at  
3 DuPont; isn't that correct?

4 **A.** We did find information pertaining to Mr. Maegerle's  
5 employment at DuPont, yes.

6 **Q.** And I'd like to show you what has been marked Exhibit 722.

7 **THE COURT:** Please ask permission to approach.

8 **MR. FROELICH:** I'm sorry, Your Honor. I'm not used to  
9 it.

10 **THE COURT:** Yes.

11 **MR. FROELICH:** Your Honor, may I approach the witness?

12 **THE COURT:** Yes. Yes, you may.

13 **MR. FROELICH:** Okay.

14 **THE CLERK:** It's been admitted.

15 **MR. FROELICH:** It has been admitted. I just want  
16 to --

17 **THE COURT:** Yes, go ahead and show it to her.

18 (Document displayed.)

19 **BY MR. FROELICH:**

20 **Q.** I want to show you Exhibit 722. Are you familiar with  
21 that?

22 **A.** Yes, I am.

23 **Q.** Okay. And can you explain to the ladies and gentlemen  
24 what that is?

25 **A.** Uhm, it appears to be a collection of documents related to

1 Mr. Maegerle's employment at DuPont. Specifically, they appear  
2 to be performance evaluations and things of that nature.

3 Q. I'd like to show you --

4 MR. FROELICH: Or could you pull up the first page of  
5 that exhibit, please.

6 (Document displayed.)

7 BY MR. FROELICH:

8 Q. Now, this is the -- you recognize that as the first -- the  
9 first page of the exhibit; is that correct?

10 A. Yes, I do recognize that is in the exhibit.

11 Q. And can you tell us what -- can you read what his  
12 responsibilities were for the past year.

13 A. Well, it's unclear, based on what I can see, which year  
14 this refers to but --

15 Q. We'll get to that.

16 A. For the past year --

17 MR. HEMANN: Objection, Your Honor. Vague as to year.

18 THE COURT: Sustained. He can have her read directly  
19 from the document, but once you start asking the witness to  
20 characterize then I think we have problems.

21 MR. FROELICH: I was asking, Your Honor.

22 BY MR. FROELICH:

23 Q. What does it say in the past year your responsibilities  
24 were?

25 A. (reading)

1 "Responsibilities include lead project engineer for  
2 DeLisle line II," in parentheses, "(Project 5901) 100M  
3 ton/per year TiO2 manufacturing facilities," in  
4 parentheses, "(156MM)."

5 Q. Okay. And what is the second?

6 A. (reading)

7 "Lead project engineer for Korea," in parenthesis,  
8 "(Project 6554) 60M ton per year TiO2 manufacturing  
9 facilities," in parentheses, "(195MM)."

10 Q. All right. And what is the third?

11 A. (reading)

12 "Key member of the Front-End Loading Resource Team  
13 Supporting the C&P Engineering Section."

14 MR. FROELICH: Now, if we can turn to the second page,  
15 please.

16 (Document displayed.)

17 BY MR. FROELICH:

18 Q. And can you read the date on that?

19 A. Yes. The signatures are dated September 1990.

20 Q. And you know Mr. Maegerle retired the next year; is that  
21 correct?

22 A. Yes --

23 Q. 1991?

24 A. -- that's correct. That's my understanding.

25 Q. On July -- in July 2011, you -- you had obtained your

1 search warrant and you were going to go to Mr. Maegerle's  
2 house; is that correct?

3 **A.** Yes.

4 **Q.** And you were going to search his house and you were going  
5 to search -- he had a small home, also, across the street; is  
6 that correct?

7 **A.** That's correct.

8 **Q.** Now, you had done research on Mr. Maegerle, had you not,  
9 before going there?

10 **A.** Yes.

11 **Q.** And you knew, did you not, that his wife had a serious  
12 illness?

13 **MR. HEMANN:** Objection, Your Honor.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** We knew at the time that his wife might  
16 have -- we could see a ramp when we drove past the house. So  
17 it was our suspicion that she had a mobility issue or  
18 something, a health ailment of that kind.

19 **BY MR. FROELICH:**

20 **Q.** Okay. Now, when you -- how big was your team that was  
21 going there?

22 **A.** We had a search team of approximately eight to ten people  
23 for each house.

24 **Q.** So approximately 20 people?

25 **A.** That's correct.

1 Q. Were they both local law enforcement and FBI agents?

2 A. It was primarily FBI agents, but we did have a local state  
3 police representative.

4 Q. Okay. Everybody was armed?

5 A. Yes, that's correct.

6 Q. And a lot of people had FBI blazers on -- not blazers, but  
7 windbreakers?

8 A. I believe so, yes.

9 Q. And they say FBI on them?

10 A. Yes.

11 Q. Now, you went to the door and -- you and the other agent.  
12 Who was the other agent went to the door with you?

13 A. I went to the -- Agent Koblitz and I went to --

14 Q. Pardon?

15 A. Agent Koblitz.

16 Q. Agent Koblitz and you go to the door. And it's just the  
17 two of you; is that correct?

18 A. Correct. The search team was a couple of miles away at  
19 that point.

20 Q. Because you didn't want Mr. Maegerle to see the search  
21 team?

22 A. No, that's not correct. We wanted to have some time to  
23 meet with Mr. Maegerle, and we didn't need the search team at  
24 that time.

25 Q. Well, you didn't want Mr. Maegerle to see the search team,

1 did you?

2 **A.** That was not how I would characterize the --

3 **Q.** Well, why wouldn't you just park it out front, park -- why  
4 wouldn't you just park the vehicles out front and walk in and  
5 knock on his door, if you didn't mind if Mr. Maegerle saw a  
6 search team of 20 agents armed, in FBI jackets, sitting out in  
7 front of his house?

8 **A.** Given that we thought we might be with Mr. Maegerle for  
9 some time it was easier and more convenient for our search team  
10 to have access to bathrooms and refreshments.

11 **Q.** Uh-huh. And so you go and you ring the doorbell?

12 **A.** Yes.

13 **Q.** And you -- Mr. Maegerle answers the door; isn't that  
14 right?

15 **A.** Yes.

16 **Q.** And when you ring the doorbell and he answers the door,  
17 you tell him you're FBI agents; isn't that right?

18 **A.** Yes, we did identify ourselves.

19 **Q.** And you tell him that you've got an active investigation  
20 and you'd like to talk to him; isn't that correct?

21 **A.** We said we were investigating a potential DuPont and  
22 USAPTI matter.

23 **Q.** Okay. What exactly did you tell them?

24 **A.** I recall having said that we were investigating a matter  
25 involving DuPont and USAPTI, and we asked him if he might have

1 some time to speak with us.

2 Q. Did you write down anywhere what you said to him?

3 A. Verbatim, no.

4 Q. So Mr. Maegerle invites you into the house, isn't that  
5 correct, says, I'll speak to you?

6 A. Correct.

7 Q. And you get -- you get into the house. And who's in the  
8 house?

9 A. When Agent Koblitz and I arrived at the house,  
10 Mr. Maegerle invited us in. When we walked in his wife was  
11 there with her home health nurse, and he introduced us to both  
12 of them.

13 Q. And she had a nurse there, didn't she?

14 A. Yes, that's correct.

15 Q. And she was in -- what kind of chair was she in?

16 A. Uhm, she was in -- it looked like a cushion chair,  
17 watching television.

18 Q. And her nurse was sitting right next to her?

19 A. I believe the nurse stood up, so I'm -- when we arrived.  
20 I'm not sure where she was seated.

21 Q. You never tell Mr. Maegerle that he's a suspect, do you?

22 A. No, we did not.

23 Q. All right. And you deliberately didn't do that; isn't  
24 that right?

25 A. No, that's not correct.

1 Q. You just happened to forget?

2 A. We didn't forget he was a suspect. We were there  
3 investigating claims that Walter Liew had misappropriated  
4 technology from DuPont, and we weren't clear what  
5 Mr. Maegerle's role may have been.

6 Q. Well, you were there -- did you tell him you were there to  
7 search his house?

8 A. We did.

9 Q. Pardon me?

10 A. At a certain point we did, yes.

11 Q. Well, when you came to the door and you came into the  
12 house, did you tell him you were there to search his house?

13 A. No, we did not.

14 Q. Why not?

15 A. Because we wanted to have a conversation first.

16 Q. All right. And why would telling him that eventually  
17 you're going to search his house interfere with the  
18 conversation you were going to have with him?

19 A. It's a very distracting thing.

20 Q. He may be distracted enough that he may say, I want to  
21 talk to a lawyer. Isn't that why you don't tell him?

22 A. It's always Mr. Maegerle's right to speak to a lawyer.

23 Q. But you didn't tell him he was a suspect?

24 A. We did not tell him he was a suspect.

25 Q. And you didn't tell him you were going to search his



1 house?

2 **A.** Immediately upon entrance we did not tell him we were  
3 going to search his house.

4 **Q.** How long was it before you told Mr. Maegerle you were  
5 going to search his house?

6 **A.** We spoke to Mr. Maegerle for about an hour before we  
7 informed him of the search warrant.

8 **Q.** And up to that time, you were just telling him that you  
9 had an investigation concerning DuPont trade secrets; isn't  
10 that right?

11 **A.** Yes, that's correct.

12 **Q.** All right. Now, Mr. Maegerle takes you out of the living  
13 room into an office; isn't that correct?

14 **A.** When we arrived, yes.

15 **Q.** Because, he tells you, he doesn't want to upset his wife;  
16 isn't that right?

17 **A.** Yes, that's correct.

18 **Q.** Okay. And when he takes you into the office, he leaves  
19 the door open so he can watch his wife; isn't that correct?

20 He leaves his door partially open and he gets in a chair  
21 where he can watch his wife; isn't that right?

22 **A.** He left the door open, yes.

23 **Q.** Okay. And then you start talking to him; isn't that  
24 right?

25 **A.** Yes.

1 Q. You ask him questions?

2 A. Yes.

3 Q. Do you write down the questions that you're asking him?

4 A. Uhm, no, we don't.

5 Q. Do you have a memorandum of the questions that you asked  
6 him?

7 A. No.

8 Q. Okay. And he's cooperating with you?

9 A. Yes.

10 Q. He's going to get documents for you, isn't he?

11 A. He showed us some drawings from his binder that has been  
12 previously entered into evidence, yes.

13 Q. The binder that you were reporting -- the exhibit that you  
14 were showed, that you were showing these things about Kuan Yin  
15 and all those others, that's 95 pages long, isn't it?

16 A. I don't know.

17 Q. And there's only two references in there of Kuan Yin;  
18 isn't that right?

19 A. I'm aware of the two references we read today, yes.

20 Q. Right. And they refer to the Pangang plant, not the  
21 Jinzhou plant; isn't that correct?

22 A. I don't recall.

23 Q. But he gets that binder for you; isn't that right?

24 A. Yes.

25 Q. And he starts showing you the things within the binder;

1 isn't that right?

2 **A.** He really only showed us one drawing in the binder.

3 **Q.** At some point, too, he even point -- well, we'll talk  
4 about that in a minute.

5 So you start talking to him, and it goes for about an hour  
6 or so. Is he cooperating with you?

7 **A.** Yes, he was very cooperative.

8 **Q.** Is he bringing you other things than the binder with all  
9 the documents in it?

10 **A.** I can't immediately recall any other items.

11 **MR. FROELICH:** Can I have the -- what exhibit are the  
12 pictures?

13 **MR. HEMANN:** 7008.

14 **THE CLERK:** 4008.

15 **MR. FROELICH:** 4008.

16 Your Honor, may I approach the witness?

17 **THE COURT:** Yes, you may.

18 (Photographs displayed.)

19 **BY MR. FROELICH:**

20 **Q.** I want to show you what has been marked Exhibit 4008.

21 Now, we talked about --

22 **MR. FROELICH:** If we can bring them up.

23 (Photograph displayed.)

24 **BY MR. FROELICH:**

25 **Q.** You talked about the office; isn't that correct?

1     **A.**    Yes.

2     **Q.**    And you said that on the left there you were sitting on  
3    the couch.  Mr. Maegerle asked you to sit on the couch; isn't  
4    that right?

5     **A.**    Yes, that's correct.

6     **Q.**    And then he was sitting not behind the desk, but he was  
7    sitting on a chair over on this -- over behind the lamp; isn't  
8    that correct?

9     **A.**    Yes, that's correct.

10    **Q.**    And that's so he could see out the door to his wife; isn't  
11   that correct?

12    **A.**    I don't know.

13    **Q.**    The -- did you look at the books -- there's a bookcase  
14   there.  Did you look at those books?

15    **A.**    With Mr. Maegerle?

16    **Q.**    Well, at any time.

17    **A.**    Uhm, I probably observed the books, yes.

18    **Q.**    All right.  Did you see that those were books about flows,  
19   and they were mechanical books and chemical engineering books  
20   and things like that?

21    **A.**    I would have been able to observe that.  I don't recall  
22   noting it.

23    **Q.**    Well, did you take them?

24    **A.**    I don't know.

25    **Q.**    Okay.

1           **MR. FROELICH:** Can I have the picture of the porch,  
2 please. The porch.

3           (Photograph displayed.)

4 **BY MR. FROELICH:**

5 **Q.** Eventually, you -- you talked to Mr. Maegerle for about an  
6 hour; isn't that right?

7 **A.** Yes.

8 **Q.** And then you tell him that you have a search warrant?

9 **A.** Correct.

10 **Q.** And what do you tell him then? What do you say to him?

11 **A.** We tell him that we have a search warrant. I explain  
12 logistically how it's going to work, and that's the  
13 conversation.

14 **Q.** And then you go out. And how many agents do you bring in  
15 the house?

16 **A.** Approximately eight to ten.

17 **Q.** They are all armed?

18 **A.** Yes.

19 **Q.** And they all have FBI blazers or -- I mean windbreakers  
20 on?

21 **A.** I don't know that they all do but, certainly, some do.

22 **Q.** Okay. And then you move Mr. Maegerle out to the porch;  
23 isn't that correct?

24 **A.** Yes, that's correct.

25 **Q.** Both of you, both you and the other agent; isn't that

1 correct?

2 **A.** We all moved to the porch, yes.

3 **Q.** And you move him out to the porch and you continue talking  
4 to him; isn't that correct?

5 **A.** Yes, we continued to speak.

6 **Q.** Don't tell him he's a suspect, do you?

7 **A.** No, we don't use those words.

8 **Q.** Okay. And you said that -- excuse me. We'll go back in a  
9 second.

10 Do you remember that when you testified yesterday that you  
11 told him -- basically, first of all, when you came to the  
12 house, that you were just going to speak to him about an  
13 ongoing investigation?

14 **A.** That's correct.

15 **Q.** Okay. So at the time, when you initially talked to him,  
16 you didn't tell him what the investigation was about, did you?

17 **A.** I think we almost immediately told him what the  
18 investigation was about.

19 **Q.** And one of the things you said is that you thought, in  
20 your experience, it's easier to go in and have a conversation  
21 with somebody without the distraction of a search warrant.

22 Remember saying that?

23 **A.** Yes.

24 **Q.** And that you thought the best way to have a really good  
25 conversation with Mr. Maegerle was not to tell him that you had

1 a search warrant or that he was a suspect, right?

2 Wasn't that the point of it, that you wanted to get him to  
3 talk, and you weren't going to tell him that he was a suspect  
4 or you had a search warrant until you got him talking?

5 **A.** The point of having an interview prior to executing the  
6 search warrant was to have an opportunity to speak with  
7 Mr. Maegerle without all the commotion of a search.

8 **Q.** Now, you get him out. And from the time you come into the  
9 house, Mr. Maegerle is never alone; is that correct?

10 **A.** Yes, that's correct.

11 **Q.** And when you take him out to the porch, the other agent,  
12 Koblitz --

13 **A.** Koblitz, yes.

14 **Q.** -- he continues to talk to Mr. Maegerle; isn't that  
15 correct?

16 **A.** Uhm, we both spoke with Mr. Maegerle while we were on the  
17 porch.

18 **Q.** Well, even -- he would talk -- did you stay with him the  
19 whole time?

20 **A.** Generally, we were generally with him for the -- most of  
21 the time. There were times where I would go speak with another  
22 agent and Mr. Koblitz would be there, and vice versa.

23 **Q.** And were you taking notes?

24 **A.** No, I was not taking notes.

25 **Q.** Okay. So then -- and how long do you talk to Mr. Maegerle

1 for?

2 **A.** Overall?

3 **Q.** Overall.

4 **A.** We arrived at approximately 10:50, at his house.

5 Agent Koblitz and I spoke with him about an hour. The search

6 team then arrived. And I think we concluded our search at

7 approximately 2:50 p.m.

8 **Q.** Well, you continued to talk to him until 2:51 p.m., didn't

9 you, one or the other of you? You spoke to him for four hours?

10 **A.** That's correct.

11 **Q.** And he cooperates during the whole four hours?

12 **A.** Yes, Mr. Maegerle was very cooperative.

13 **Q.** In fact, at one point during his search he tells you that

14 you've missed a computer and a cell phone; isn't that right?

15 **A.** Yes, that's correct.

16 **Q.** And he points that out to you?

17 **A.** Yes.

18 **Q.** And so it's going on and then it concludes, and you pack

19 up and you take everything and you leave. And Mr. Maegerle's

20 concerned though, isn't he?

21 **A.** I don't know.

22 **Q.** Well, one, he was concerned about what you -- he was

23 concerned that some of the private -- didn't he ask you to have

24 available some of the documents because he had -- it had his

25 wife's medical conditions on it?



1   **A.**   We made sure that he had an opportunity to write down some  
2   of the times for his wife's medical appointments prior to  
3   seizing some -- I think a computer and something else that had  
4   that information on it.

5   **Q.**   Okay.

6           **THE COURT:** Mr. Froelich, can we break now?

7           **MR. FROELICH:** Yes.

8           **THE COURT:** All right. Ladies and gentlemen, we're  
9   going to take our first break of the morning. Little different  
10   schedule.

11           Please remember the Court's usual admonitions; keep an  
12   open mind; don't obtain outside information. And we will see  
13   you in 15 minutes.

14           (Jury out at 11:12 a.m.)

15           **THE COURT:** You may step down, Agent.

16           **THE WITNESS:** Thank you.

17           (Recess taken from 11:13 a.m. to 11:32 p.m.)

18           **THE COURT:** Please bring in the jury.

19           **THE CLERK:** All rise for the jury.

20           (Jury enters at 11:33 p.m.)

21           **THE COURT:** All right. Please be seated.

22           You can continue.

23   **BY MR. FROELICH:**

24   **Q.**   Agent Pattillo, I'd like to go over with you what my  
25   client told you during those four hours while you were -- you

1 and the other agent were interviewing him at his house.

