

Monday, May 5, 1997 (morning)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,

Defendant.

REPORTER'S TRANSCRIPT
(Trial to Jury - Volume 77)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 9:00 a.m., on the 5th day of May, 1997,
in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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APPEARANCES

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CHRISTOPHER L. TRITICO, Attorney at Law, Essmyer, Tritico &
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Defendant McVeigh.

* * * * *

PROCEEDINGS

(In open court at 9:00 a.m.)

THE COURT: Be seated, please.

Good morning. Are we ready for jury?

Good. Bring them in.

(Jury in at 9:01 a.m.)

THE COURT: Members of the jury, good morning. You
look rested and ready to go. Some of you apparently have had a
little sunshine over the weekend. We're glad to see that.

We're ready for the Government's next witness.

MR. HARTZLER: The Government calls Special Agent Cullen Scott. Mr. Goelman will question him.

THE COURT: Thank you.

(Cullen Scott affirmed.)

COURTROOM DEPUTY: Have a seat, please. Would you state your full name for the record and spell your last name.

THE WITNESS: Cullen, first name spelled C-u-l-l-e-n, middle initial A., last name Scott, S-c-o-t-t.

COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Goelman.

MR. GOELMAN: Thank, your Honor.

DIRECT EXAMINATION

BY MR. GOELMAN:

Q. Good morning, Mr. Scott.

A. Good morning.

Q. Where do you work?

A. With the Federal Bureau of Investigation. I'm assigned to the Kansas City division.

Q. What's your position?

A. I'm a special agent assigned specifically to the Organized Crime Squad.

Q. How long have you been a special agent for the FBI?

A. Almost 28 years.

Cullen Scott - Direct

Q. And after the bombing in Oklahoma City, sir, were you assigned to that ongoing investigation?

A. Yes, sir, I was. On April the 22 -- April the 22nd, 1995, I became involved in the Oklahoma City investigation.

Q. And during -- during the time you spent on that investigation, where were you based?

A. In the Junction City, Kansas, command post which was physically located at Fort Riley, Kansas.

Q. Turning specifically to April 25, 1995, were you working on the bombing investigation on that date?

A. Yes, sir, I was.

Q. And do you remember what you did on that date?

A. Yes. I do. I -- I had a lead to contact Sheriff Ed Davies at the Marion County Sheriff's Department in -- in Marion, Kansas, for the purpose of retrieving a padlock which he had recovered in -- in an investigation of the Martin Marietta burglary.

Q. Did you go to the Marion County sheriff's office by yourself?

A. No. I was accompanied by my partner, teammate, during this investigation, Special Agent Robert Dewald of the military -- Army CID office.

Q. And what did you and Mr. Dewald do when you arrived at the Marion County sheriff's office?

A. We contacted Sheriff Davies and asked for the lock which he

Cullen Scott - Direct

had in his possession, the padlock, which he did, in fact, turn over to us. We requested that -- that device so that we could send it to our FBI laboratory.

Q. And when Sheriff Davies gave you this lock, did he just hand you a lock?

A. He handed us a brown sealed envelope. The lock was contained therein.

MR. GOELMAN: Your Honor, may I approach?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mr. Scott, I'm showing you what's been already admitted as Government Exhibit 126A and ask you if you recognize that.

A. Yes, I do. This is -- excuse me -- this is the brown envelope that I described earlier. The lock was contained in this. My initials CAS, are inscribed on the envelope. The date of 4-25-95. Also, the initials of my partner, RAD, for Robert A. Dewald.

Q. And when you got that envelope with the lock inside from Sheriff Davies, what did you do with it?

A. I kept it in my personal possession and returned to Junction City, Kansas, to the command post.

Q. When Sheriff Dave -- when Sheriff Davies gave you the lock, was the envelope sealed or unsealed?

A. It was sealed at that time.

Q. And did you open it at that time?

Cullen Scott - Direct

A. Not at that time.

Q. Okay. Did you subsequently open it?

A. I did open the envelope after I returned to the command post.

Q. And what did you see when you opened that envelope?

A. A Master padlock. Model number was 15, I believe. Serial number was 10N354.

Q. And -- did you notice anything unusual about that lock?

A. Yes. Upon close examination of the lock, I -- I observed that in the lower -- the bottom of the lock, the brass insert where a key would be inserted into the lock, there appeared to be a drill marking or impression caused by what I believe to be a drill or tool, and directly adjacent to that impression was a small hole that had penetrated clear into the inside of the lock.