2 He told you that he had been employed at DuPont for  
3 30-some-odd years; is that correct?

4 **A.** Yes, that's correct.

5 **Q.** And he told you that during his time his main work at  
6 DuPont involved the TiO2 process; isn't that right?

7 **A.** Yes, that's correct.

8 **Q.** And then you started -- those were the initial things you  
9 talked to him about, wasn't it?

10 **A.** We did go over his -- sort of the narrative of his DuPont  
11 employment at the beginning of the interview, yes.

12 **Q.** Okay. Do you remember exactly what you -- what you asked  
13 him about and what order you asked him?

14 **A.** I think we asked him to describe his employment at DuPont.

15 **Q.** Do you remember what details he gave you?

16 **A.** Yes. He said that he worked, primarily, on titanium  
17 dioxide; and the most significant projects that he was involved  
18 with at the end of his career at DuPont were a plant in the  
19 1980s, in Mississippi, and a project in South Korea, which  
20 never came to fruition.

21 **Q.** Now, was that in the beginning of the interview or was  
22 that towards the end of the interview?

23 **A.** That was in the beginning of the interview.

24 **Q.** That was in the beginning of the interview?

25 **A.** Yes.

1 Q. Now, we -- you talked about an FBI 302. That's the  
2 document that reflects the -- it's a memo reflecting yours and  
3 the other agent's interview of my client; isn't that correct?

4 A. Yes, that's correct.

5 Q. I think we talked about this, but you didn't -- you didn't  
6 tape-record the interview, did you?

7 A. No, we did not.

8 Q. You didn't have him write out a statement, did you?

9 A. No, we did not.

10 Q. You didn't write up a statement and have him come and sign  
11 the statement, did you?

12 A. No, we did not.

13 Q. He did not get to review your 302, did he?

14 A. That is correct.

15 Q. How you do a 302 is somebody, one of you -- you weren't  
16 taking notes, right?

17 A. That's correct. Agent Koblitz was taking notes.

18 Q. But there were times when you were in the room with my  
19 client and he was not; isn't that correct?

20 A. Yes, that's correct.

21 Q. And you were talking to him at that time?

22 A. Well, whoever was in the room with him would be talking  
23 with him, yes.

24 Q. Okay. And then several days later you get together with  
25 the agent; is that correct?

1     **A.**    Uhm --

2     **Q.**    With the other agent?

3     **A.**    We were in communication.  The agent had returned to  
4    San Francisco.

5     **Q.**    So he returned to San Francisco.  And then one of you  
6    drafts up a 302; is that correct?

7     **A.**    Yes, that's correct.

8     **Q.**    Who drafted up the 302?

9     **A.**    Agent Koblitz.

10    **Q.**    So you have -- you're working off your recollection.  You  
11    don't have any notes of the conversation of your own; is that  
12    correct?

13    **A.**    I have a copy of Agent Koblitz's notes.

14    **Q.**    Well, you -- you have a copy of his 302?

15    **A.**    Correct.

16    **Q.**    Uhm, let me mark -- I want to talk about that 302.  Can I  
17    tell you, what's the last exhibit?

18            **THE CLERK:**  4008, I believe.

19            **MR. FROELICH:**  This would be 4000?

20            **THE CLERK:**  And 9.

21            **MR. FROELICH:**  4009.  Thank you very much.

22            (Trial Exhibit 4009 marked for identification)

23            **MR. FROELICH:**  Your Honor, may I approach?

24            **THE COURT:**  Yes.

25

1 **BY MR. FROELICH:**

2 **Q.** I show you what is marked -- not in evidence, but just  
3 marked for identification purposes as 4009. Exhibit 4009. Do  
4 you recognize that?

5 **MR. HEMANN:** Objection, Your Honor, relevance.

6 **THE COURT:** Sustained.

7 **BY MR. FROELICH:**

8 **Q.** Are you -- on 4009, is that what you're relying on for  
9 your testimony? Didn't you review that for your testimony?

10 **MR. HEMANN:** Objection, Your Honor.

11 **THE COURT:** Sustained.

12 **MR. FROELICH:** Your Honor, may I be heard?

13 **THE COURT:** No.

14 **MR. FROELICH:** Okay.

15 **BY MR. FROELICH:**

16 **Q.** I'd like you to look at that. I would like to see if this  
17 refreshes your recollection.

18 **MR. HEMANN:** Objection, Your Honor.

19 **THE COURT:** Sustained.

20 **BY MR. FROELICH:**

21 **Q.** Do you remember -- do you remember the -- that he talked  
22 to you about Condux; isn't that correct?

23 **A.** Yes, that's correct.

24 **Q.** And he told you at the time that that's how he had met  
25 Walter Liew; isn't that correct?

1 **A.** Yes, that's correct.

2 **MR. HEMANN:** Your Honor, may I interject and ask that  
3 the record should reflect that although the 302 is in front of  
4 Special Agent Pattillo, she is not reading it or looking at it?

5 **THE COURT:** All right.

6 **MR. HEMANN:** I actually ask that it be taken away  
7 right now.

8 **THE COURT:** Yes, please do.

9 **THE CLERK:** Can I get the date of that 302, please?

10 **THE COURT:** No. We'll do that at another time.

11 **THE CLERK:** Thank you.

12 **BY MR. FROELICH:**

13 **Q.** And he told you that Liew was with the Performance Group,  
14 is that correct, at the time?

15 **A.** I don't know that he used -- Walter Liew went through  
16 several iterations of company names, so I think he just  
17 referred to Mr. Liew as Mr. Liew.

18 **Q.** And he was looking for conceptual assistance; isn't that  
19 correct?

20 **A.** Mr. Maegerle characterized the assistance he provided as  
21 conceptual.

22 **Q.** And that was in 1997, that's what you were talking about,  
23 correct?

24 **A.** Correct.

25 **Q.** And then you talked to him about, and he told you about

1 how DuPont had built a TiO<sub>2</sub> plant at Ashtabula for  
2 Sherwin-Williams; isn't that correct?

3 **A.** We did discuss the Ashtabula plant, yes.

4 **Q.** And he told you that DuPont had sold the plant; isn't that  
5 correct?

6 **A.** Yes, yes, he did.

7 **Q.** And that, in addition, he told you, as you've testified,  
8 that he had made up drawings of TiO<sub>2</sub> -- of two TiO<sub>2</sub> plants;  
9 isn't that correct?

10 **A.** I'm sorry, I'm not clear on the question.

11 **Q.** Didn't he go and get -- didn't he tell you that he had  
12 drawings of the TiO<sub>2</sub> plants that he had worked on for Mr. Liew?

13 **A.** Yes, he did.

14 **Q.** Okay. And the -- and then he got the book; isn't that  
15 correct?

16 **A.** He showed us the book, yes.

17 **Q.** Now, he also told you that Jinzhou, who he was originally  
18 working -- which was the first client that he started working  
19 for for Mr. Liew; isn't that correct?

20 **A.** He did mention Jinzhou.

21 **Q.** All right. And that the -- they already were operating a  
22 chloride plant, chloride line plant in China; isn't that right?

23 **A.** That's correct.

24 **Q.** And he also told you that -- he talked about that he was  
25 working on a TiO<sub>2</sub> plant for the -- in -- for the Pangang Group,

1 didn't he?

2 **A.** Yes, he did.

3 **Q.** All right. And that the plant was going to be a  
4 chloride -- chloride line TiO<sub>2</sub> hundred-ton plant; isn't that  
5 what he told you?

6 **A.** Yes, it is.

7 **Q.** He told you he wasn't aware of the ownership structure.  
8 He didn't know whether it was government owned or anything  
9 about it, did he?

10 **A.** That's correct.

11 **Q.** He told you that the last two major projects he worked on  
12 for DuPont were the Mississippi, the DeLisle, Mississippi?

13 **A.** I don't believe he used the term DeLisle, but he did say  
14 Mississippi, yes.

15 **Q.** A plant in Mississippi. And then a Korean plant which  
16 never got built; isn't that correct?

17 **A.** Yes, it is.

18 **Q.** And you've looked at his personnel documents, and you know  
19 that's the last two -- two that -- two projects that he did for  
20 DuPont; isn't that correct?

21 **A.** Yes.

22 **Q.** Okay. Now, he also told you that he was certain that  
23 since he retired from DuPont that the TiO<sub>2</sub> technology had --  
24 had continued to grow; isn't that correct?

25 **A.** Yes, it is.



1 Q. And he also told you that -- and he told you about the  
2 ten-year contract that Sherwin-Williams had with -- about the  
3 Ashtabula plant; isn't that correct?

4 A. He discussed that the -- or he mentioned that the  
5 Ashtabula plant had been sold to Sherwin-Williams. I don't  
6 believe that we discussed a ten year length of period.

7 Q. You don't remember him telling you that there was a  
8 ten-year restriction on Sherwin-Williams' ownership rights to  
9 the plant had long since -- that DuPont's ownership rights --  
10 excuse me, Sherwin-Williams ownership plans had long expired,  
11 and the process had been made available to other competitors?

12 A. He characterized the process from Ashtabula as publicly  
13 available to competitors.

14 Q. Now, he also talked about the civil case; isn't that  
15 right?

16 A. Yes, it is.

17 Q. That involved the Jinzhou plant, right?

18 A. Yes.

19 Q. Okay. And he said that he didn't find DuPont's case very  
20 compelling; isn't that right?

21 A. That's correct.

22 Q. And that, for example, he said the chlorine catch tank was  
23 in the public information; didn't he tell you that?

24 A. Yes, he did.

25 Q. He told you that he had incorporated Pinewater Design?

1     **A.**    Yes, he did.

2     **Q.**    He told you that he was charging \$125 an hour; isn't that  
3     right?

4     **A.**    That is correct.

5     **Q.**    He also went back and told you about Gaylord Chemical, and  
6     that he had done some work for Gaylord Chemical; isn't that  
7     right?

8     **A.**    Yes, it is.

9     **Q.**    And he told you what his understanding was about his  
10    limitation with DuPont, didn't he?

11    **A.**    In terms of what?

12    **Q.**    Well, he believed that he only had a five-year restriction  
13    with DuPont.  Didn't he tell you that?

14    **A.**    Mr. Maegerle said that he believed that he was subject to  
15    the same rules as DuPont contractors, and specifically that he  
16    couldn't consult for a competitor within a five year time  
17    period after having left DuPont.

18    **Q.**    And that he could use the Ashtabula work, the Ashtabula  
19    plant which had been sold, whatever information he learned  
20    about that, he told you he could use that, right?

21    **A.**    Mr. Maegerle said he believed that the Ashtabula  
22    information was in the public domain, yes.

23    **Q.**    Okay.  He also told you that he had kept some DuPont  
24    memorandum and documents; isn't this right?

25    **A.**    Yes, he said he had retained some DuPont paperwork.

1 Q. And that he had destroyed them, he just didn't remember  
2 when?

3 A. Yes, that's correct.

4 Q. And he also told you that he still might have some DuPont  
5 stuff around the house; isn't that right?

6 A. Yes, but he said it wouldn't contain proprietary  
7 information.

8 Q. He also said that -- he talked about proprietary  
9 information; isn't that right?

10 A. Yes.

11 Q. And he said that he had not -- he had not provided  
12 proprietary information. He used that word, didn't he?

13 A. Yes, he did.

14 Q. So he was -- and he distinguished the information he was  
15 providing, the type of information he was providing, but not --  
16 he was not providing proprietary information; isn't that right?

17 A. Yes, that's correct.

18 Q. Said he didn't provide any pink sheets; isn't that right?

19 A. That's correct.

20 Q. And he also told you that he didn't have -- he didn't have  
21 the -- well, let me go back.

22 He also told you his initials may be on a lot of USAPTI  
23 schematics; isn't that right?

24 A. Yes, that's correct.

25 Q. And he said some he had reviewed and some he hadn't; isn't

1 that right?

2 **A.** Yes.

3 **Q.** And he said that his initials basically got put on  
4 everything; isn't that right?

5 **A.** Of USAPTI's, that's correct.

6 **Q.** That's right.

7 He also told you -- and, by the way, this is over this  
8 four-hour period, right?

9 **A.** Yes.

10 **Q.** You don't have a note, not one note of what he said to  
11 you?

12 **A.** I personally was not taking notes.

13 **Q.** And you don't have one recording of it?

14 **A.** Correct.

15 **Q.** And you don't have one signed statement of it?

16 **A.** That is correct.

17 **Q.** And he was cooperating with you?

18 **A.** Mr. Maegerle was very cooperative.

19 **Q.** Do you have any reason why -- to believe --

20 **THE COURT:** Counsel, let her finish the answer,  
21 please.

22 **MR. FROELICH:** I'm sorry.

23 **THE COURT:** Thank you very much.

24 **MR. FROELICH:** I get into a rhythm.

25 **THE COURT:** All right. All right.

1 **BY MR. FROELICH:**

2 **Q.** You don't have any reason to believe that since he was  
3 cooperating with you and talking to you that you could have  
4 taken out a recorder and recorded what he said?

5 **MR. HEMANN:** Objection, Your Honor.

6 **THE COURT:** Overruled.

7 **THE WITNESS:** It's not FBI's policy to record  
8 interviews.

9 **BY MR. FROELICH:**

10 **Q.** Right. That's exactly right. It is not FBI policy to  
11 record anything; isn't that right?

12 **A.** Yes.

13 **Q.** And because they want the word of the agent rather than  
14 the recorded of whoever they're interviewing; isn't that right?

15 **MR. HEMANN:** Objection.

16 **THE COURT:** Sustained.

17 **BY MR. FROELICH:**

18 **Q.** Are you taught that -- you're taught that in school,  
19 aren't you?

20 **MR. HEMANN:** Objection, Your Honor.

21 **THE COURT:** Overruled.

22 **BY MR. FROELICH:**

23 **Q.** You're taught -- you went to the FBI Academy; isn't that  
24 correct?

25 **A.** Yes.

1 Q. And they teach you not to record when you take statements;  
2 isn't that right?

3 A. No, they told us that it's not FBI policy to record  
4 interviews.

5 Q. Okay. So that's what they told you, not to record  
6 interviews.

7 He also went through and he told you that -- what his  
8 email address was; isn't that correct?

9 A. I believe so.

10 Q. And he told you the number of people that -- he gave you  
11 the names of a lot of people that worked for USAPTI, didn't he?

12 A. I believe -- I believe he gave us the name of about eight  
13 employees.

14 Q. Okay. And he -- he also told you that he had been at a  
15 meeting in California with some executives from -- was it  
16 Pangang or Jinzhou?

17 A. In November 2010, I think it was Pangang.

18 Q. Pangang.

19 And he gave you the name of one of those people, didn't  
20 he?

21 A. Of one of the Pangang executives, yes.

22 Q. He also -- you asked him to identify if there was any  
23 DuPont, ex-DuPont people who were working as consultants; isn't  
24 that correct?

25 A. For Walter Liew, yes.

1 Q. For Walter Liew. He said he didn't want to do that; isn't  
2 that right?

3 A. Yes, that's correct.

4 Q. But -- and then he said that he would at least -- he'd  
5 give one name; isn't that right?

6 A. He ended up giving us the name of Daniel McIntosh. He did  
7 that at the beginning of the interview when --

8 Q. What?

9 A. He gave us Daniel McIntosh's name when we were in the  
10 office.

11 Q. You weren't there, were you?

12 A. Not initially, no.

13 Q. You weren't there when he gave the name Daniel McIntosh,  
14 were you?

15 A. Initially, no.

16 Q. In fact, you're relying on what you were told?

17 A. We subsequently talked about Daniel McIntosh when I was  
18 present.

19 Q. And did he -- he gave you some background on McIntosh,  
20 didn't he?

21 A. A little bit.

22 Q. And what did he tell you about McIntosh?

23 A. That McIntosh was another former DuPont employee, and that  
24 he and Mr. Maegerle had worked briefly with Walter Liew on a  
25 project through Condux.

1 Q. He also told you about other meetings that Mr. Liew had,  
2 both in China and in California; isn't that right?

3 A. Yes, that's correct.

4 Q. He also told you that DuPont, at one time, had attempted  
5 to build -- were in negotiations to build a plant in China;  
6 isn't that right?

7 A. Yes, that's correct.

8 Q. And he told you that he had no animosity against DuPont,  
9 and didn't know anybody that had animosity against DuPont?

10 A. Yes, that's correct.

11 Q. Did you learn that Mr. Maegerle's father had worked for  
12 DuPont?

13 A. I believe he may have mentioned that.

14 Q. And, again, we talked about, earlier, that Mr. Maegerle  
15 pointed out to you that -- a computer and a cell phone that you  
16 had missed in the search; is that right?

17 A. I believe our search team had identified the computer, but  
18 he did raise the cell phone and bring it to our attention.

19 Q. And he also told you that it had been 20 years since he  
20 had -- over 20 years since he had retired from DuPont, right?

21 A. Yes.

22 Q. And that he had no information concerning what had been  
23 done at DuPont for the 20 -- since the 20 years that he had  
24 left; isn't that right?

25 A. Yes, that's correct.



1 Q. And he also knew -- you knew and you've talked about that  
2 the Basic Data Book was in 1985; was it not?

3 A. I don't believe we ascribed a date to that during the  
4 course of the interview.

5 Q. Well, you know that, don't you?

6 A. Yes, I do.

7 Q. Now, you never asked Mr. Maegerle about Kuan Yin, did you?

8 A. I asked Mr. Maegerle on several occasions about Kuan Yin.

9 Q. You -- but you didn't make any notes of that, or you  
10 didn't write it down, right?

11 A. Agent Koblitz wrote it down.

12 Q. Okay. And you didn't record that?

13 A. No, we did not record that.

14 Q. And you didn't record his response?

15 A. No, we did not.

16 Q. You didn't have him sign anything?

17 A. That is correct.

18 Q. And this was in July of 2011; is that right?

19 A. That's correct.

20 MR. FROELICH: That's all I have.

21 THE COURT: Thank you, Counsel.

22 Ms. Lovett.

23 MS. LOVETT: Yes, Your Honor.

24 Your Honor, may I proceed?

25 THE COURT: Yes, you may.

CROSS-EXAMINATION

1  
2 **BY MS. LOVETT:**

3 **Q.** Good morning, Agent Pattillo.

4 **A.** Good morning.

5 **Q.** Barely.

6 You testified last week that you were the lead agent on  
7 the search of the Maegerle residence, correct?

8 **A.** That's correct.

9 **Q.** And you went through a number of documents seized in that  
10 search, with Mr. Hemann, right?

11 **A.** Yes, that's correct.

12 **Q.** And you're generally familiar with the documents that were  
13 collected during that search, correct?

14 **A.** Generally, yes.

15 **MS. LOVETT:** Your Honor, may I approach with Exhibit  
16 221?

17 **THE COURT:** Yes, you may.

18 **MS. LOVETT:** And, Your Honor, one further point of  
19 clarification, the original of Exhibit 221 is quite difficult  
20 to read, so may I also approach with a copy?

21 **THE COURT:** Yes. And, all counsel, where possible I'd  
22 like to use the actual exhibits rather than copies. But if  
23 there's a problem with its legibility you may.

24 **MS. LOVETT:** Thank you, Your Honor.

25 **MR. HEMANN:** We agree to use, in this particular case,

1 copies of data -- I mean the originals can use a copy.

2 **THE COURT:** Okay. Very well.

3 **BY MS. LOVETT:**

4 **Q.** Agent Pattillo, are you familiar with this document?

5 **A.** Yes, I am.

6 **Q.** What is it?

7 **A.** It's correspondence from Condux Consulting Company to  
8 Robert Maegerle.

9 **Q.** And what is the date on this document?

10 **A.** August 5th, 1997.

11 **MS. LOVETT:** And, Your Honor, the parties have  
12 stipulated that this document was seized at the Maegerle  
13 residence and may be offered by any witness into evidence.

14 **THE COURT:** Is that correct, Mr. Hemann?

15 **MR. HEMANN:** Yes, it is, Your Honor.

16 **THE COURT:** Are you offering it?

17 **MS. LOVETT:** Yes, Your Honor.

18 **THE COURT:** All right it's admitted.

19 (Trial Exhibit 221 received in evidence.)

20 (Document displayed.)

21 **BY MS. LOVETT:**

22 **Q.** The copy on the screen may be a bit more legible, as well,  
23 than the one you have.

24 **MS. LOVETT:** Mr. Guevara, if you could display the  
25 first three paragraphs of this letter.

1 (Document displayed.)

2 **BY MS. LOVETT:**

3 **Q.** Agent Pattillo, would you mind reading just the first  
4 three paragraphs of this letter for the jury?

5 **A.** Certainly.

6 "Dear Bob:

7 "Mike Marinak, private consultant in Petaluma,  
8 California, and his partner, Walter Liew of LH Performance  
9 Inc. in Alameda, CA would like to visit with you at the  
10 Condux office in the near future. Their purpose is to  
11 evaluate whether to engage you as a consultant relative to  
12 the chloride route TiO<sub>2</sub>.

13 "As I have mentioned earlier, they are planning to  
14 bid on and then prepare a technology package that will  
15 form the production design basis for a 25,000 metric tons  
16 per year TiO<sub>2</sub> plant to be built in China. A Chinese  
17 design firm will provide final facilities design and  
18 installation. The fee will be a 88 percent rutile slag  
19 and we understand that some site work has already begun.

20 "Marinak indicates that he and Liew have done other  
21 similar work in China. Their method of operation, as  
22 unbelievable as it sounds, is to gather technical and  
23 process information from available public sources and  
24 patent literature, and then put a package together.

25 However, Mike does recognize that his proposal must be

1 more than just a, quote, paper study, end quote, and that  
2 is where you come in. Your role will be as an advisor and  
3 reviewer of the work to be done by others.

4 "Because your expertise was obtained while working  
5 for DuPont, Marinak would expect that you not divulge any  
6 process, product, scientific or engineering information  
7 that you feel is still proprietary. However, for those  
8 areas that are currently in the public domain I'm sure  
9 that you can improve on literature-generated information,  
10 and that is what Marinak is looking for."

11 Q. Thank you so much, Agent Pattillo.

12 MS. LOVETT: Your Honor, may I approach with  
13 Exhibit 1076?

14 THE COURT: Yes, you may.

15 BY MS. LOVETT:

16 Q. Agent Pattillo, are you familiar with this document?

17 A. Yes, I am.

18 Q. What is it?

19 A. This is an invoice from Condux, Inc., to Mr. Maegerle.

20 MS. LOVETT: And, Your Honor, the parties have  
21 stipulated that this document was seized at the Maegerle  
22 residence.

23 THE COURT: All right. Is that correct, Mr. Hemann?

24 MR. HEMANN: It is, Your Honor.

25 THE COURT: All right. Are you offering it?

1           **MS. LOVETT:** Defendants move to admit this exhibit.

2           **THE COURT:** It's admitted.

3           **MR. HEMANN:** And we have no objection, Your Honor.

4           **THE COURT:** It's admitted then.

5           (Trial Exhibit 1076 received in evidence)

6 **BY MS. LOVETT:**

7 **Q.** Agent Pattillo, can you please read the header of this  
8 document?

9 **A.** (reading)

10           "Condux, Inc., a Consulting Association of Former  
11 DuPont Professionals, 201 Possum Park Road, Suite 9,  
12 Newark, Delaware 19711, 302-738-9200."

13 **Q.** Thank you very much.

14           **MS. LOVETT:** Your Honor, may I approach with  
15 Exhibit 718?

16           **THE COURT:** Yes, you may.

17                           (Pause in proceedings.)

18           **MS. LOVETT:** Just one moment, Your Honor.

19                           (Pause in proceedings.)

20 **BY MS. LOVETT:**

21 **Q.** Agent Pattillo, are you familiar with this document?

22 **A.** Yes, I am.

23 **Q.** What is it?

24 **A.** This is a letter to Walter Liew from Dan McIntosh.

25           **MS. LOVETT:** Your Honor, the parties have stipulated

1 that this document was also seized at the Maegerle residence.

2 **THE COURT:** Is that correct, Mr. Hemann?

3 **MR. HEMANN:** Yes, Your Honor.

4 **THE COURT:** All right. So stipulated.

5 **MS. LOVETT:** And defendants move to admit Exhibit 718  
6 into evidence.

7 **MR. HEMANN:** No objection, Your Honor.

8 **THE COURT:** Admitted.

9 (Trial Exhibit 718 received in evidence)

10 **BY MS. LOVETT:**

11 **Q.** Agent Pattillo, do you recognize the handwriting on this  
12 document near the second half?

13 **A.** Yes, I do.

14 **Q.** Whose handwriting is that?

15 **A.** It appears to be Mr. Maegerle's handwriting.

16 **Q.** And can you read the statement in his handwriting to the  
17 jury?

18 **A.** Yes. It says, "DuPont clearance for TiO2 work," question  
19 mark.

20 **Q.** And I believe you already mentioned this, but this letter  
21 is signed by Daniel McIntosh; correct?

22 **A.** Yes, that's correct.

23 **Q.** Thank you.

24 Agent Pattillo, you interviewed an individual named Paul  
25 Reis or Rice (phonetic) on January 30th, 2012; correct?

1     **A.**     Yeah, I believe that date is correct, but I definitely  
2 interviewed Mr. Reis.

3     **Q.**     And are you aware that his attorney provided a number of  
4 documents to the FBI after that interview?

5             **MR. HEMANN:**    Objection, Your Honor.

6             **THE COURT:**   Well, the question is are you aware.

7             **THE WITNESS:**  Yes, I do believe he did.

8     **BY MS. LOVETT:**

9     **Q.**     Your office took possession of those documents; correct?

10            **THE COURT:**   The objection is overruled.

11            **MR. HEMANN:**   All right. Thank you.

12            **THE WITNESS:**  It was another agent from my office,  
13 yes.

14     **BY MS. LOVETT:**

15     **Q.**     Are you familiar with those documents?

16     **A.**     I did not see the documents, no.

17            **MS. LOVETT:**    No further questions, Your Honor.

18            **THE COURT:**   Thank you.

19            **MR. FROELICH:**  Your Honor, I forgot two questions, if  
20 I might.

21            **THE COURT:**   Really, two? I never met a lawyer --

22                               (Laughter)

23            **THE COURT:**   -- who could restrain him or herself with  
24 two.

25            **MS. LOVETT:**   Your Honor, may I approach to retrieve



1 the exhibits?

2 **THE COURT:** Yes, you may.

3 Certainly you can proceed. You can ask more than two if  
4 you wish.

5 **MR. FROELICH:** I understand, Your Honor.

6 **CROSS-EXAMINATION** (resumed)

7 **BY MR. FROELICH:**

8 **Q.** I forgot one area.

9 Mr. Maegerle told you that he had gotten permission from  
10 DuPont to be a consultant; isn't that correct?

11 **A.** Mr. Maegerle said that in the mid-'90s he had been  
12 approached by a consulting firm, I think in Atlanta, who was  
13 interested in using his services for a Kimera contract. So he  
14 said he contacted DuPont and requested permission, yes.

15 **Q.** Okay. He gave you two names when he was talking about  
16 permission from DuPont; didn't he?

17 **A.** Yes, he did.

18 **Q.** Tell the ladies and gentlemen of the jury the two names he  
19 gave you?

20 **A.** Dennis Dakin and I cannot recall the other name.

21 **Q.** Would you remember if it was Drew McCullin?

22 **A.** Yes.

23 **Q.** And you didn't remember the other name because it's been a  
24 while, isn't that correct, since that interview with

25 Mr. Maegerle?

1 A. Yes.

2 Q. And you have reviewed the notes of it just recently?

3 A. I did review the notes recently, yes.

4 MR. FROELICH: Thank you.

5 THE COURT: Mr. Hemann, any redirect?

6 MR. HEMANN: Yes, Your Honor. Thank you.

7 REDIRECT EXAMINATION

8 BY MR. HEMANN:

9 Q. A few questions, Special Agent Pattillo.

10 First of all, do you recall discussion with Mr. Froelich  
11 about metadata attached to Exhibits 5 and 10?

12 A. Yes, I do.

13 Q. Ms. Mahoney, when the computer comes on, can we put up  
14 Exhibit 5, page 2?

15 But do you have a general recollection --

16 A. Yes, I do.

17 Q. -- of the metadata?

18 The metadata associated with that document, was that added  
19 somehow by the FBI or did it come with the document itself?

20 A. No. I believe that was some electronic information that  
21 was provided by some of our experts in this area.

22 Q. And does that electronic information correspond to the  
23 document as it was found on the thumb drive?

24 A. I don't understand the question.

25 Q. Let me put the document up.

1 And if you could blow up the top of that.

2 There are three dates: Accessed date, created date, and  
3 modified date. Do you see those?

4 **A.** Yes.

5 **Q.** Do all of those dates precede the FBI's first involvement  
6 in the case?

7 **A.** Yes, they do.

8 **Q.** And do those dates correspond to activities that occurred  
9 with the document on or about those particular dates?

10 **MR. FROELICH:** Objection, Your Honor. She's --

11 **THE COURT:** Sustained.

12 **BY MR. HEMANN:**

13 **Q.** Do you know what those dates generally correspond to?

14 **A.** I believe so.

15 **Q.** And what do you know?

16 **MR. FROELICH:** Again, I'm going to object to  
17 "generally correspond to."

18 **THE COURT:** Pardon me?

19 **MR. FROELICH:** I object to the question.

20 **THE COURT:** Sustained. Lack of foundation.

21 **BY MR. HEMANN:**

22 **Q.** Mr. Froelich asked you some questions about these  
23 particular dates. Do you remember that?

24 **A.** Yes, I do.

25 **Q.** And he asked you what you knew about what you believed

1 created, modified, and accessed. Do you remember that?

2 **A.** Yes.

3 **Q.** And do you remember testifying as to what you believed  
4 those meant?

5 **A.** Yes.

6 **Q.** Do you believe that -- further, do you believe that those  
7 dates correspond to activities with the underlying document?

8 **A.** Yes.

9 **Q.** Why is that?

10 **A.** My understanding is that --

11 **MR. FROELICH:** I'm going to object to what her  
12 understanding is, Your Honor.

13 **THE COURT:** Sustained. Lack of foundation for this  
14 witness.

15 **BY MR. HEMANN:**

16 **Q.** Did the FBI -- let me ask a different question.

17 **A.** Okay.

18 **Q.** Did the FBI have possession of this document on any of  
19 those three dates?

20 **A.** No, we did not.

21 **Q.** Do you know who accessed this document on August 21st,  
22 2008?

23 **A.** No, I do not.

24 **Q.** Have you ever seen any FBI report that suggests that the  
25 FBI knows who accessed this document on August 21st, 2008?

1           **MR. FROELICH:** I'm going to object, Your Honor.

2           **THE WITNESS:** No, I don't.

3           **THE COURT:** All right. Sustained.

4           **BY MR. HEMANN:**

5           **Q.** Do you know who created this document on the thumb drive  
6 on January 23rd, 2008 -- January -- yes. Do you know who  
7 created this document on the thumb drive on that date?

8           **A.** No, I don't.

9           **Q.** And do you know who modified this document on the computer  
10 that Mr. Froelich referred to on December the 14th, 2007?

11          **A.** No, I don't.

12          **Q.** And if I were to ask you the same set of questions with  
13 regard to Exhibit 10 and the metadata associated with  
14 Exhibit 10, would your answers be the same?

15          **A.** Yes.

16          **Q.** Thank you.

17                 Mr. Froelich asked you some questions about the Basic Data  
18 Document; correct?

19          **A.** Yes.

20          **Q.** And he asked you if the Basic Data Document itself  
21 referred to the -- Exhibit 161 referred to the location of the  
22 project. Do you remember that, Taiwan versus another project?

23          **A.** Correct.

24          **Q.** You do remember that?

25          **A.** Yes, I do.

1           **MR. HEMANN:** Your Honor, may I approach the witness  
2 with what's been entered into evidence as Exhibit 161?

3           **THE COURT:** Yes, you may.

4                                 (Pause in proceedings.)

5 **BY MR. HEMANN:**

6 **Q.** And if you could look at the second page of that document.

7 **A.** (Witness examines document.)

8 **Q.** If you could put up 161, page 2. Blow up the text,  
9 please.

10           Is this document addressed to Mr. Maegerle, Special Agent  
11 Pattillo?

12 **A.** Yes, it is.

13 **Q.** And does the first paragraph of this refer to the situs,  
14 the location, of the project?

15 **A.** Yes, it does.

16 **Q.** And what is the location?

17 **A.** The plant presently planned for Taiwan.

18 **Q.** Mr. Froelich also asked you some questions about the Asia  
19 project. Do you remember that?

20 **A.** Yes.

21 **Q.** And he asked you some questions about the Korea project on  
22 which Mr. Maegerle worked. Do you remember that?

23 **A.** Yes.

24 **Q.** And do you remember that Mr. Froelich asked you some  
25 questions about Government Exhibit 722?

1 A. Yes.

2 MR. HEMANN: And, Your Honor, this is in evidence.

3 And, Ms. Mahoney, would you be so kind as to put up  
4 page 14 of Exhibit 722? And could you blow up the  
5 second-to-last paragraph? No. Second-to-last one. Sorry.  
6 One more down from that, please.

7 Q. Could you please read that text, Special Agent Pattillo?

8 A. Yes. (reading)

9 "In mid-1985 I began front-end-loading activities for  
10 the proposed Asian TiO<sub>2</sub> ventures and guided these  
11 activities to completion of a Taiwan technology package  
12 and scope of work for a similar Korea plant."

13 Q. Could you please put up the next page, Ms. Mahoney? And  
14 page 15. And blow up the top several lines.

15 Ms. Lovett asked you a question about whether you  
16 recognized Mr. Maegerle's handwriting. Do you remember that?

17 A. Yes, I do.

18 Q. And you answered the question "yes"?

19 A. Correct.

20 Q. Do you recognize the handwriting on this page?

21 A. Yes, I do.

22 Q. Whose is it?

23 A. It appears to be Mr. Maegerle's handwriting.

24 Q. Can you please read the first entry on this page?

25 A. (reading)

1 "6-85 to 9-87, Asia TiO2 ventures Taiwan/Korea."

2 Q. Thank you, Special Agent Pattillo. Just a couple more  
3 questions.

4 Mr. Froelich asked you a series of questions about the  
5 conduct of the search warrant and the meeting that you had with  
6 Mr. Maegerle prior to the execution of the search warrant;  
7 correct?

8 A. Correct.

9 Q. Could you describe -- when you and Special Agent Koblitz  
10 first approached the door and knocked on it, can you describe  
11 how you were dressed?

12 A. I was wearing a business suit as was Mr. Koblitz.

13 Q. You agreed with Mr. Froelich's question about being  
14 questioned that you were armed. Do you remember that?

15 A. Yes.

16 Q. Can you describe where your firearm was when you  
17 approached the front door?

18 A. Yes. I was wearing my firearm in a holster on my right  
19 hip. It was covered by my suit jacket.

20 Q. And Special Agent Koblitz?

21 A. The same.

22 Q. When the eight to ten other agents arrived an hour later  
23 to conduct the search, you stated that they were armed as well.  
24 Do you remember that?

25 A. Yes.



1 Q. And were their firearms visible outside their clothing?

2 A. They may have been. They were wearing firearms on their  
3 hips as well, and they may not all have had concealing  
4 garments.

5 Q. Does the wearing of firearms relate to certain FBI  
6 policies?

7 A. We're obligated to wear our firearms at a search site.

8 Q. And when you say "obligated," what do you mean?

9 A. Well, it's our general practice to be armed at search  
10 sites.

11 Q. And that is a general practice that's mandated by FBI  
12 regulations; correct?

13 A. It's our general practice. I'm unclear if there's an FBI  
14 regulation which stipulates specifically that we have to do  
15 that.

16 Q. You were asked a question about whether you informed  
17 Mr. Froelich [sic] that he was a suspect in the case. Do you  
18 remember that?

19 A. Yes, I do.

20 Q. And you said that you did not. Do you remember that?

21 A. Correct.

22 Q. Is "suspect" a term that is used by the FBI to describe  
23 individuals who are involved in any way in FBI investigations?

24 A. No, it is not a term we use.

25 Q. Have you in your career ever informed anyone that they are

1 a suspect?

2 **A.** No, I have not.

3 **Q.** Have you ever been in the presence of an FBI agent who has  
4 informed anyone that they are a suspect?

5 **A.** No, I have not.

6 **Q.** Mr. Maegerle also asked -- Mr. Froelich also asked you a  
7 series of questions regarding your note taking and the  
8 preparation of the 302. Do you remember those?

9 **A.** Yes, I do.

10 **Q.** And also questions related to the tape recording of -- or  
11 the not tape recording of the interview and the sworn  
12 statement. Do you remember those?

13 **A.** Yes, I do.

14 **Q.** Is there anything that you or Special Agent Koblitz did  
15 with regard to those matters that was different than standard  
16 FBI policy?

17 **A.** No.

18 **Q.** When you spoke to Mr. Maegerle, did he say at any time  
19 that he was distressed?