Q. And from your 28 years' experience as a special agent, did you think that these features might be significant?

MR. TRITICO: Objection. Leading.

THE COURT: Sustained. Rephrase it.

BY MR. GOELMAN:

Q. What did you think when you saw these features?

A. I believed that the -- the fact that these unique impressions were in the lock, that they had some evidentiary value for purposes of later comparison to a tool that might have caused those impressions and the drill hole, itself.

Cullen Scott - Direct

Q. So what did you do with the lock?

A. I maintained it as evidence. I recorded the identifying information on what we refer to as a bulk exhibit form or an administrative form, just to maintain custody of the -- of the evidence; in this case, the lock.

MR. GOELMAN: Your Honor, may I approach?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mr. Scott, I'm showing you what's been marked for identification as Government Exhibit 126.

A. Yes.

Q. Do you recognize that? You can take it out of the bag, if you wish.

A. Yes, I do recognize this as the same lock that I picked up from Sheriff Davies on April 25, 1995.

Q. And how do you know that that's the very same lock that you got from Sheriff Davies?

A. It bears the same model number, markings, serial number, as well as the drill -- drill hole that I described earlier and what appears to be an impression made from a drill.

Q. Is that lock in the same condition that it was the last time you saw it?

A. Not exactly. This portion of the lock, I believe, that is referred to as the shackle is now missing. Apparently, as a result of examination. I don't know. But it was intact when

Cullen Scott - Direct

I --

Q. The hasp was connected to --

A. Yes.

Q. -- it when you last saw the lock?

A. That's correct.

MR. GOELMAN: Your Honor, move to admit.

MR. TRITICO: Your Honor, object. Rule 402 and 403 of Federal Rules of Evidence and improper chain of custody.

THE COURT: Recognizing that it has been altered.

MR. GOELMAN: Yes, your Honor.

THE COURT: So I think we need whoever altered it.

The objection is sustained.

BY MR. GOELMAN:

Q. What did you do -- you said that you logged it into evidence. Is there someone specific who you gave it to?

A. Yes. I turned it over -- physically turned it over to our evidence technician, Special Agent Charles Provost.

MR. GOELMAN: I have nothing further, your Honor.

THE COURT: Mr. Tritico, do you have any questions?

MR. TRITICO: Just a few, Judge.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good morning, Agent Scott.

A. Good morning.

Q. My name is Christopher Tritico. You and I have never met

Cullen Scott - Cross

before, have we?

A. No, we haven't.

Q. I've never had the opportunity to sit down with you and discuss the facts and circumstances surrounding the -- your investigation into this case; is that right?

A. That's correct.

Q. Now, when you went to see Sheriff Davies -- I believe it was April the 25th of '95 -- you did other things with respect to this burglary other than just get the lock; is that right?

A. Yes, sir.

Q. You got his offense report; right?

A. That's correct.

Q. And as part of reviewing of his offense report, you noticed that he had not written a supplement to the report?

MR. GOELMAN: Objection, your Honor.

THE COURT: Sustained. Beyond the scope of the direct.

MR. TRITICO: Okay. I have nothing further then at this time.

THE COURT: All right. Do you have any other questions? I take it --

MR. GOELMAN: No. Your Honor.

THE COURT: All right. You want the witness available?

MR. TRITICO: Yes, sir, I do. I don't mind if he goes back to work as long as he's available.

THE COURT: Right. You can step down and be available on notice.

THE WITNESS: Thank you, sir.

THE COURT: Next witness, please.

MR. HARTZLER: Can I have one moment, your Honor? I'm sorry.

THE COURT: Yes.

MR. HARTZLER: The Government calls Special Agent Tom Brown. Ms. Behenna will question him.