20 **A.** No, he did not.

21 **Q.** Did he say at any time that he was worried?

22 **A.** No, he did not.

23 **Q.** Did you have an opportunity over the course of the time  
24 that you were there to observe Mr. Maegerle's demeanor?

25 **A.** Yes, I did.

1 Q. Did he appear to you that he was distressed at any time?

2 A. Mr. Maegerle seemed very composed.

3 Q. Did he appear to you at any time in answering your  
4 questions to be confused?

5 A. No.

6 Q. Mr. Froelich asked you a series of questions with regard  
7 to the drawings, the binder that is in evidence as Exhibit  
8 Number 53. Do you remember that?

9 A. Yes, I do.

10 Q. And one of the questions he asked you was whether this  
11 only referred to the Pangang project. Do you remember that?

12 A. Yes.

13 Q. And you responded that you did not know?

14 A. Correct.

15 MR. HEMANN: Your Honor, may I approach with  
16 Exhibit 53?

17 THE COURT: Yes.

18 BY MR. HEMANN:

19 Q. Special Agent Pattillo, is this the binder that we looked  
20 at previously?

21 A. Yes, it is.

22 Q. If you could, please, turn to page 14 of the binder. You  
23 have to page through, I guess.

24 Actually, it's in evidence. Ms. Mahoney, could you put up  
25 page 14?

1 Do you see the page on the screen, Special Agent Pattillo?

2 **A.** Yes.

3 **Q.** And does that page of the binder contain a reference to

4 30,000 tons per year TiO<sub>2</sub>?

5 **A.** Yes, it does.

6 **Q.** And do you know that to be the Pangang project or the

7 Jinzhou project?

8 **A.** That is a reference to the Jinzhou project.

9 **Q.** Mr. Froelich asked you about the length of the interview,

10 and you referred him to the full amount of time that you were

11 there, which is approximately four hours. Do you remember

12 that?

13 **A.** Correct.

14 **Q.** Was there any distinction in the interview between the

15 first hour and the subsequent three?

16 **A.** We covered the majority of the topics actually in the

17 first hour, and then sort of revisited a couple of things, in

18 particular the Kuan Yin topic, and asked for some additional

19 clarification for the rest.

20 **Q.** Mr. Froelich asked you some questions about Mr. Maegerle

21 saying that he had kept some DuPont material after he left the

22 company; correct?

23 **A.** Correct.

24 **Q.** How did Mr. Maegerle characterize the DuPont material that

25 he had kept?

1   **A.**   He said it was -- he had not retained any proprietary  
2   information.

3   **Q.**   And did he tell you whether it was information that he had  
4   authored and was proud of?

5   **A.**   He said that he had retained some information that he had  
6   authored and was proud of, but that he'd gotten rid of most of  
7   it over time.

8   **Q.**   I think at one point I misspoke and said did you inform  
9   Mr. Froelich that he was a suspect and not Mr. Maegerle. Did  
10   you recall me misspeaking that way?

11   **A.**   I do not.

12   **Q.**   Okay.

13   **A.**   I informed nobody that they were a suspect.

14   **Q.**   Okay. Thank you, Special Agent Pattillo.

15           **MR. HEMANN:** Your Honor, I have no further questions.

16           **THE COURT:** Anything further, Mr. Froelich?

17           **MR. FROELICH:** No, Your Honor.

18           **THE COURT:** All right.

19           **MS. LOVETT:** No, Your Honor.

20           **THE COURT:** All right. You may be excused. Thank  
21   you, Agent. You can leave everything there.

22                           (Witness excused.)

23           **THE COURT:** Let's take a stretch break while we're  
24   calling the next witness.

25                           (Pause in proceedings.)

1           **THE COURT:** All right. Please call your next witness.

2           **MR. HEMANN:** Your Honor, the United States calls  
3 Philipp Ilagan.

4           **THE COURT:** Come forward, sir.

5           You may be seated when you're ready, ladies and gentlemen.

6           **THE CLERK:** Raise your right hand, please.

7                           PHILIPP ILAGAN,

8 called as a witness for the Government, having been duly sworn,  
9 testified as follows:

10           **THE WITNESS:** Yes.

11           **THE CLERK:** Thank you.

12           Please be seated and state and spell your full name for  
13 the record.

14           **THE WITNESS:** Philipp Ilagan.

15           **THE CLERK:** Spell it, please.

16           **THE WITNESS:** P-H-I-L-I-P-P. Last name Ilagan,  
17 I-L-A-G-A-N.

18           **THE CLERK:** Thank you.

19                           DIRECT EXAMINATION

20 **BY MR. HEMANN:**

21 **Q.** Good morning, Mr. Ilagan.

22           Was there a time that you were employed by a company  
23 called Performance Group?

24 **A.** Yes.

25 **Q.** When was that?

1 A. Summer between July 2008.

2 Q. And what was the length of your employment with  
3 Performance Group?

4 A. Like three years.

5 Q. What was your start date and what was your end date?

6 A. Start date between June or July 2008 to somewhere between  
7 April or May 2011.

8 Q. Can you move the microphone just slightly closer so that  
9 we can hear?

10 So you worked for Performance Group from summer 2008 till  
11 early 2011; correct?

12 A. Yes.

13 Q. And just a couple of notes. You have to keep the  
14 microphone close; and when you answer, please sort of say your  
15 answer audibly rather than nodding. Okay? Yes?

16 A. Yes.

17 Q. Okay. How did you come to be employed by Performance  
18 Group?

19 A. I saw an ad on Craigslist regarding a piping designing  
20 job.

21 Q. Did you have a background in piping and designing?

22 A. I have a little background in piping designing. I was  
23 working in Chevron doing piping designing for a year -- a year  
24 and a half or a year at that time.

25 Q. Did you answer the Craigslist ad?

1 A. Yes, I did.

2 Q. And what did you do? Did you go have an interview or send  
3 a résumé?

4 A. I sent a résumé, and I got respond back from him.

5 Q. When you say "him," who do you mean?

6 A. Walter.

7 Q. Mr. Liew?

8 A. Yes.

9 Q. And what was Mr. Liew's response?

10 A. I forgot already as far as that. I mean, basically he  
11 wants to get -- he wants me -- he wants to interview me as far  
12 as that job.

13 Q. Did you go in and have an interview?

14 A. Yes, I did.

15 Q. Were you hired?

16 A. What do you mean? Yeah, of course.

17 Q. Okay. What were you hired to do?

18 A. At that time it's a piping designing job, to finish the  
19 piping designing.

20 Q. Piping designing for what?

21 A. For the plant, 30,000K. At that time I didn't know what  
22 job, but I was hired for a piping designing job.

23 Q. Did, over the next several years that you were employed,  
24 did your piping and designing duties evolve at all? Did they  
25 change?



1 A. Yes.

2 Q. How did they change?

3 A. I was doing some P&IDs, doing some autoCAD drafting as far  
4 as different disciplines.

5 Q. When you started at Performance Group in 2008, who were  
6 the employees --

7 A. BJ --

8 Q. -- the other employees?

9 A. I remember BJ, Sudha, Dinesh, and I think Wendell at that  
10 time doing consulting. He doesn't work there, but he's doing  
11 consulting. And I think Bob something over there.

12 Q. When you say "Bob," you referenced your hand. Are you  
13 referring to Mr. Maegerle?

14 A. Yeah, but at that time -- I already know Bob at that time  
15 as far as he's actually working for Walter.

16 Q. Of the -- did you have an opportunity to work with the  
17 individuals, and let's set Mr. Maegerle aside for one moment,  
18 the other individuals that you listed, BJ, Dinesh, Sudha, and  
19 Mr. Wendell Baker is a consultant; correct?

20 A. I think there's another guy. I forgot his name. I think  
21 JC or some guy doing the same job as me, but I couldn't  
22 remember his name no more.

23 Q. What did the job entail? Did you find -- after you  
24 started, what did you find out the job involved?

25 A. It's a piping -- basically it's a piping job that I have

1 to route the piping, estimate routing as far as what's in the  
2 P&ID to oxidation plant.

3 **Q.** Did you have an understanding as to what the project was  
4 that you were working on?

5 **A.** Understanding at that time, no. I just -- they just want  
6 me to pipe it.

7 **Q.** And at some point in time did you gain an understanding as  
8 to what the project was that you were working on?

9 **A.** Oh, yes.

10 **Q.** And what was the project that you were working on?

11 **A.** TiO<sub>2</sub> chemical plant.

12 **Q.** Prior to starting work with Mr. Liew at Performance Group,  
13 did you have any experience with TiO<sub>2</sub>?

14 **A.** No.

15 **Q.** What other -- what chemicals had you had experience with  
16 prior to working at Performance Group?

17 **A.** Just the refinery, but it's not chemical.

18 **Q.** Did you have an opportunity to interact with or work with  
19 the other individuals that you listed?

20 **A.** Mostly with Sudha and once in a while with BJ at that  
21 time.

22 **Q.** Did you come to know whether they had experience with  
23 TiO<sub>2</sub>?

24 **A.** At that time, no. I'm not sure if they have experience in  
25 TiO<sub>2</sub>.

1 Q. At what point in time did you become familiar with  
2 Mr. Maegerle?

3 A. That's probably a year or something after I worked there  
4 because I don't really deal with Bob.

5 Q. What occasion did you begin to deal with Mr. Maegerle?

6 A. Oh, can you repeat that question? I'm sorry.

7 Q. On what occasion did you begin to deal with Mr. Maegerle?

8 A. I did basically, like, a couple of times or three times  
9 dealing with some piping suggestion; and there's another one  
10 trying to get some, like, showing the Madera -- I sent him some  
11 drawings from Madera involving something.

12 Q. Why did you do that?

13 A. Because I had to get some approvals if this is -- the  
14 writing is okay or not.

15 Q. At some point in time did Mr. Liew hire additional  
16 employees to work at Performance Group?

17 A. Can you repeat that?

18 Q. At some point in time did Mr. Liew hire additional  
19 employees to work at Performance Group?

20 A. Yes.

21 Q. When was that?

22 A. There's a lot of people. With the three years that I was  
23 working with them, there's a lot of people that had been  
24 working in different discipline.

25 Q. Say again. I'm sorry.

1     **A.**    There's a lot of people that work there on and off thing.  
2     Basically they work there and then they're out.

3     **Q.**    I'm sorry.  Let me -- I think we're talking over each  
4     other a little bit.

5             Say your answer again, please.

6     **A.**    Okay.  Basically when they -- what they -- the three years  
7     period that I worked for Walter, there's basically a lot of  
8     people that I've seen work there for, like, you know, certain  
9     period of time and then let go after that.

10    **Q.**    At some point in time did Mr. Liew hire somebody by the  
11    name of Tony Duong?

12    **A.**    Yes.

13    **Q.**    And who's Tony Duong?

14    **A.**    I think he's our IT guy or -- I'm not really sure what's  
15    his title, but he's dealing with IT stuff.

16    **Q.**    And did you have an opportunity to observe Mr. Liew's  
17    interactions with Tony Duong?

18    **A.**    I mean, they go out, take lunch together, you know.

19    **Q.**    Was Mr. Liew closer to Mr. Duong than he was to the other  
20    employees?

21             **MS. AGNOLUCCI:**  Objection.

22             **THE COURT:**  Sustained.

23    **BY MR. HEMANN:**

24    **Q.**    Did you have an opportunity to observe Mr. Liew's  
25    relationship with Mr. Duong as compared to other employees?

1 A. I just notice they talk a lot, I mean, as far as that.

2 Q. How would you characterize Mr. Liew's relationship with  
3 Mr. Duong?

4 A. What is that supposed to mean, sir?

5 Q. How would you describe his relationship with Mr. Duong?

6 A. Probably closer or something. Close or something because  
7 they interact a lot, they talk a lot, so....

8 Q. You said that you worked on the 30,000 -- 30K plant. Do  
9 you remember that?

10 A. Yes.

11 Q. The 30K design I think you said. Do you remember whether  
12 that -- whether the project had a name other than 30K?

13 A. Pretty much I call it 30K. They call it the Jinzhou or  
14 something, but I typically call it 30K. It's easier for me.

15 Q. You said you left in April?

16 A. Yeah, somewhere between there, April or -- from March to  
17 May, probably, 2011.

18 Q. Did you work on the 30K project the entire time you were  
19 at Performance Group?

20 A. Yes, I was working on it.

21 Q. Was the 30K project done when you left Performance Group?

22 A. No.

23 Q. Did you also work on another project?

24 A. Yes.

25 Q. What was that project?

1 A. 100K.

2 Q. When did you start working on the 100K project?

3 A. I don't have the specific date for that, but probably a  
4 year or year and a half, two years after 30K. After I've been  
5 there, but it's been awhile.

6 Q. Were you paid by Mr. Liew for your work at Performance  
7 Group?

8 A. Yes.

9 Q. What was your payment arrangement with him?

10 A. I think I was 1099 contract employee.

11 Q. Okay. And what do you mean by "1099"?

12 A. It's a contract employee. Basically it's not directly --  
13 what's a 1099? It's a type of payment that you're not actually  
14 working for -- I mean, you're working for a company, but it's  
15 not under that company.

16 Q. And to whom did you report at Performance Group?

17 A. Walter.

18 Q. Did you bring your own equipment to work?

19 A. No. They have their own equipment.

20 Q. How much were you paid?

21 A. I was making 40, at that time, an hour.

22 Q. \$40 an hour?

23 A. Yes.

24 Q. And was that a consistent amount for the whole time you  
25 were there?

1     **A.**    Yes.

2     **Q.**    How often were you paid?

3     **A.**    Every two weeks.

4     **Q.**    And were you paid consistently throughout the time you  
5     were there 2008 through 2011?

6     **A.**    There's a time that he didn't give me, but mostly it's  
7     consistent, yes.

8     **Q.**    And how long was that time that he didn't give you the  
9     money?

10    **A.**    Probably not even a month or something, or -- but the  
11    1099, I mean, there's rules that they cannot pay me, like, 45  
12    days until you have finished something.

13           **MR. HEMANN:**  Thank you, Your Honor.  No further  
14    questions.

15           **THE COURT:**  All right.  Ms. Agnolucci?

16           **MS. AGNOLUCCI:**  Yes, Your Honor.

17                           (Pause in proceedings.)

18           **MS. AGNOLUCCI:**  May I proceed?

19           **THE COURT:**  Yes.

20                           **CROSS-EXAMINATION**

21    **BY MS. AGNOLUCCI:**

22    **Q.**    Good afternoon, Mr. Ilagan.

23    **A.**    Good afternoon.

24    **Q.**    You testified that you worked for USAPTI for roughly three  
25    years?

1 A. Yes.

2 Q. Did you consider Mr. Liew to be a mentor to you?

3 A. Yes.

4 Q. Would you say he was a good boss to you?

5 A. Yes.

6 Q. And would you say he was a smart guy?

7 A. Yes.

8 Q. Would you say he was a good engineer?

9 A. Yes.

10 THE COURT: You have to answer audibly, sir, "yes" or  
11 "no" or say something verbally.

12 THE WITNESS: I say yes.

13 THE COURT: All right. Thank you.

14 BY MS. AGNOLUCCI:

15 Q. Your work at USAPTI related to designs for two TiO<sub>2</sub>  
16 plants; correct?

17 A. Yes.

18 Q. The 30K and the 100K project?

19 A. Yes.

20 Q. And your specific job at USAPTI was to work on piping  
21 design; correct?

22 A. Yes.

23 Q. You testified earlier about something called a P&ID.

24 A. That's after -- after I'm done with the piping, the one  
25 I'm doing, I start doing different things. One of them is



1 P&ID.

2 Q. Can you please tell the jury what a P&ID is?

3 A. It's a process and instrument diagram, which the piping  
4 and instrumentations that is listed to that drawings.

5 Q. So it's a diagram that shows piping and instrumentation  
6 design?

7 A. Yes.

8 Q. And it relates to your work in piping design; correct?

9 A. Yes.

10 Q. And you also testified that you worked on autoCAD  
11 drawings; is that right?

12 A. Yes.

13 Q. Were those 3D autoCAD drawings?

14 A. 2D and partial 3D at that time.

15 Q. And can you please explain to the jury what autoCAD is?

16 A. It's a special software that we use in drawing something  
17 like a line or objects.

18 Q. So is it fair to say that it makes a computer drawing of  
19 things like a piping design?

20 A. Yes.

21 Q. Now, when you made these autoCAD drawings, did you use  
22 information provided by the engineers who worked at USAPTI?

23 A. Yes.

24 Q. Was a fellow you testified about whose name was BJ  
25 Bhatnagar one of those engineers who did the drawings?

1 A. Yes.

2 Q. And was Sudha Sanghi another engineer who did the  
3 drawings?

4 A. Yes.

5 Q. These engineers were doing a lot of drawings over the  
6 course of your time at USAPTI; right?

7 A. Yes.

8 Q. How many drawings would you say you worked on?

9 A. I'm sorry?

10 Q. How many drawings would you say you worked on during your  
11 three years at USAPTI?

12 A. A lot. Like a lot of drawings.

13 Q. Too many to count?

14 A. Yes.

15 Q. Okay. Would you say that a lot of hard work went into  
16 USAPTI's designs?

17 A. Yes.

18 Q. Would you say that Mr. Liew was constantly working hard to  
19 improve his work product?

20 A. I think so. There's a lot of changes, yes.

21 Q. By "a lot of changes," you mean that there were multiple  
22 drafts and iterations of the designs?

23 A. Yes.

24 Q. And multiple improvements to the designs over time?

25 A. Yes.

1 Q. And everyone in the office was, as far as you knew,  
2 working hard on these improvements?

3 A. I think so, yes.

4 Q. And Mr. Liew had very high standards; didn't he?

5 A. Yes, he has.

6 Q. And he was always working hard to improve the quality of  
7 his work?

8 A. I can say yes.

9 Q. Did he ever say to you that he wanted to work hard to  
10 impress his customers?

11 A. He mentioned that one, yes.

12 MS. AGNOLUCCI: Your Honor, may I please approach the  
13 witness with Exhibit 3443?

14 THE COURT: Yes, you may. Is that in evidence,  
15 Counsel?

16 MS. AGNOLUCCI: No, it isn't.

17 THE COURT: All right.

18 BY MS. AGNOLUCCI:

19 Q. Mr. Ilagan, please take a look at this document.

20 A. (Witness examines document.)

21 Q. Do you recognize this as an email?

22 A. From Walter, yes.

23 Q. And is it an email to you and other USAPTI employees?

24 A. Pretty much for everyone working at that time, yes.

25 Q. Does it relate generally to your work at USAPTI on the

1 design of the TiO2 plant?

2 **A.** This kind of relates mostly on the process area, which  
3 also relates on me.

4 **Q.** And was it sent during the ordinary course of your work at  
5 USAPTI?

6 **A.** I'm sorry?

7 **Q.** Was this email an ordinary part of your work --

8 **A.** Yes.

9 **Q.** -- at USAPTI?

10 **A.** Yes.

11 **MS. AGNOLUCCI:** Your Honor, I move to admit  
12 Exhibit 3443.

13 **MR. HEMANN:** Objection. Hearsay.

14 **THE COURT:** All right. May I see the exhibit?  
15 Ms. Ottolini, would you please retrieve it from counsel?

16 (Pause in proceedings.)

17 **THE COURT:** The objection is overruled. It's  
18 admitted.

19 (Trial Exhibit 3443 received in evidence)

20 **MS. AGNOLUCCI:** Thank you, Your Honor.

21 Mr. Guevara, can you please put that email up on the  
22 screen?

23 **MR. GUEVARA:** I'm sorry. We seem to be having some  
24 difficulty.

25 **THE COURT:** We have to reset the system.

1           **MS. AGNOLUCCI:** Okay.

2           **THE COURT:** How long is it going to take to reset?

3           **THE CLERK:** I think I actually need to shut the whole  
4 system down and restart it. I tried to do it --

5           **THE COURT:** All right. Well, why don't we take our  
6 break then. We're going to end at 2:00, but we'll take a  
7 15-minute break.

8           And please remember the usual admonitions not to discuss  
9 the case and keep an open mind. I'll see you in 15 minutes.

10           You may step down for the break as well, sir.

11           (Proceedings were heard out of the presence of the jury:)

12           **THE COURT:** 15 minutes.

13                           (Recess taken at 12:38 p.m.)

14                           (Proceedings resumed at 12:55 p.m.)

15           (Proceedings were heard out of presence of the jury:)

16           **THE COURT:** Please bring in the jury.

17           **THE CLERK:** All rise for the jury.

18           (Proceedings were heard in the presence of the jury:)

19           **THE COURT:** Please be seated.

20           Ms. Agnolucci, you may continue your cross-examination.

21           **MS. AGNOLUCCI:** Thank you, Your Honor.

22           (Document displayed.)

23           **BY MS. AGNOLUCCI:**

24           **Q.** Mr. Ilagan, before we get into the email that's in front

25 of you, I want to ask you about your experience in piping

1 design before going to USAPTI.

2 Did you testify that you worked on piping design at  
3 Chevron as well?

4 **A.** Yes.

5 **Q.** Is Chevron where you learned how to do piping design?

6 **A.** Yes.

7 **Q.** For how long, approximately, did you work on piping design  
8 at Chevron?

9 **A.** Like a year and a half, a year.

10 **Q.** And were you mentored and taught about piping design by  
11 people above you at Chevron?

12 **A.** Yes.

13 **Q.** So by the time you went to USAPTI you had significant  
14 experience in piping design under your belt?

15 **A.** Yes, but not that much though.

16 **Q.** You had been doing it for about a year and a half --

17 **A.** Yes.

18 **Q.** -- is that accurate?

19 **A.** Yes.

20 **Q.** Let's look at the document in front of you, Exhibit 3443.

21 **MS. AGNOLUCCI:** Mr. Guevara, could you please  
22 highlight the first paragraph and then the second one-line  
23 paragraph below it.

24 (Document displayed.)

25

1 **BY MS. AGNOLUCCI:**

2 **Q.** And, Mr. Ilagan, can you please read the highlighted  
3 portion that's on the screen in front of you.

4 **A.** (reading)

5 "Philip and I have just completed the 100K BD  
6 submittal meeting in Chengdu. We will leave Chengdu and  
7 travel to meet 30K people tomorrow."

8 **Q.** And the next line please.

9 **A.** (reading)

10 "There are a few major changes they have made as  
11 follows."

12 **Q.** Thank you.

13 Does this email refer to a trip you took with Mr. Liew to  
14 China?

15 **A.** Yes.

16 **Q.** Did he bring you along to meet the Chinese clients?

17 **A.** Yes.

18 **Q.** During that trip, did you assist in giving any AutoCAD or  
19 3D design presentations to the clients?

20 **A.** Uhm, I think I did a couple, or once, or couple.

21 **Q.** So your answer is yes, you did give presentations?

22 **A.** Oh, presentations, no.

23 **Q.** Or you showed AutoCAD and 3D designs?

24 **A.** I gave it to Walter at times to probably give it to  
25 somebody else.

1 Q. Were you assisting Mr. Liew in operating the AutoCAD --

2 A. Yes.

3 Q. -- and 3D designs?

4 A. Yes.

5 Q. This email -- the remainder of this email discusses a  
6 number of changes to USAPTI designs that resulted from the  
7 meetings with the Chinese clients; is that correct?

8 A. Uhm, according to this one, yes.

9 Q. For example, in item 1, on the last line it says:

10 "We'll have to update the PFD, P&ID, equipment list,  
11 instrument list, line list, etc., accordingly," correct?

12 A. Yes.

13 Q. These were changes that came out of those meetings with  
14 the Chinese clients?

15 A. I guess so, yes.

16 Q. The clients had suggested making some changes to the  
17 designs, and Mr. Liew was emailing a number of people on the  
18 design team about implementing those changes, right?

19 A. Yes, I guess, yes.

20 Q. Is it fair to say that after your trip to China there was  
21 a lot of work to be done to customize these designs to meet the  
22 Chinese customer's needs?

23 A. Yes.

24 Q. Thank you.

25 Under item 2 on that same email --



1           **MS. AGNOLUCCI:** I'll give Mr. Guevara a minute to pull  
2 it up.

3           (Document displayed.)

4 **BY MS. AGNOLUCCI:**

5 **Q.** The last line reads:

6           "The customer always wants to cross the pump so that  
7 any one of the 2 pumps can feed to any one of the 6 press  
8 filters."

9 Do you see that?

10 **A.** Yeah.

11 **Q.** And is that another example of a request from the Chinese  
12 clients?

13 **A.** Yes.

14           **THE COURT:** Wait for her to finish her question before  
15 you respond.

16           **THE WITNESS:** Sorry, sir.

17 **BY MS. AGNOLUCCI:**

18 **Q.** It's another example of a request to customize the design,  
19 correct?

20 **A.** Yes.

21 **Q.** Thank you.

22           **MS. AGNOLUCCI:** Your Honor, may I approach the witness  
23 with Exhibit 1972, which has not been admitted yet?

24           **THE COURT:** Yes.

25           **MS. AGNOLUCCI:** Thank you.

1 **BY MS. AGNOLUCCI:**

2 **Q.** Do you recognize this document, Mr. Ilagan?

3 **A.** Yes.

4 **Q.** Is it an email chain between Walter Liew, you, and other  
5 USAPTI employees?

6 **A.** Yes.

7 **Q.** Does it relate, generally, to your work on the designs of  
8 the TiO<sub>2</sub> plant?

9 **A.** Yes.

10 **Q.** And was this email also a regular email sent in the course  
11 of your business at USAPTI?

12 **A.** Yes.

13 **MS. AGNOLUCCI:** Your Honor, I move to admit Exhibit  
14 1972.

15 **MR. HEMANN:** No objection.

16 **THE COURT:** Admitted.

17 (Trial Exhibit 1972 received in evidence.)

18 (Document displayed.)

19 **MS. AGNOLUCCI:** Mr. Guevara, if you could please go to  
20 page 2 of the document, at the bottom of the email chain.

21 **BY MS. AGNOLUCCI:**

22 **Q.** Mr. Ilagan, can you read that highlighted part, starting  
23 with "Hi, Walter."

24 **A.** Uhm, sorry, did what -- okay.

25 "Hi, Walter. Mayer Valve. Draw off elevation was

1 modified per client's request. Draw off inlet (K1-k2)  
2 elevation is same as chlorination K1-K."

3 **THE COURT:** Please slow down, sir.

4 **THE WITNESS:** (reading)

5 "Location of draw off was move 200 on both side  
6 closer to each other due to pipe location.

7 "Caldera. I cannot get a final angle orientation  
8 without the actual size of the valve.

9 "My suggestion is to let them know not to drill the  
10 hole for Chlorinator (K1-K2) and draw off inlet without  
11 getting the final valve drawing dimension.

12 "Thanks, Philipp."

13 **BY MS. AGNOLUCCI:**

14 **Q.** It says that the draw off elevation was modified per the  
15 client's request, correct?

16 **A.** Yes.

17 **Q.** The client was asking that you, again, modify an aspect of  
18 the design, correct?

19 **A.** Yes.

20 **Q.** And in the email you're saying perhaps we should wait to  
21 drill the hole until we have the final dimensions, right?

22 **A.** Yes.

23 **MS. AGNOLUCCI:** Mr. Guevara, if you could blow up the  
24 rest of the chain above that email, on the first page. The  
25 entire first page, actually, would be fine.

1 (Document displayed.)

2 **BY MS. AGNOLUCCI:**

3 **Q.** And without reading it aloud, Mr. Ilagan, is it fair to  
4 say that in response to your email the rest of the team is  
5 discussing your question and weighing in?

6 **A.** Yes.

7 **Q.** Mr. Liew is asking questions, and then one of the team  
8 members is proposing solutions, correct?

9 **A.** Yes.

10 **Q.** This type of back-and-forth discussion was typical in your  
11 office, wasn't it?

12 **A.** Yes.

13 **Q.** Drawings were revised many times?

14 **A.** Yes.

15 **Q.** And details changed over the course of your projects,  
16 right?

17 **A.** Yes.

18 **Q.** And sometimes, like here, it was USAPTI's Chinese  
19 customers who suggested the design changes, correct?

20 **A.** Yes.

21 **Q.** Thank you.

22 **MS. AGNOLUCCI:** Your Honor, I'd like to publish the  
23 next exhibit, and a couple more after that, to the witness and  
24 court only. They are 3D AutoCAD designs that we have on CD.

25 **THE COURT:** All right.

1           **MS. AGNOLUCCI:** I don't think he'll -- I can't give it  
2 to him on paper.

3           **THE COURT:** All right.

4           **MS. AGNOLUCCI:** May I please publish Exhibit 2615 to  
5 the witness and the Court only?

6           **THE COURT:** Yes, you may.

7           **MS. AGNOLUCCI:** Thank you.

8 **BY MS. AGNOLUCCI:**

9 **Q.** Is that coming up on your screen, Mr. Ilagan?

10 **A.** Yes.

11 **Q.** Do you recognize this image?

12 **A.** Yes.

13 **Q.** What is it?

14 **A.** It's a layout of a chlorination --

15 **Q.** And --

16 **A.** -- and piping.

17 **Q.** Is this something that you worked on?

18 **A.** Yes.

19 **Q.** And was this in the ordinary course of your job at USAPTI?

20 **A.** Yes.

21           **MS. AGNOLUCCI:** Your Honor, I move to admit Exhibit  
22 2615.

23           **MR. HEMANN:** We don't have an objection, Your Honor.  
24 We haven't discussed the logistics of its admission, but we  
25 don't have an objection to this image as it appears. Keeps

1 moving on the screen, but we don't have an objection to an  
2 image like this being admitted to the -- into evidence.

3 **THE COURT:** Well, to the extent that the image is  
4 contained on the CD -- is it a CD?

5 **MS. AGNOLUCCI:** I believe it's a CD, Your Honor.

6 **THE COURT:** Yeah, then we'll admit that and worry at a  
7 later time how it will be dealt with later on. But, certainly,  
8 I'll admit the -- the physical media, and then counsel, if she  
9 wishes to display it to the jury and ask questions, she may do  
10 so. So it's admitted.

11 (Trial Exhibit 2615 received in evidence.)

12 **MR. HEMANN:** Thank you, Your Honor.

13 **MS. AGNOLUCCI:** Thank you, Your Honor.

14 **THE CLERK:** I'm sorry, twenty-six-one-five, not  
15 one-six?

16 **MS. AGNOLUCCI:** One-five, yes.

17 **THE CLERK:** Thank you.

18 (Document displayed.)

19 **MS. AGNOLUCCI:** Mr. Guevara, could you please zoom in  
20 on the image, so a little more.

21 **THE CLERK:** Can I display this to the jury?

22 **THE COURT:** Are you asking to publish this to the  
23 jury?

24 **MS. AGNOLUCCI:** May I publish it to the jury, please?

25 **THE COURT:** Yes, you may.

1           **MS. AGNOLUCCI:** Thank you, Your Honor.

2           (Document displayed.)

3           **BY MS. AGNOLUCCI:**

4           **Q.** Mr. Ilagan, is this a 3D AutoCAD drawing?

5           **A.** This is -- came from a 3D AutoCAD software. But this is  
6 not a 3D AutoCAD.

7           **Q.** Can you explain what it is?

8           **A.** It's a conversion from one software to another software.  
9 But it came from AutoCAD 3D drawings, yes.

10          **Q.** And is this a drawing that you worked on?

11          **A.** Yes, I did.

12          **Q.** Does it depict the chlorination phase of the TiO<sub>2</sub> plant?

13          **A.** This is chlorination, yes.

14          **Q.** Did you create this drawing using drawings and equipment  
15 arrangements that you got from USAPTI engineers?

16          **A.** Yes.

17          **Q.** In this case, were the engineers who worked with you on  
18 this file Sudha Sanghi and BJ Bhatnagar?

19          **A.** Yes.

20          **Q.** Thank you.

21                 **MS. AGNOLUCCI:** Your Honor, may I please publish  
22 Exhibit 2617, which is a similar file, to the witness and the  
23 Court only?

24                 **THE COURT:** Yes, you may.

25                 **THE CLERK:** I'm sorry, the number?

1           **MS. AGNOLUCCI:** 2617.

2           **BY MS. AGNOLUCCI:**

3           **Q.** Mr. Ilagan, do you recognize this drawing?

4           **A.** Yes.

5           **Q.** Is this something that you worked on at USAPTI?

6           **A.** Yes.

7           **Q.** And does it relate to the designs for a TiO<sub>2</sub> plant?

8           **A.** Yes.

9           **Q.** And was this prepared in the ordinary course of your work  
10 at USAPTI?

11          **A.** Yes.

12           **MS. AGNOLUCCI:** Your Honor, I move to admit Exhibit  
13 2617.

14           **THE COURT:** Any objection?

15           **MR. HEMANN:** No objection.

16           **THE COURT:** It's admitted.

17           (Trial Exhibit 2617 received in evidence.)

18           **MS. AGNOLUCCI:** And may we please publish it to the  
19 jury?

20           **THE COURT:** Yes, you may.

21           (Document displayed.)

22           **BY MS. AGNOLUCCI:**

23           **Q.** This drawing shows the oxidation phase of a TiO<sub>2</sub> plant,  
24 correct?

25           **A.** Yes.



1           **MS. AGNOLUCCI:** And, Mr. Guevara --

2           **BY MS. AGNOLUCCI:**

3           **Q.** Let me ask, Mr. Ilagan, is it possible to rotate these  
4 drawings?

5           **MS. AGNOLUCCI:** Mr. Guevara, I don't know if it's  
6 asking too much --

7           **THE WITNESS:** There you go.

8           **MS. AGNOLUCCI:** Can you rotate it a little bit so we  
9 can get kind of a view from above of that purple area, and then  
10 zoom in.

11           Thank you.

12           **BY MS. AGNOLUCCI:**

13           **Q.** Mr. Ilagan, what's this purple area that we're looking at  
14 here?

15           **A.** It's a flue pond pipe, flue pond area.

16           **Q.** And the flue pond, so we all understand, is a system of  
17 winding pipes that cools liquid during the oxidation phase,  
18 correct?

19           **A.** Yes.

20           **Q.** And is this another example of the work that you did at  
21 USAPTI?

22           **A.** Yes.

23           **Q.** Who did you work with on this particular file?

24           **A.** Mostly with BJ, Sudha, and Walter.

25           **Q.** BG Bhatnagar, Sudha Sanghi, and Mr. Liew?

1 **A.** Yes.

2 **Q.** Thank you.

3 **MS. AGNOLUCCI:** Your Honor, may I publish Exhibit 2618  
4 to the witness and court only? And after that one I only have  
5 one or two others.

6 **THE COURT:** Okay.

7 **BY MS. AGNOLUCCI:**

8 **Q.** Do you recognize this document, Mr. Ilagan?

9 **A.** Yes.

10 **Q.** What is it?

11 **A.** It's updated version of the last drawing that you showed.

12 **Q.** And by "updated version" you mean a revision of the  
13 previous one?

14 **A.** Yes.

15 **Q.** And did you work on this?

16 **A.** Yes.

17 **Q.** And was this prepared in the ordinary course of your work  
18 at USAPTI?

19 **A.** Yes.

20 **MS. AGNOLUCCI:** Your Honor, I move to admit Exhibit  
21 2618.

22 **MR. HEMANN:** No objection, Your Honor.

23 **THE COURT:** Admitted.

24 (Trial Exhibit 2618 received in evidence.)

25 **MS. AGNOLUCCI:** Thank you, Your Honor. And can we

1 please publish it for the jury?

2 **THE COURT:** Yes.

3 (Document displayed.)

4 **BY MS. AGNOLUCCI:**

5 **Q.** Mr. Ilagan, you say that this is an updated version of the  
6 previous drawing that we looked at. What about it, if you  
7 recall, was updated?

8 **A.** There's more pipes in there. The structure is covered  
9 by -- it's covered now, compared to the other ones.

10 **Q.** And by "the structure" do you mean the portion that  
11 Mr. Guevara is zooming in on right now?

12 **A.** Yeah, pretty much the whole thing, yes.

13 **Q.** And you updated the design by adding a cover to the  
14 structure?

15 **A.** Copper, more pipes, more -- you know, structural stuff in  
16 there, yes.

17 **Q.** And can you identify the tall column in the middle of the  
18 screen that we're looking at right now?

19 **A.** If I recall, that's a heater. It's been a while already.  
20 Sorry.

21 **Q.** Understood.

22 **MS. AGNOLUCCI:** And, Mr. Guevara, if you could rotate  
23 it, and we could see that purple area again, from above.

24 **BY MS. AGNOLUCCI:**

25 **Q.** Is one of the changes that you made, Mr. Ilagan, the pipe

1 that goes down to the purple area from the covered structure?

2 **A.** Yes.

3 **Q.** And what is that?

4 **A.** Those are pipe that's coming from one equipment going to a  
5 flue pond.

6 **Q.** Going down into the flue pond, correct?

7 **A.** Yes.