THE COURT: All right. Mr. Brown.

(Thomas Brown affirmed.)

COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: Thomas R. Brown, B-r-o-w-n.

COURTROOM DEPUTY: Thank you.

THE COURT: Ms. Behenna.

DIRECT EXAMINATION

BY MS. BEHENNA:

Q. Are you employed?

A. Yes, I am.

Q. Where do you work?

A. Federal Bureau of Investigation.

Q. How long have you worked for the Federal Bureau of

Thomas Brown - Direct

Investigation?

A. Approximately eight years.

Q. And where is your office located?

A. In Wichita, Kansas.

Q. How many people are in that office?

A. There are eight of us.

Q. Okay. Is there a specific type of crime that you investigate?

A. It's primarily white-collar crime.

Q. Let me direct your attention to April of 1995. Were you assigned to the investigation of the Oklahoma City bombing?

A. Yes, ma'am.

Q. Do you recall when you were first asked to join that investigation?

A. It was the Saturday following the bombing, which was April 22, 1995.

Q. And where did you report? Where were you told to go?

A. To Junction City, Kansas.

Q. And how long were you in Junction City, Kansas?

A. Approximately 60 days.

Q. Doing a variety of tasks?

A. Yes, I was.

Q. Let me direct your attention specifically to May 3, 1995. Did you participate in a search of a house in Herington, Kansas?

Thomas Brown - Direct

A. Yes, I did.

Q. Whose house was that?

A. It was Terry Nichols'.

Q. Do you remember the address?

A. It was 1090 South 2d.

Q. And did you enter the house pursuant to a search warrant?

A. Yes, we did.

Q. Do you remember when the search warrant was obtained?

A. The previous day. May 2, 1995.

Q. Do you recall what items you were authorized to seize pursuant to that search warrant?

A. Various tools which included drills and drill bits, correspondence, documentation.

Q. Do you remember what time -- I'm sorry -- you entered the house on May 3, 1995?

A. It was 9:57 a.m.

Q. How many people participated in that search?

A. It was myself, Special Agent Leslie Earl with the FBI, Special Agent William Franges also with -- or with the Bureau of Alcohol, Tobacco and Firearms.

Q. Did you move together through the house as a team or did you separate and each cover a different room?

A. We moved together through the house.

Q. Can you tell the jury what rooms you searched on May 3, 1995.

Thomas Brown - Direct

A. The storage room.

Q. Is that on the first floor?

A. Yes, it is.

Q. Were there items seized in that room?

A. Yes, there were.

Q. Okay.

A. And we went to the basement where there were items seized, as well.

Q. All right.

A. We went to the furnished rooms. No items were seized there. We then went to the kitchen. There were items seized in that room. And to the living room where there were items seized, and then to the garage where there were items seized.

Q. What time did that search end on May 3, 1995?

A. Approximately 5:14 p.m.

Q. What happened to the items that were seized during that search?

A. We placed them in a vehicle and transported them to Junction City, Kansas, to an evidence storage facility.

Q. Let me direct your attention more specifically to the basement area when you were there during the course of the search. And you stated earlier that there were items that you had seized in the basement.

A. Yes, ma'am.

Q. Do you recall seizing a cordless drill?

Thomas Brown - Direct

A. Yes, ma'am.

Q. Can you describe that for the jury.

A. It was a Makita cordless drill. The drill was contained in a blue box.

Q. Was there anything else in the blue box?

A. Yes. There were two batteries for the cordless drill. There was a battery charger. There was a yellow box containing additional drill bits and some miscellaneous items in the bottom of the box.

Q. I think you have in front of you what's marked for identification purposes only as Government's Exhibit 151, 151A, and 151C, and you can go ahead and look at that, if you like.