8 **Q.** And did you also work with the engineers Sudha Sanghi and  
9 BJ Bhatnagar on this drawing?

10 **A.** Yes. And this time I did -- did, uhm, talk to -- not talk  
11 to but emailed Bob as far as the changes and the pipe that's  
12 the radius that he wants it to be accomplished in this pipe.

13 **Q.** Can you repeat the last part of what you said. There's a  
14 radius?

15 **A.** The radius that he wants to use on the -- that pipe that's  
16 going from top -- from the top to bottom of the flue pond.

17 **Q.** You and Mr. Maegerle corresponded about the specifications  
18 for that pipe that goes down?

19 **A.** Yeah. He suggested it, yes.

20 **THE COURT:** Let her finish her question, please,  
21 before you answer.

22 **MS. AGNOLUCCI:** Thank you.

23 Your Honor, may I publish Exhibit 2614?

24 **THE COURT:** Yes.

25 **THE CLERK:** To just the witness?

1           **MS. AGNOLUCCI:** To only the witness and the Court.

2 Thank you.

3           **THE COURT:** All right.

4 **BY MS. AGNOLUCCI:**

5 **Q.** Mr. Ilagan, do you see it up on your screen?

6 **A.** No. Oh, yeah.

7 **Q.** Is it up on your screen now?

8 **A.** Yes.

9 **Q.** Do you recognize this drawing?

10 **A.** Yes.

11 **Q.** Is this a -- another 3D AutoCAD file that you worked on?

12 **A.** Yes.

13 **Q.** And was this also created in the ordinary course of your  
14 work at USAPTI?

15 **A.** Yes.

16           **MS. AGNOLUCCI:** Your Honor, I move to admit Exhibit  
17 2614.

18           **MR. HEMANN:** No objection.

19           **THE COURT:** It's admitted.

20 (Trial Exhibit 2614 received in evidence.)

21           **MS. AGNOLUCCI:** Thank you.

22 And may we publish it to the jury, please?

23           **THE COURT:** Yes, you may.

24           **MS. AGNOLUCCI:** Mr. Guevara, if you could zoom in on  
25 the image. Thank you.

1 (Document displayed.)

2 **BY MS. AGNOLUCCI:**

3 **Q.** Do you see towards the upper left, Mr. Ilagan, where it  
4 says "30K piping"?

5 **A.** Oh, yes, yes.

6 **Q.** Does this drawing depict piping for the 30K project?

7 **A.** Yes.

8 **Q.** And the 30K project, that's the smaller plant in Jinzhou,  
9 that Mr. Liew first worked on, correct?

10 **A.** Yes.

11 **Q.** That's the first contract he got?

12 **A.** Yes.

13 **Q.** And is this another example of work you did at USAPTI?

14 **A.** Yes.

15 **Q.** And what does this drawing depict?

16 **A.** It's mostly piping -- piping routing.

17 **Q.** Piping routing. And the piping are the little purple,  
18 sort of thinner lines --

19 **A.** Yes.

20 **Q.** -- is that right?

21 **A.** Yes.

22 **Q.** And those were the pipes that you were tasked specifically  
23 with working on?

24 **A.** Yes.

25 **Q.** And who did you work with in preparing this file?

1     **A.**     Uhm, mostly with Sudha and BJ on this.

2     **Q.**     Again, the engineers Sudha Sanghi and Brijesh Bhatnagar?

3     **A.**     Yes.

4             **MS. AGNOLUCCI:**   Thank you.

5             I have one more, Your Honor.   May I publish 2616 to the  
6     Court and witness only?

7             **THE COURT:**    Yes, you may.

8             **MS. AGNOLUCCI:**   Thank you.

9     **BY MS. AGNOLUCCI:**

10    **Q.**     Mr. Ilagan, do you recognize this file?

11    **A.**     Yes.

12    **Q.**     Is this another example of a 3D AutoCAD file that you  
13    worked on at USAPTI?

14    **A.**     Yes.

15    **Q.**     And does it relate to the TiO2 -- TiO2 plant designs that  
16    you worked on?

17    **A.**     Yes.

18    **Q.**     And this was prepared in the ordinary course of your work  
19    at USAPTI?

20    **A.**     Yes.

21             **MS. AGNOLUCCI:**   Your Honor, I move to admit Exhibit  
22    2616.

23             **MR. HEMANN:**    No objection.

24             **THE COURT:**    It's admitted.

25             (Trial Exhibit 2616 received in evidence.)

1           **MS. AGNOLUCCI:** Thank you.

2           May we please publish it for the jury?

3           **THE COURT:** Yes.

4           (Document displayed.)

5           **MS. AGNOLUCCI:** And, Mr. Guevara, can you zoom in just  
6 a little bit.

7           **THE COURT:** Wait until the big monitor comes up.

8           (Document displayed.)

9           **THE COURT:** There it goes. Okay.

10          **MS. AGNOLUCCI:** Thank you.

11          **BY MS. AGNOLUCCI:**

12          **Q.** Mr. Ilagan, is this another example of the work you did at  
13 USAPTI?

14          **A.** Yes.

15          **Q.** Can you tell us what this file depicts?

16          **A.** This is a finishing area of the TiO<sub>2</sub>.

17          **Q.** And what exactly about the finishing area is shown here in  
18 this drawing?

19          **A.** Uhm, that bottom part are mostly tank preparation area.  
20 And there's -- those six boxes are, I think, reflects this  
21 filter press, if I recall, from that email that you showed  
22 earlier.

23          **Q.** The filter press that the Chinese customers asked for  
24 modifications on?

25          **A.** Yes, I think, yes. If I still remember, yes.



1 Q. Which project did this drawing relate to?

2 A. I think this is 30K, as far as --

3 Q. Who did you work with on this file?

4 A. Uhm, same person, BJ and Sudha.

5 Q. That's BJ Bhatnagar and Sudha Sanghi?

6 A. Yes.

7 Q. We've now looked at five AutoCAD drawings you worked on at  
8 USAPTI, Mr. Ilagan. Is it fair to say that there were many  
9 more?

10 A. Yes.

11 Q. And are there too many to count, or do you have an idea of  
12 how many you did?

13 A. It's too many to count.

14 Q. These are examples of the designs that you and the  
15 engineers and Mr. Liew worked hard on over the years, correct?

16 A. Yes.

17 Q. And you revised them over the years, correct?

18 A. Yes.

19 MS. AGNOLUCCI: Thank you, Mr. Ilagan. I don't have  
20 any other questions.

21 THE COURT: Mr. Froelich, do you have any questions?

22 MR. FROELICH: No, Your Honor.

23 MR. HEMANN: I have a few, Your Honor.

24 THE COURT: All right.

25 MR. HEMANN: And I would ask that Mr. Guevara indulge

1 us with these 3D drawings just for a moment.

2 **THE COURT:** All right.

3 **MR. HEMANN:** Thank you.

4 **THE CLERK:** Let me go back.

5 **MR. HEMANN:** Would you be so kind to put up 2616 when  
6 it clicks on.

7 (Document displayed.)

8 **REDIRECT EXAMINATION**

9 **BY MR. HEMANN:**

10 **Q.** We just looked at this one, Mr. Ilagan?

11 **A.** Yes.

12 **Q.** And you testified that this was for the 30,000-ton  
13 facility?

14 **A.** Yeah, I think so, yes.

15 **Q.** And you testified that these were the press filters from  
16 the 30,000-ton facility, correct?

17 **A.** Zoom -- hold on. I'm not sure -- sorry. This is, I  
18 think -- I think this is a 100K project. I'm sorry. A 100K  
19 project. Can you zoom in more on the top area.

20 I'm sorry, this is either 30K or 100K. I'm not a hundred  
21 percent sure. But it looks like it's a 100K also.

22 **Q.** Also?

23 **A.** Yeah. I'm trying to remember how many lines are on 30K  
24 and 100K. It's been a while. I haven't seen these drawings.

25 **Q.** So you don't know whether this is the 30K or the 100K?

1 **A.** The first three parts, the drawings, it's 30K. But this  
2 one here, now, it kind of looks like a 100K, but I cannot a  
3 hundred percent guarantee now. It's been a while. I haven't  
4 seen this drawing.

5 **Q.** When was the last time you saw this drawing?

6 **A.** When she -- when I talked to -- I forget her name.

7 **Q.** Ms. Agnolucci?

8 **A.** Yes.

9 **Q.** When was that?

10 **A.** Four days ago, five days -- Monday -- Wednesday.

11 **Q.** And you reviewed each of these drawings?

12 **A.** Yes, but I haven't really focused on the drawings.

13 **Q.** And you testified a moment ago that this was from the 30K,  
14 but now you're not sure?

15 **A.** By zooming in on some area, it looks kind of different.  
16 But I did work on this one also.

17 **Q.** All the other ones you worked on --

18 **A.** Yes.

19 **Q.** -- were for which project?

20 **A.** It's 30K.

21 **Q.** There are some tanks and other vessels. If I use the term  
22 "vessel" do you know what that means?

23 **A.** Yeah.

24 **Q.** In the -- in the portion of this that are under the -- the  
25 square structure, do you see that?

1     **A.**    I'm sorry?

2     **Q.**    Do you see the vessels that are under the -- sort of in  
3     that square structure that's closest to us on the screen?

4     **A.**    Yes.

5             **MR. HEMANN:**  Mr. Guevara, could you just scan in on  
6     that first set of four that are there.

7     **BY MR. HEMANN:**

8     **Q.**    What are those vessels?

9     **A.**    I think those are filter, if I recall.  Some of them  
10    are -- it's been a while.  Pumps.  Site micronizer.  Yeah.  
11    It's been a while.

12    **Q.**    Did you review those the other night, these parts?

13    **A.**    Not in detail.  I just check with the drawings, and I  
14    remember those drawings come from -- you know, came from me.

15    **Q.**    But you don't remember precisely what any of these items  
16    are, correct?

17    **A.**    Yes.  It's about three years.  Four -- three years, two  
18    years.

19             **MR. HEMANN:**  If you could please go to 2618,  
20    Mr. Guevara.  Thank you.

21             (Document displayed.)

22             **MR. HEMANN:**  And back on the back side of the  
23    structure, if you would, the other side on the flue pond side  
24    there.

25

1 **BY MR. HEMANN:**

2 **Q.** What part of it did you consult with Mr. Maegerle on?

3 **A.** The pipe from the green part on top going down.

4 **Q.** Okay. And what is that pipe?

5 **A.** It's a pipe that connecting from one equipment to a flue  
6 pond.

7 **Q.** From one -- a piece of equipment to the flue pond?

8 **A.** Yes.

9 **Q.** What piece of equipment?

10 **A.** Uhm, I forget which one is that.

11 **Q.** Did you review that the other night, or no?

12 **A.** I'm sorry?

13 **Q.** Did you review that the other night?

14 **A.** Yes, I did.

15 **Q.** And what piece of equipment was it?

16 **A.** Can't remember no more.

17 **Q.** You had to consult with Mr. Maegerle on the radius of  
18 the -- of the vertical section of that pipe?

19 **A.** I think he was suggesting to use five times diameter of  
20 the -- five times diameter radius so the flow will be smoother  
21 than the -- than using a regular 90-degree.

22 **Q.** When was this, roughly?

23 **A.** Can't remember.

24 **Q.** And this is the 30-ton project?

25 **A.** 30K, yes.

1 Q. Okay. So for Jinzhou?

2 A. Yes.

3 Q. And why didn't you ask Sudha or BJ about this particular  
4 measurement?

5 A. Because I was doing the piping that time, and I think it  
6 was brought up that that pipe needs to be in a certain diameter  
7 so the flow will be -- will be better flowing for this area.

8 Q. How is it that BJ and Sudha were not able to answer that  
9 question?

10 MS. AGNOLUCCI: Objection.

11 THE COURT: Sustained.

12 BY MR. HEMANN:

13 Q. Did you -- did the answering that question require some  
14 particular expertise?

15 A. I think so, yes.

16 Q. And what sort of expertise was needed?

17 A. Probably piping experience.

18 Q. Did BJ or Sudha have the necessary piping experience?

19 A. No.

20 Q. The -- the materials you used to create these CAD  
21 drawings -- well, let me ask a better question. Were these  
22 based on something?

23 A. Based on AutoCAD.

24 Q. How did you know what to draw on AutoCAD, if that's the  
25 right terminology?

1   **A.**   As far as -- I'm sorry, can you be more specific on that?

2   **Q.**   Sure.

3           When you created these drawings, you were essentially  
4 electronically drawing on the computer, correct?

5   **A.**   Yes.

6   **Q.**   And how did you know what to draw?

7   **A.**   Uhm, basically, I get instruction from either BJ, or some  
8 of them already been drawn before, before I start working  
9 there.

10 **Q.**   So are you looking at flow sheets and equipment designs?

11 **A.**   No. Basically, dimensions from -- from engineering.

12 **Q.**   And who in particular was providing you with those  
13 dimensions?

14 **A.**   BJ, Walter, pretty much.

15 **Q.**   Anybody else?

16 **A.**   Once in a while Sudha.

17           **MR. HEMANN:** And if we could look at the side, the  
18 back -- I'm sorry, the far side of this, Mr. Guevara. Back in  
19 here, in the middle there.

20 **BY MR. HEMANN:**

21 **Q.**   There's a small tank there, do you see that, small vessel?

22 **A.**   Behind that --

23 **Q.**   The small one.

24 **A.**   Yes.

25 **Q.**   What is that?

1     **A.**    Can't remember.

2     **Q.**    And above that, just to the right, there are several other  
3     vessels.  What are those?

4     **A.**    I can't remember what's the -- the name of the vessel.

5     **Q.**    You took a trip to China, you testified about on  
6     cross-examination, with -- with Mr. Liew.  Do you remember  
7     that?

8     **A.**    Yes.

9     **Q.**    And what was your role in that trip?

10    **A.**    Supposed to be for piping, to understand the way that the  
11    pipe in China.

12    **Q.**    And did you -- did you go to meetings with Mr. Liew?

13    **A.**    Yes, I did.

14    **Q.**    How did you participate in those meetings?

15    **A.**    Mostly in Chinese.

16    **Q.**    Do you speak Chinese?

17    **A.**    No.

18    **Q.**    So what did you do on the trip?

19    **A.**    Uhm, basically sit there and -- and once in a while the --  
20    they kind of translated.  But I don't -- I don't speak any  
21    Chinese.

22    **Q.**    Did everything get translated for you?

23    **A.**    I'm sorry?

24    **Q.**    Did everything get translated for you?

25    **A.**    Oh, no, no.



1 Q. What percentage of the meetings got translated for you?

2 A. Five percent or -- about that much.

3 Q. What sort of presentations did you make during the  
4 meetings?

5 A. I didn't do any presentation. I just probably gave a  
6 couple of drawings to Walter when he needs something.

7 Q. Ms. Agnolucci asked you about your experience with piping  
8 at Chevron. Do you remember that?

9 A. Yes.

10 Q. And you said little bits and not that much?

11 A. Yes.

12 Q. Is that accurate?

13 A. Yes.

14 Q. It was not significant experience, was it?

15 A. Yeah. Learning piping, you have to have tons of  
16 experience understanding as far as pipes. It's not like  
17 regular stuff like you can just learn it quick. There's  
18 different discipline or different area that you have to have  
19 special, you know, experience on it.

20 Q. When I asked you on direct examination the company that  
21 you went to work for, you said it was Performance Group,  
22 correct?

23 A. Yes.

24 Q. When Ms. Agnolucci was asking you questions on  
25 cross-examination, you referred -- she referred to the company

1 as USAPTII. Do you remember that?

2 **A.** Yes.

3 **Q.** And you agreed with that, correct?

4 **A.** Yes.

5 **Q.** What was the name of the company?

6 **A.** Before or after? After?

7 **Q.** Before or after what?

8 **A.** Uhm, PGI when I start working there. And at the end it  
9 got changed to PTI or Performance -- I think PTI.

10 **Q.** When did that change take place?

11 **A.** I'm not really sure. I didn't actually pay attention at  
12 that.

13 **Q.** How did the company change over time?

14 **A.** I'm not really sure as far as that.

15 **Q.** Did you notice any changes in the way the company was  
16 structured or organized when the name went from Performance  
17 Group --

18 **A.** No.

19 **Q.** -- to USAPTII?

20 **MS. AGNOLUCCI:** Objection.

21 **THE COURT:** Sustained.

22 **BY MR. HEMANN:**

23 **Q.** What did you do for Performance Group?

24 **A.** Mostly all the drawings involved as far as AutoCAD.

25 **Q.** And did you do the same for USAPTII?

1     **A.**    Yes.

2     **Q.**    On cross-examination, Ms. Agnolucci asked you whether  
3     Mr. Liew was smart. Do you remember that?

4     **A.**    Yes.

5     **Q.**    And you said yes?

6     **A.**    He's smart.

7     **Q.**    How was he smart?

8     **A.**    He's very smart. He's the type of person he learn quick.

9     **Q.**    And can you give me an example?

10           **MS. AGNOLUCCI:** Objection.

11           **THE COURT:** Overruled.

12           **THE WITNESS:** It's kind of hard to say.

13     **BY MR. HEMANN:**

14     **Q.**    You testified on cross-examination he was a good engineer.  
15     Do you remember that?

16     **A.**    Yes.

17     **Q.**    Can you give me an example of that?

18     **A.**    He's pretty smart as far as learning some stuff and  
19     understanding it quick than people that I know. If I compare  
20     him to other people, Walter is smart, smart guy.

21     **Q.**    Can you give me an example?

22           **MS. AGNOLUCCI:** Objection.

23           **THE COURT:** I'll let him answer one more time. Can  
24     you give an answer of how he was smart?

25           **THE WITNESS:** It's a lot of things to -- what exactly

1 do you want as far as -- I mean, there's a lot of things, you  
2 know, I could tell he's smart.

3 **BY MR. HEMANN:**

4 **Q.** You met the other day with Ms. Agnolucci, correct?

5 **A.** Yes.

6 **Q.** You met four days ago with Ms. Agnolucci?

7 **A.** Yes.

8 **Q.** And did you go through these questions and answers with  
9 her?

10 **A.** As far as -- yes, as far as being smart, yes.

11 **MR. HEMANN:** Thank you very much, Your Honor. No  
12 further questions.

13 **THE COURT:** Anything further?

14 **MS. AGNOLUCCI:** Yes, just briefly, Your Honor, if I  
15 may.

16 **THE COURT:** Yes.

17 **RECROSS-EXAMINATION**

18 **BY MS. AGNOLUCCI:**

19 **Q.** Mr. Ilagan, you testified that you met with me the other  
20 night, right?

21 **A.** Yeah, Wednesday, yes, if I still remember, yes.

22 **Q.** Wednesday night. And you also met with the government  
23 that same night, correct?

24 **A.** Yes.

25 **Q.** How much time did you spend meeting with the government?

1 **A.** I didn't actually pay attention on that. So after I'm  
2 done with them I went straight with you.

3 **Q.** Do you have any idea how long you met with them?

4 **A.** Honestly, I didn't pay attention at that. I can probably  
5 see my text or something, but I didn't actually time it.

6 **Q.** You and I only met for about half an hour, right?

7 **A.** Something like that, yes.

8 **Q.** And we didn't rehearse your questions, did we?

9 **A.** No. Mostly showing the drawings and pretty much whatever  
10 this paper.

11 **Q.** How long would you say we looked at each of the 3D  
12 drawings that we've been discussing today?

13 **A.** Not that long. I just know that it's my drawing because,  
14 you know, it's my work.

15 **Q.** Long enough for you to identify the drawing and recognize  
16 that you had worked on it, right?

17 **A.** Yes.

18 **Q.** Less than one minute per drawing, would you say?

19 **A.** Probably like that.

20 **Q.** Thank you.

21 You also testified with Mr. Hemann just now about a trip  
22 that you took with Mr. Liew to China, correct?

23 **A.** Yes.

24 **Q.** You told me earlier today that you considered Mr. Liew to  
25 be a mentor; is that right?

1 **A.** Yes.

2 **Q.** And is one of the reasons that you went on the trip an  
3 opportunity for him to mentor you?

4 **A.** Yeah, to see the plant, yes, also.

5 **MS. AGNOLUCCI:** Thank you. No further questions.

6 **THE COURT:** All right. You're excused. Thank you  
7 very much.

8 (Witness excused.)

9 **THE WITNESS:** Thank you.

10 **THE COURT:** Next witness.

11 **MR. HEMANN:** Thank you, Your Honor. The United States  
12 calls Robert Gibney.

13 **MS. AGNOLUCCI:** Your Honor, may I retrieve the  
14 documents?

15 **THE COURT:** Yes, please do.

16 **MS. AGNOLUCCI:** Thank you.

17 **THE CLERK:** Raise your right hand, please.

18 **ROBERT GIBNEY,**

19 called as a witness for the Government, having been duly sworn,  
20 testified as follows:

21 **THE WITNESS:** I do.

22 **THE CLERK:** Thank you. Please be seated.

23 State and spell your full name for the record.

24 **THE WITNESS:** Robert Gibney. R-o-b-e-r-t. Gibney,  
25 G-i-b-n-e-y.

1           **THE CLERK:** Thank you very much.

2                                   **DIRECT EXAMINATION**

3   **BY MR. HEMANN:**

4   **Q.** Good afternoon, Mr. Gibney. And let me just ask you, when  
5 you speak, try to speak relatively close to the microphone.  
6 And I'll be asking questions. If you'll wait until I'm done  
7 and then go ahead and answer, okay?

8   **A.** Okay.

9   **Q.** Thank you.

10           Mr. Gibney, have you been retained by the United States as  
11 an expert witness?

12   **A.** Yes, I have.

13   **Q.** Do you have experience in the titanium dioxide industry?

14   **A.** Yes. I've spent my entire adult career in the TiO<sub>2</sub>  
15 industry, roughly since 1986.

16   **Q.** So I'd like to begin your testimony today by reviewing  
17 with you your -- your educational background and your career in  
18 the titanium dioxide industry, okay.

19   **A.** Okay.

20   **Q.** And I may interrupt with questions as we go, but if you  
21 could begin with describing for the jury your educational  
22 background.

23   **A.** Well, I have a bachelor of science degree at University of  
24 Arizona. Graduated in 1985. Beyond that, executive  
25 development course at Wharton, but no advanced degree.

1 Q. After you graduated from the University of Arizona, did  
2 you get a job in the titanium dioxide industry?

3 A. Yes, I did.

4 Q. What was your first -- your first job in the TiO<sub>2</sub>  
5 industry?

6 A. I was a sales representative for a company by the name of  
7 Van Waters and Rogers. They're now known as Univar National  
8 Distributor. It was DuPont's main distributor of titanium  
9 dioxide. So I represented, on top of DuPont, other raw  
10 materials that went into the paint and coatings industry, and  
11 held that job for roughly five years.

12 Q. During that job did you become familiar with -- with  
13 titanium dioxide products, both DuPont's and other companies'?

14 A. Yes.

15 Q. Could you describe, sort of, how you developed that  
16 familiarity during that job.

17 A. Well, a lot of it's on-the-job training. You're out  
18 working with customers, trying to get them to specify your  
19 brand of TiO<sub>2</sub> over another.

20 You -- you work hand in hand with -- at different  
21 representatives from the various companies that we worked with.  
22 So a technical sales and service representative, for instance,  
23 from DuPont would go with me to visit with accounts. And you'd  
24 be able to learn about their grades and their properties. And  
25 then also attended seminars. And they would come in and



1 provide us with training.

2 **Q.** And did you do the same with other companies in the  
3 titanium dioxide industry?

4 **A.** Just DuPont for that five year period of time.

5 **Q.** After that five year period of time, did you -- what was  
6 your next job?

7 **A.** The next job -- I decided that I enjoyed the TiO<sub>2</sub>  
8 industry. Kerr-McGee approached me. And this is in 1991.  
9 They wanted to establish a direct representation in the Texas  
10 region where I was based. I was out of Dallas, Texas.

11 So I hired on with Kerr-McGee to be their regional sales  
12 manager, essentially a sales representative, at the beginning  
13 in 1991.

14 **Q.** Could you tell the jury just a little bit about  
15 Kerr-McGee.

16 **A.** So Kerr-McGee is an old or was an old oil and gas company  
17 that was based out of Oklahoma City; hence the reason it was  
18 Oklahoma. They had discovered oil in the region early on, I  
19 guess in the 1930s. They then invested in a wide variety of  
20 products. They wanted to be basic in a whole host of different  
21 industries. It was back during the conglomerates.

22 They invested in coal as well as a chemical company. Back  
23 in 1967, they bought American Potash, their titanium dioxide  
24 business that had a plant in Hamilton, Mississippi.

25 **Q.** And did the -- did the Kerr-McGee TiO<sub>2</sub> line have a

1 particular brand name?

2 **A.** Yes. Tronox. T-r-o-n-o-x.

3 **Q.** You were initially a sales representative for Kerr-McGee;  
4 is that correct?

5 **A.** That's correct.

6 **Q.** How long did you keep that position or hold that position  
7 as a sales representative?

8 **A.** Just a few years. And then I was promoted to regional  
9 manager, and set up a western regional office out of Dallas,  
10 Texas, and then held that position, I believe, for another two  
11 years.

12 **Q.** And that was also in sales?

13 **A.** Yes.

14 **Q.** And because we're going to use these terms a little bit,  
15 sales of a product like titanium dioxide involves what kind of  
16 activities?

17 **A.** Well, it's both negotiating annual and semiannual  
18 contracts or even on a quarterly basis.

19 But a lot of what's done you're -- at the time we were a  
20 very small regional player. We only had one plant in the U.S.  
21 and a joint venture in western Australia. So we were trying to  
22 gain a foothold at some of the major accounts in the U.S. And  
23 to do that you have to go through an approval process to get  
24 TiO<sub>2</sub> approved in the various formulations, for instance,  
25 Sherwin-Williams or PPG would use.

1           **THE COURT:** Would you pull that microphone a little  
2 closer to you, sir.

3           **THE WITNESS:** Yes. Sorry.

4           **THE COURT:** Thank you very much.

5 **BY MR. HEMANN:**

6 **Q.** And so did you begin to educate yourself during that  
7 process on titanium dioxide as a product?

8 **A.** Yes. Part of the -- it does work better. Sorry.

9           Part of the process is when you first hire on, or at least  
10 we used to do this, you would spend a great deal of time at the  
11 production facility.

12           So I spent, you know, a week at a time going down to our  
13 Hamilton, Mississippi plant and working side by side with the  
14 various operators, and getting a much better understanding of  
15 the -- of the process itself.

16 **Q.** When you say "working side by side," what do you mean by  
17 that?

18 **A.** So they would assign me -- a TiO<sub>2</sub> plant is typically set  
19 up in sections. You've got your chlorination, oxidation, and  
20 finishing.

21           So they would set me up with an operator and, you know,  
22 person actually in the plant that would operate, whether it be  
23 the control equipment or the bagging equipment. And so I would  
24 walk around with them, basically, by their side all day long,  
25 to understand the process better.

1 Q. How long did you hold sales positions with Kerr-McGee?

2 A. It was a variety of -- so once I became regional sales  
3 manager in Dallas, that was for just about a year and a half,  
4 was then promoted to the largest region, the eastern region  
5 based out of Atlanta. Was only there for seven months. Then  
6 became director of sales for the Americas. I had  
7 responsibility for north and South America.

8 And then in -- I think it was '99 or 2000, became vice  
9 president of global marketing; had global responsibility for  
10 not only the marketing of the TiO<sub>2</sub> but also the technical sales  
11 and service.

12 We had, you know, a relatively large group of technical  
13 sales and service representatives, including Ph.D.s that worked  
14 closely with the accounts to try and get our material specified  
15 into formulations.

16 Q. How is marketing different than sales?

17 A. Sales -- you know, if you look at it, you're blocking and  
18 tackling on a day-to-day basis. You're in the trenches, trying  
19 to make sure product is getting shipped out to the customers;  
20 you're negotiating much more shorter term or shorter duration  
21 contracts or pricing agreements.

22 Marketing is more of trying to get your products  
23 specified, get a position with an account, and then negotiate  
24 longer-term contracts.

25 So my responsibility was laid out in 2000, as part of this

1 job, to gain a market share position at Sherwin-Williams, PPG,  
2 and AkzoNobel. So I spent a great deal of time both on the  
3 technical service side, getting our sales approved, but also in  
4 negotiating contracts.

5 **Q.** Does the marketing responsibility include learning about  
6 the titanium dioxide markets around the world?

7 **A.** Yes.

8 **Q.** And did you begin that process when you became involved in  
9 marketing in '99 or 2000?

10 **A.** Well, we -- we were already monitoring on a regular basis,  
11 even when I was director of sales for the Americas. We were  
12 competing on a global basis then. And we would have regular  
13 reviews of how we were doing versus the competition. So I had  
14 been keeping track of that even before taking on that role.

15 **Q.** Did you, at some point, take a hiatus from titanium  
16 dioxide as an employee of Kerr-McGee?

17 **A.** As part of the development program, they -- they wanted me  
18 to get some international experience, so they -- they offered  
19 me the position of getting outside of TiO<sub>2</sub> for a period of time  
20 in a developmental role.

21 I moved up to Montreal, Canada, and was a chief marketing  
22 officer of a small startup. We had a joint venture with  
23 Hydro-Québec to develop a lithium metal polymer battery for  
24 automobiles and other applications.

25 **Q.** How long did you do that job?

1 **A.** I was there for three-and-a-half or four years. Was there  
2 2001, and came back in early 2005.

3 **Q.** When you came back, what did you come back to?

4 **A.** So we -- in 2005, a number of things occurred. Number  
5 one, they restructured the company so that I was then made  
6 general manager of a product group. It was the paper and  
7 specialties business.

8 So the material that we were then manufacturing out of  
9 Germany, which was a sulfate plant, was targeted towards both  
10 paper as well as specialty applications.

11 You know, if you look at cosmetics or food-grade  
12 applications, we were competing with Cristal and others to sell  
13 our product into those specialty applications, which tend to  
14 get a much higher -- higher price.

15 So I did that, roughly, for seven months, because in the  
16 midst of taking over that job, Carl Icon got involved in  
17 Kerr-McGee's stock, bought a substantial stake, and forced the  
18 board of directors of Kerr-McGee to spin us off or sell us.

19 And so we went through a -- about a six-month process of  
20 both negotiating -- or they were negotiating, but we were in  
21 the rooms, as part of the due diligence, with some of the  
22 private equity firms. But the eventual decision was made to  
23 spin us off.

24 **Q.** And the business was spun off and a new TiO<sub>2</sub> only company  
25 was created?

1     **A.**     That's correct.

2     **Q.**     And what was the naming of that company?

3     **A.**     Tronox.

4     **Q.**     Did you take a position at Tronox?

5     **A.**     Yes.  They asked me to take on a new role, that I really  
6     had no experience in.  But it was because I knew the company so  
7     well and I knew the industry, they asked me to take on the role  
8     of vice president of industrial relations.

9             So I had the responsibility for dealing with the  
10     day-to-day calls from investors and analysts about the company,  
11     and then the various trade shows that we would go to, or  
12     investor conferences.

13     **Q.**     As the -- in the position of investor relations, did that  
14     evolve into other responsibilities at Tronox?

15     **A.**     Yes.  They then started giving me more responsibilities.

16             I took on communications.  Government relations eventually  
17     reported to me.

18             As we started entering the global financial crisis, the  
19     company was going through a bit of difficulty with our  
20     financial position, so we started downsizing.  Went from 11  
21     officers of the company, of which I was one, one of the  
22     officers, down to four, leading up to our bankruptcy.

23             So I took on additional responsibilities for human  
24     resources, global procurement.  I was, essentially, the chief  
25     administrative officer of the company at that point.

1 Q. And throughout that time did you continue to be involved  
2 in operating and managing the titanium dioxide business and  
3 understanding what the market was with regard to TiO<sub>2</sub>?

4 A. Yes. There was -- you know, there was only four of us,  
5 essentially, at the upper level of the management structure, so  
6 we were -- we didn't have a business development group. We  
7 didn't have a strategic planning group. The vice president of  
8 operations was let go. So we all shared responsibility across,  
9 across the company to look at both markets as well as  
10 technology.

11 Q. Did you, at some point in time, add human resources and  
12 supply chain management to your portfolio of jobs?

13 A. Yes.

14 Q. And what does supply chain management involve?

15 A. So our main inputs into making titanium dioxide, the  
16 largest input, of course, is your titanium barium ore. You  
17 can't make TiO<sub>2</sub> without the ore itself. And so at the time I  
18 took over responsibility, it was roughly a third of our cost  
19 structure. Today it's -- it can be upwards of 40 to  
20 50 percent.

21 But the other major components are chlorine, caustic soda,  
22 some of the process chemicals that you would use to manufacture  
23 TiO<sub>2</sub>. So I had responsibility across all of those inputs, as  
24 well as energy, freight, any of the cost inputs.

25 Q. In 2009, did you add a responsibility with regard to the



1 company's factory in Germany?

2 **A.** Yes. During -- as we filed for Chapter 11 bankruptcy  
3 protection, the plant manager at our Botlek, Netherlands  
4 facility.

5 **Q.** Netherlands, I'm sorry.

6 **A.** Yeah. He did not feel comfortable continuing to have  
7 responsibility for the plant because of liability reasons.  
8 When a company is in bankruptcy in Europe, there's personal  
9 liability that's associated with that. So we put him in a  
10 lesser role, and I took over responsibility as the acting  
11 general manager for the facility.

12 **Q.** And what sort of facility is that?

13 **A.** It was a chloride plant, roughly 90,000 tons per year  
14 production.

15 **Q.** Over your tenure -- let me ask you, how long did you hold  
16 that position?

17 **A.** We were in bankruptcy from early 2009 until January of  
18 2011. So a few years.

19 **Q.** Over your years at Kerr-McGee, how would you describe  
20 your -- your learning and knowledge with regard to both the  
21 technology at Kerr-McGee and the technology and -- of other  
22 companies?

23 **A.** It's -- it's like learning a new language, but you get to  
24 understand pretty quickly not only your own technology but  
25 your -- we were constantly benchmarking ourselves versus the

1 competition because you're always trying to either reduce your  
2 costs or improve your quality of your product so that you can  
3 gain a bigger market share position on a global basis.

4 So we had constant reviews, both on a technical basis as  
5 well as on a business basis, to find out where we stood.

6 **Q.** And the technical reviews on a -- or the technical reviews  
7 on a technical basis, can you describe those over the course of  
8 your career at Kerr-McGee and Tronox?

9 **A.** We would have on a regular basis, at least once a quarter,  
10 technical reviews at our research and development facility in  
11 Oklahoma City. And plant managers from our various plants  
12 would fly in, along with their technical staff. We would  
13 review their performance versus benchmarks. Essentially, their  
14 goals for the year.

15 If changes had to be made or new equipment be purchased to  
16 improve their quality or their technical performance or reduce  
17 their costs, those reviews helped us evaluate whether or not we  
18 were going to spend that capital or not. So it was -- we did  
19 that every quarter. And then we had an annual capital review  
20 that we would also sit in on.

21 **Q.** The capital review, would that involve decisions about  
22 expanding factories and potentially building new factories and  
23 that sort of thing?

24 **A.** Yes, that's correct.

25 **Q.** You also mentioned that there were business reviews.

1 Could you describe those.

2 **A.** So business reviews, we would bring in not only the  
3 production staff but also folks from R&D, pretty much people  
4 across the company. Sales and marketing. And we would review  
5 the performance of the business on an annual basis, sometimes  
6 even more often if the need arose. Especially as we were  
7 approaching 2008 and 2009, we started having more meetings  
8 because we were trying to figure out how we were going to turn  
9 the ship around and get it moving in the right direction.

10 **Q.** In the course of those meetings and your other management  
11 responsibilities, did you become familiar with how -- how  
12 companies in the TiO<sub>2</sub> industry would protect their proprietary  
13 information?

14 **A.** Well, yes. We -- we -- during the course of my career we  
15 hired a number of individuals from competitors because it's a  
16 small industry. There's not a lot of -- you can't run out and  
17 grab someone from a Dow Chemical that understands TiO<sub>2</sub>.  
18 It's -- you tend to look for people that have been in the  
19 trenches and understand the business.

20 So we would hire -- for instance, there was a gentleman by  
21 the name of Marty Roland, high-ranking engineer at DuPont. And  
22 we made him, eventually, our plant manager of Hamilton,  
23 Mississippi, our largest plant, and eventually chief operating  
24 officer. So we got to know him.

25 But they -- it was interesting. Marty, in technical

1 reviews people would look to Marty and say, Marty, how does  
2 DuPont do this? And he would say, listen, I --

3 **MR. GASNER:** Objection, Your Honor, hearsay.

4 **MR. HEMANN:** It's offered for experience.

5 **THE COURT:** Sustained. Overruled.

6 You may answer.

7 **THE WITNESS:** So he would say, listen, I can't divulge  
8 that. And he'd just say, you've got to just keep working on  
9 what you're doing.

10 So we saw firsthand that people were -- were not willing  
11 to divulge confidential information.

12 **THE COURT:** Mr. Froelich.