A. Yes, ma'am.

Q. Have you seen those items before?

A. Yes, ma'am.

Q. When did you first see those items?

A. This was the drill that we removed in the May 3, 1995 search warrant from the basement.

Q. How are you able to recognize those items?

A. I can recognize the drill. It contains the initials of William Franges, who was also there during the search. Also on the drill, there is a serial number. The serial number is 01477897. That serial --

O. I'm sorry. I didn't mean to interrupt.

2. I'm sorry. I didn't mean to interrupt.
A. That serial number was recorded by myself in an evidence

Thomas Brown - Direct

recovery log. There are also initials of Mr. Franges contained on the yellow box containing drill bits. There is also a sticker that was placed by Agent Franges on the front of the box, describing the drill bits -- or the drill and the contents of the box.

Q. With regard to Government's Exhibit -- I believe it's 151C, which is the drill-bit box, did that have bits inside when you seized it on May 3, 1995?

A. Yes, it did.

Q. Are those items, Government's Exhibit 151, 151A, and 151C, in substantially the same condition today as they were when you seized them on May 3, 1995?

A. Yes, they are.

Q. Were the Government exhibits that I just mentioned, 151, 151A and C taken by you and transported to the command post at Junction City?

A. Yes, they were.

Q. Did they stay in your possession or in an agent of the FBI's possession during that transport?

A. Yes, they did.

Q. Were they changed in any manner during the course of that transportation?

A. No, they weren't.

Q. Once you got to the command post in Junction City, Kansas, what did you do with Government Exhibits 151, 151A, and 151C?

Thomas Brown - Direct

A. They were placed in the evidence storage facility.

MS. BEHENNA: I have nothing further, your Honor.

THE COURT: Mr. Tritico?

MR. TRITICO: May I approach and just examine the --

THE COURT: Yes. Certainly.

MR. TRITICO: I need to work out. Thank you. I have just a few questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good morning.

A. Good morning.

Q. My name is Christopher Tritico. You and I have never met before, have we?

A. No.

Q. I've never had the ability to sit down and talk to you about the things that you've done in investigating this case, have I?

A. That's correct.

Q. Now, what was the day that you conducted this search that you've talked about today?

A. May 3, 1995.

Q. Was that the first search that you participated in at Mr. Nichols' home?

A. No, sir.

Thomas Brown - Cross

Q. How many searches had you done prior to that?

MS. BEHENNA: Your Honor, I object. Beyond the scope.

THE COURT: Overruled.

BY MR. TRITICO:

Q. How many searches had you done prior to that?

A. I conducted or I was a participant in the search warrant that was served on April 29, 1995.

Q. How long did that search last?

A. It was approximately 12 hours.

Q. How many items were taken from Mr. Nichols' home in that 12-hour search?

A. I don't recall the number of items. It was principally items of men's clothing that were taken during that search.

Q. Did anybody search the basement at that time?

A. Yes, sir.

Q. And when was the second search you participated in?

A. The second search was May 3, 1995.

Q. How many items were taken from Mr. Nichols' home on the second search?

A. Approximately 60, I'm guessing.

Q. All of them from the basement or from other areas of the house?

A. From all the areas of the house.

Q. What type of items were taken other than the drill and the bits that you've already talked about?

Thomas Brown - Cross

A. There were a number of tools. There were some documentation.

Q. And did you participate in a third search?

A. No, sir, I don't think so.

Q. You did two searches?

A. That's correct.

Q. Okay. Now, you testified that the items that you looked at, 151, 151A, and 151C, are in substantially the same condition as they were when you last saw them; is that right?

A. That's correct.

Q. How long have they been out of your possession?

A. I placed them in the evidence storage facility on May the 3d of 1995. I released custody of those items on May the 4th, 1995.

Q. And you haven't seen them until you came to testify today or recently?

A. Yes, sir.

Q. Excuse me?

A. Yes, sir. I saw them recently. That's correct.

Q. You don't know what's happened to them since they left your

possession, do you?

A. That's correct.

Q. Did you -- you did check with Makita to see if they had records of selling a drill to Terry Nichols; is that right?

A. No, sir, I did not.

Thomas Brown - Cross

Q. Do you know who did?

A. I do not.

Q. Did you check with Makita to see if they had sold a drill to Timothy McVeigh?

A. No, sir, I did not.

Q. Do you know if anybody did?

A. I do not know.

Q. Do you know how long that drill was in Mr. Nichols' home prior to May the 3d of 1995?

A. No, sir, I do not.

Q. Do you know how long the bits were in Mr. Nichols' home prior to May the 3d of 1995?

A. No, sir, I do not.

MR. TRITICO: Thank you, sir. I'll pass the witness.