13 **MR. FROELICH:** Objection. Move to strike.

14 **THE COURT:** Objection is overruled. Motion is denied.

15 Would you please, at a convenient breaking point I would  
16 like to adjourn.

17 **MR. HEMANN:** This would be a convenient breaking  
18 point.

19 **THE COURT:** Okay. You may step down, sir, until  
20 tomorrow.

21 (Witness steps down.)

22 **THE COURT:** Ladies and gentlemen, I'm going to give  
23 you your proper conduct instruction, as I'm required to do  
24 every day. Then we'll break until tomorrow morning, and I'll  
25 give you some more information about that.

1           Again, to remind you again of your conduct as jurors,  
2 first, keep an open mind throughout the trial. Do not decide  
3 what the verdict should be until you and your fellow jurors  
4 have completed your deliberations at the end of the case.

5           Secondly, because you must decide this case based only on  
6 the evidence received in the case and on my instructions as to  
7 the law that applies, you must not be exposed to any other  
8 information about the case or to the issues it involves during  
9 the course of your jury duty.

10           Thus, until the end of the case or unless I tell you  
11 otherwise, do not communicate with anyone in any way and do not  
12 let anyone else communicate with you in any way about the  
13 merits of the case or anything to do with it.

14           This includes discussing the case in person, in writing,  
15 by phone, Smartphone or electronic means, via email, text  
16 messaging, or in or on any Internet chat room, blog, website,  
17 including such social networking media like Facebook, MySpace,  
18 LinkedIn, YouTube, and Twitter or other feature. This applies  
19 to communicating with your fellow jurors until I give you the  
20 case for deliberation, and it applies to communicating with  
21 everyone else, including your family members, your employer,  
22 the media or press, and the people involved in the trial.  
23 Although, you may notify your family and your employer that you  
24 are continuing to sit as a juror in this case.

25           But, if you are asked or approached in any way about your

1 jury service or anything about this case, you must respond that  
2 you have been ordered not to discuss the matter and to report  
3 the contact to the Court.

4 Because you will receive all the evidence and legal  
5 instruction you may properly consider to return a verdict, do  
6 not read, watch, or listen to any news or media accounts or  
7 commentary about the case, or anything to do with it.

8 Do not do any research such as consulting dictionaries,  
9 searching the Internet, or using other reference materials.  
10 And do not make any investigation or in any other way try to  
11 learn about the case on your own.

12 The law requires these restrictions to ensure the parties  
13 have a fair trial based on the same evidence that each party  
14 has had an opportunity to address. A juror who violates these  
15 restrictions jeopardizes the fairness of these proceedings, and  
16 a mistrial could result that would require the entire trial  
17 process to start over.

18 If any juror is exposed to any outside information, please  
19 notify the Court immediately.

20 So tomorrow we're going to have our regular day from 8:00  
21 to 1:30, the same drill as before. And then you've already got  
22 the printed schedule for the rest of the week.

23 We're going to be dark on Thursday and Friday of this  
24 week, not sitting. And we'll talk more about that tomorrow.

25 So thank you for your attention. We'll see you tomorrow

1 morning at 8 o'clock, to start.

2 (Proceedings were heard out of presence of the jury:)

3 **THE COURT:** All right. So the door is closed. The  
4 jury is gone.

5 Two things I wanted to raise. One, we got a  
6 nonsubstantive note from the jury.

7 **THE CLERK:** Do you want it?

8 **THE COURT:** Yes. And in the interest of complete  
9 disclosure and transparency, I'll read the note. I mean the  
10 jury is doing literally what we asked them to do in  
11 communicating only by note. So it says the following, and it  
12 was received at 11:35 a.m.:

13 "Hallway bathroom (ladies) is almost out of toilet  
14 paper."

15 This could be an issue on appeal so we've got to be  
16 careful.

17 "Also our water tank is also empty. Also, I need  
18 another pad of paper (and a Skill Craft pen if  
19 available)."

20 And it was signed by, of all people, Lindsay DuPont, Juror  
21 No. 1. So we'll handle that administratively, but I thought I  
22 would raise that important matter with you.

23 The other issue is I wanted to ask government counsel if  
24 you've been able to communicate with Ms. McNamara.

25 **MR. HEMANN:** I have, Your Honor. She was,

1 coincidentally, here today for another meeting. I spoke with  
2 her at the first break, and I passed along to her a little  
3 status report about what had occurred in our conversation.

4 She indicated that she would endeavor to have something  
5 filed to the Court by 4 o'clock today, in the nature of an  
6 expedited motion, hopefully, with the support of a declaration  
7 of Mark Bernstein, who is the civil attorney who was  
8 representing Mr. Jian Liu at the time of the communications in  
9 question.

10 **THE COURT:** Well, I think one thing that -- one thing  
11 that the Court would like to get, because I think it might be  
12 relevant, has to do with the circumstances under which these  
13 communications were disclosed to the defense, and what, if  
14 anything was done -- how the disclosure was -- what the  
15 government calls an inadvertent disclosure was discovered, and  
16 what the government did, and when it did it, to deal with the  
17 inadvertent disclosure.

18 **MR. HEMANN:** I can make a proffer to the Court now.

19 **THE COURT:** No. I need -- we're going to do this in  
20 writing. So I think you need to file a declaration, as well,  
21 by 4 o'clock.

22 **MR. HEMANN:** And the declaration that I would file by  
23 4 o'clock would be, at least to some degree, of course, hearsay  
24 because there are parts of this that I am not -- that I have  
25 been made aware of, but there would be several people involved



1 in the process.

2 My intention would be to submit a declaration from  
3 Mr. Scott and Mr. Axelrod or myself, just laying out what we  
4 know and what we've been advised of by the relevant employees  
5 of the FBI. And then, certainly, all of them would be  
6 available for further inquiry if necessary.

7 **THE COURT:** All right. The more information the  
8 better.

9 Yes, Ms. Agnolucci, do you want to say anything?

10 **MS. AGNOLUCCI:** No, Your Honor. I simply wanted to  
11 ask that if this brief that's coming from Ms. McNamara comes  
12 after 4:00 p.m., may we have 24 hours to respond?

13 **THE COURT:** Yes. You can have -- probably not an  
14 enforceable order because I've done it indirectly and haven't  
15 issued anything in writing, but knowing Ms. McNamara, if she  
16 was going to file whatever she was going to file later than  
17 4:00, she would ask for permission.

18 But your request to file 24 hours after Ms. McNamara and  
19 the government E-file their materials is granted.

20 **MS. AGNOLUCCI:** Thank you, Your Honor.

21 **THE COURT:** Yes, Mr. Froelich.

22 **MR. FROELICH:** Your Honor, I have a motion for a  
23 mistrial.

24 Your Honor, Mr. Gibney is so far afield, it's so  
25 prejudicial. There's no date -- he talks about some

1 ex-employee of DuPont. You don't know what kind of agreement  
2 he had with DuPont and when he left DuPont, what questions were  
3 asked of him and what year it was. And my client left DuPont  
4 in 1991.

5 This is very, very prejudicial. It's hearsay. And  
6 there's just no way to combat it.

7 **THE COURT:** Mr. Hemann.

8 **MR. HEMANN:** My intention is to provide all of those  
9 details that Mr. Froelich just asked for through Mr. Gibney's  
10 testimony as we go forward.

11 It is -- it could literally not be more relevant to the  
12 issues in this case. This is an expert who has dealt with,  
13 personally, how to -- how to handle confidential information  
14 sharing. He'll testify that this is an employee who left  
15 DuPont with no restriction other than the restriction that he  
16 not use DuPont information.

17 That is what this trial is about, Your Honor.

18 **THE COURT:** All right. Well, I'm going to take  
19 Mr. Froelich's -- in light of the representation of the  
20 government -- motion under advisement. Because in fairness to  
21 them, we had to adjourn and the government hasn't finished.

22 If you are correct, we'll see what remedy is appropriate.

23 **MR. FROELICH:** The problem is it's all hearsay. I  
24 don't get to cross-examine the employee.

25 **THE COURT:** First of all, if you want to get technical

1 about it, it's not hearsay because it's not offered for the  
2 truth of the matter, just that this one employee made this  
3 statement. And it's not -- there's no substantive truth that's  
4 ascribed to that, number one.

5 Number two, as you well know, in qualifying an expert and  
6 in the reliance by an expert, an expert is entitled to rely on  
7 information that is otherwise inadmissible, if it's the kind of  
8 information that's usually and regularly relied upon by an  
9 expert in the field.

10 **MR. FROELICH:** I know that. It's all hearsay. I  
11 don't believe -- he's a salesman and because he talks -- and  
12 because he talks to one DuPont employee that doesn't make him  
13 an expert on DuPont's protection.

14 I mean -- and he's going to say that this employee told  
15 him he had this agreement, this agreement. That's all hearsay.

16 **THE COURT:** All right. Well, I will certainly -- I  
17 think it's premature, your request is premature.

18 I would like to hear the full foundation, and then I'll  
19 decide, if there's a specific objection -- I ruled on the one  
20 objection, and now I've given you my reasons, and I'll rule on  
21 all the other objections.

22 But I think that this all -- I will say to the government,  
23 this all needs to be linked up because the concern that the  
24 Court has -- and, again, because I haven't heard his testimony,  
25 I've read the in limines and the responses and all that, and I

1 adjudicated that motion in limine with respect to Mr. Gibney's  
2 qualifications and opinion, but I certainly would expect -- the  
3 Court would be very concerned if all Mr. Gibney was going to be  
4 relying on is anecdotal information about what various people  
5 viewed various things, because those people aren't before us to  
6 cross-examine.

7       And unless the government can show that this is somehow --  
8 you know, a practice of DuPont, that, you know, is a practice  
9 that is followed by DuPont, then this testimony may not come  
10 in. Because what I want to avoid is -- you may get ten people  
11 in here, some of them qualifying as experts, some not, who  
12 might say, well, I was at DuPont and I thought that my  
13 obligations for confidentiality expired after five years. Some  
14 might say ten years. Some might say well, I think, you know, a  
15 good ethical practice would be never to reveal it.

16       But that's not really going to be probative. So, again,  
17 I'll have to await the testimony, but I want to warn the  
18 government that that's not -- if it's going to be only  
19 anecdotal evidence, then I'm not going to allow it. So I think  
20 you need to be properly guided by that.

21       And I don't want to argue hypotheticals of what he might  
22 say. But I understand Mr. Froelich's point. And to the extent  
23 that some random person or two or three had this view of the  
24 DuPont world, that to the extent you can link that up as being  
25 probative with the issues the jury must find, and in

1 particular, more to the point, and the point that the  
2 government argued in response to the in limine motion with  
3 respect to Mr. Gibney's testimony, the statutory elements that  
4 the government offered as a support to show an attempt to keep  
5 confidential information confidential.

6 And that was what was laid out in the Court's order with  
7 respect to Mr. Gibney. And it's particularly with respect  
8 to -- the government has, according to the Court's order, page  
9 7, lines 24, quote:

10 "The government contends this testimony is relevant  
11 to elements of the alleged offenses, namely, quote, the  
12 reasonable measures element, unquote, of 18 U.S.C. Section  
13 1839(3)(A), and the element that the information has value  
14 because it is not generally known to the public, 18 U.S.C.  
15 Section 1839(3)(B)."

16 And on that basis, the Court ruled that the government had  
17 made a sufficient showing that he is qualified to testify.

18 And I invited the defense to challenge the opinions in  
19 vigorous cross-examination rather than exclusion.

20 So, again, I don't want to get into hypotheticals about  
21 what this witness might say or not say, but --

22 **MR. HEMANN:** And, Your Honor, I understand that. And  
23 I guess I have two things I would very much like to say about  
24 this.

25 Number one, this specific information was included in the

1 expert disclosure. And neither defendant objected to this  
2 specific information. And that is, of course, the purpose of  
3 going through the whole *Daubert* motion process. That's number  
4 one.

5 And so waiting until the morning that he's going to  
6 testify and then, you know, making argument seems to be  
7 contrary to the Court's intention of setting these *Daubert*  
8 motions.

9 **THE COURT:** Just a minute, I'll let you speak.

10 **MR. HEMANN:** And not really fair as we've gone ahead  
11 and prepared.

12 **THE COURT:** All right. When we get to the point,  
13 then, as to that specific point you should have prepared the  
14 disclosure. And I will look at -- and I'm going to look at it  
15 again because I think that's a fair point. That's why we have  
16 *Daubert* procedures. And the Court took a lot of time with --  
17 you know, in adjudicating these motions.

18 **MR. HEMANN:** And then the other observation I'd like  
19 to make, Your Honor, is that that particular piece of testimony  
20 doesn't go to the elements of -- the reasonable measures  
21 elements or the -- the use of technology elements of what the  
22 government is attempting to prove.

23 What it does go to is this idea that has been articulated  
24 consistently throughout the case that there is a restriction on  
25 DuPont's employees that expires after five years. That notion

1 is fallacious. It comes from nowhere. It is not standard.  
2 And Mr. Gibney will testify it is not standard in the industry.

3 Unless a high-level executive has a contractual  
4 noncompete, any of DuPont can leave and go work at any  
5 competitor the day after. And there is no restriction. Except  
6 another restriction that is common throughout the industry  
7 which is that that employee may thereafter not spout off either  
8 from memory or by using DuPont documents about information that  
9 that employee used in -- obtained from DuPont.

10 That is consistent with the DuPont agreements both at the  
11 beginning and end of the employee's tenure. It is consistent  
12 with the testimony of every witness who has testified so far in  
13 this case.

14 And Mr. Gibney, as an expert, is going to say in the  
15 industry that is standard. And that is what it --

16 **THE COURT:** All right. Mr. Froelich.

17 **MR. FROELICH:** Your Honor, that's -- now we're really  
18 far afield. That's a standard in the industry. That's not  
19 what this is about. And we should -- and that's not what --  
20 the way he was put up.

21 And my understanding is what we're doing is doing a  
22 *Daubert* -- you know, we objected to this man being an expert  
23 from the get-go. And I thought there would be a *Daubert*  
24 hearing where he had to get on the stand. And we're doing a  
25 *Daubert* hearing before the jury, where we can't unring the

1 bell.

2 And for him to say -- this is a salesman. This isn't --  
3 his background is sales. And he's -- he's in a position in a  
4 bankrupt company for a while and he says -- I mean, it's in the  
5 industry. No one is talking about -- we've talked about and  
6 there's been plenty of evidence showing a five year, that my  
7 client had a belief. It wasn't something he made up. And  
8 that's what this is about. Not an industry practice.

9 There's never been an allegation here that this is an  
10 industry practice or at DuPont it's an industry practice. In  
11 fact, we've been blocked a little bit, but DuPont has all kinds  
12 of contracts, and they know it, from a year to five years.  
13 And, actually, McIntosh says he didn't even have a contract,  
14 and he even told them that.

15 **THE COURT:** Mr. Gasner, it seems like you want to --

16 **MR. GASNER:** Yes, Your Honor. I believe the Court is  
17 on the right path in trying to distinguish --

18 **THE COURT:** That's all good.

19 **MR. GASNER:** -- proper expert testimony.

20 **THE COURT:** Getting to the end.

21 **MR. GASNER:** I do think that after the voir dire the  
22 Court is going to have a sense of what this man is an expert in  
23 or not.

24 **THE COURT:** I agree. The parties had an opportunity  
25 to fully flesh out the *Daubert* issues.



1 I said that I would certainly entertain, which I would be  
2 required to do any way, a voir dire, and, of course, allow  
3 cross-examination -- assuming I allow him to testify as an  
4 expert on whatever area he's offered, a full and thorough  
5 cross-examination.

6 So I think all of these issues that Mr. Froelich is  
7 concerned about really are the stuff that voir dire and  
8 cross-examination are made of. And the voir dire may knock him  
9 out. The cross-examination may cause me to strike his  
10 testimony, or portions of it. You'll have that full  
11 opportunity to do that.

12 And the government, in fairness to the government, they  
13 haven't finished even starting to make their foundation. Once  
14 they've made their foundation, I'll turn it over to counsel to  
15 voir dire, and we'll see where we go from there.

16 But I will say, as I said in the order -- and counsel  
17 should certainly reread the order because I cited cases -- that  
18 the expert does not have to have personal experience in every  
19 area in which he or she will testify. And, you know, I went  
20 through and summarized his experience and said the government  
21 had made, at least on that record, a sufficient showing.

22 So let's see where it goes, is all I'm saying. I  
23 understand this is a very important issue to counsel and,  
24 Mr. Froelich, you're concerned about it, which you should be.

25 But to the extent that you've made a motion for a

1 mistrial, based upon what he said so far, the motion is denied  
2 without prejudice.

3 To the extent that you are objecting to his testimony at  
4 this point, the request is overruled without prejudice. That's  
5 all I'm going to do right now.

6 **MR. FROELICH:** Can I just say --

7 **THE COURT:** Yeah.

8 **MR. FROELICH:** The problem is they didn't even lay a  
9 foundation. They gave him a general -- a general outline, but  
10 didn't really lay anything.

11 **THE COURT:** They haven't gotten to it. They haven't  
12 finished yet.

13 **MR. FROELICH:** He has already given the opinion.

14 **THE COURT:** Well, he's talking about his basis.

15 Anyway, let's deal with this tomorrow. We're adjourned  
16 until tomorrow. And to the extent that the Court wishes oral  
17 argument on the motion, the anticipated motion by -- what's the  
18 witness's name, Mr. Liu?

19 **MR. HEMANN:** Jian. It's J-i-a-n L-i-u.

20 **THE COURT:** Yes, Mr. Liu, L-i-u, perhaps we'll deal  
21 with it after court tomorrow. We'll see how -- actually, we  
22 can't deal with it after court tomorrow because we don't have  
23 the defense response.

24 So I'll let you know. It may be the following morning  
25 that we'll deal with it. I'll let you know, give you plenty of

1 notice.

2 **MR. HEMANN:** Thank you, Your Honor.

3 I anticipate, based on our timing, that it's possible  
4 Mr. Liu would begin testifying tomorrow. It may be unlikely,  
5 at this point. But he certainly would not get to cross, and we  
6 would not be bringing those documents up in direct.

7 **THE COURT:** Sounds good. All right. Thank you very  
8 much.

9 **MS. AGNOLUCCI:** Thank you, Your Honor.

10 **THE COURT:** Have a good evening.

11 **MR. HEMANN:** Thank you, Your Honor.

12 (Proceedings adjourned at 2:13 p.m.)

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CERTIFICATE OF REPORTERS

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Monday, January 27, 2014



\_\_\_\_\_  
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