MR. HARTZLER: Your Honor, may I consult Mr. Tritico for one moment?

THE COURT: Yes.

MR. HARTZLER: Thank you, your Honor. We'd like to offer the exhibits that he's identified at this point.

THE COURT: 151, 151A, and 151C.

MR. TRITICO: I'll object pursuant to Rule 402 and 403 of the Federal Rules of Evidence and improper chain of custody at this time.

THE COURT: Overruled. They are received.

MR. HARTZLER: Thank you.

THE COURT: Any other questions of the witness?

MS. BEHENNA: No, your Honor.

THE COURT: Is he going to be excused or do we need him back?

MR. HARTZLER: No, sir.

MR. TRITICO: I don't need him back. I'm sorry. I may need him back for other matters, so I would like to hold him subject to recall.

THE COURT: Okay. Again, you can step down. You're excused for now and subject to notice on whether you're going to be asked to reappear.

THE WITNESS: Thank you, sir.

THE COURT: Continue, of course, to follow the sequestration order.

THE WITNESS: Yes, sir.

THE COURT: Next witness.

MR. HARTZLER: The Government calls Special Agent Mary Jasnowski. Mr. Ryan will question her.

THE COURT: Thank you.

(Mary Jasnowski affirmed.)

COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name

spell your last name.

THE WITNESS: My name is Mary Y. Jasnowski,
J-A-S-N-O-W-S-K-I.

COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Ryan.

MR. RYAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. RYAN:

Q. Good morning.

A. Good morning.

Q. You have stated your full name?

A. That's correct.

Q. And you're a special agent with the FBI; is that right?

A. That is right.

Q. Where do you work?

A. I'm the chief division counsel for the Omaha division of
the Federal Bureau of Investigation.

Q. Sounds like a lawyer.

A. That is correct.

Q. Where did you go to school?

A. The University of Notre Dame.

Q. In college or law school?

A. Law school at Notre Dame, the University of Nebraska at
Lincoln undergrad.

Q. When did you graduate from law school?

A. In 1977.

Q. What did you do after that time?

A. I joined the FBI approximately eight months after that.

Mary Jasnowski - Direct

Q. How long -- are you still in Omaha today?

A. Yes, I am.

Q. And where were you assigned in April of 1995?

A. I was assigned to the Omaha division of the FBI.

Q. And what were your duties at the -- with the FBI in Omaha
in April of '95?

A. As I said, I was the chief division counsel, which means
that I'm the attorney for the Omaha division, but I was also
the Evidence Response Team coordinator at that time.

Q. Okay. What does that mean, Evidence Response Team
coordinator?

A. Well, the Evidence Response Team is a group within the FBI.
Each division that is -- specializes in the collection of
evidence. And as part of -- as the evidence team coordinator,
I would coordinate activities of the team, supplies, and that
sort of thing.

Q. And what does the team consist of?

A. At that time, we had agents and support personnel who
served on the evidence team who would respond to requests for
evidence collection.

Q. When you say "coordinators," does that mean you're in
charge of this team?

A. That's correct.

Q. Okay. Do you remember having a conversation on April 21 of
1995 with the SAC, the special agent in charge, of the Omaha

Mary Jasnowski - Direct

FBI office?

A. Yes. The SAC at that time, Mr. Thomas Lesby, requested I collect members of my team and perhaps other agents in the office and assist the Kansas City division in Fort Riley, Kansas.

Q. And did you do that?

A. Yes, I did.

Q. Would you please tell us what you did on April 21.

A. We gathered together supplies and people and we drove down to Fort Riley, Kansas.

Q. When did you arrive there?

A. I think the entire team was in Fort Riley by about 8 p.m. that night.

Q. What did you do after you arrived?

A. We reported to the command post and were given an assignment for the next day.

Q. What was the assignment?

A. To show up at the command post and we would be given further assignments.

Q. Did you show up at the command post the next day as instructed?

A. Yes, we did. Yes, we did.

Q. Okay. Good. And what time was that?

A. Approximately 6:30 a.m.

Q. All right. What did you do after you arrived?

Mary Jasnowski - Direct

A. As often is the case, we waited for further instructions and were sent to Junction City, Kansas, to pick up members of a team from FBI headquarters.

Q. All right. And who was that -- who was the team from FBI headquarters? Who did they consist of?

A. These were people from the FBI lab. They included Supervisory Special Agent Steven Burmeister; Chemist Ronald Kelly; latent print photographer, Eugene Grindstaff, and Latent Print Examiner, Lou Hupp.

Q. All right. So you joined forces with your FBI team from Omaha and the FBI headquarter team and you did what?

A. Then we drove down to the command post that was set up at the Herington Public Safety Building in Herington, Kansas.

Q. All right. And what did you do after you arrived at the Herington Public Safety Department?

A. Again, we were given instructions to perform some tasks. We waited for further instructions and were briefed concerning the execution of a Federal District -- District of Kansas search warrant that was to be executed that night or that evening.

Q. Had a search warrant been issued for this case?

A. Yes. It had.

Q. And who issued that search warrant?

A. That warrant was issued by Federal District Judge Monty Belot of the District of Kansas.

Mary Jasnowski - Direct

Q. All right. And what did the -- paraphrase, but tell us what the search warrant instructed or permitted be done.

A. It allowed us to search a single residence and detached garage belonging to Mr. Terry Nichols located at 109 South 2d Street in Herington, Kansas.

Q. And when did you receive word that this search warrant had been issued?

A. I don't recall the exact time. I know it was sometime during the day of the 22nd of April.

Q. All right. We're talking about three days after the Oklahoma City bombing?

A. I believe that's right, yes.

Q. All right. And were you furnished with a copy of the search warrant?

A. Oh, yes. Absolutely.

Q. And what did you do when you got it?

A. We all reviewed the search warrant at the command post. We were briefed on it. We had a -- my counterpart from the Denver division was there assisting to make sure that we understood what it was that we were allowed to take and not to take so we were all aware of the search warrant and what we were allowed to seize.

Q. Now, was this -- ultimately, we're going to get to a point where you participated in a search of Terry Nichols' home.

A. That's correct.

Mary Jasnowski - Direct

Q. Now, is this the only search of Terry Nichols' home in which you were involved?

A. No. There were several searches after that.

Q. Okay. Were you involved in each of those?

A. I was involved in several of those.

Q. Okay. We're just going to talk today about this first search that you were involved with. And tell us ultimately, did you go to the home?

A. Yes, we did.

Q. And about what time did you arrive?

A. I believe we arrived about 4:35 p.m. on Saturday, the 22d of April.

Q. And we've got a whole passel of FBI agents here; right?

A. Yes, we do.

Q. How many people do you have from your team in Omaha?

A. Well, we have six people from Omaha, then we have the four agents -- or four employees of the FBI lab, and then my team was augmented by four agents from the Kansas City division and one agent -- or I guess he's an agent from a -- out -- Bureau of Alcohol, Tobacco and Firearms from Kansas City.

Q. This is a pretty small house?

A. Yes, it is.

- A. Yes, it is.
Q. A whole bunch of agents in it?
A. Well, yes.
Q. Okay. And you look pretty carefully?

Mary Jasnowski - Direct

- A. Absolutely. Yes.
Q. All right. Now, tell me -- or tell the jury, rather, what your role in this search was.
A. Well, basically, my role was to assign -- make the assignments, make sure that everyone had an idea of what they were supposed to take. I would answer a lot of questions. We would package the evidence up as we seized it, and I would take custody of each piece of evidence as it was seized.
Q. Can we use the overhead machine. Figure out how to turn it on.

This is Exhibit 58 you're looking at. It's already been received in evidence. With the Court's permission, we'll go ahead and republish it to the jury.

Just to reorient the jury on where we are, what we're doing, tell us what Exhibit 58 is.

- A. It's a photograph of Mr. Nichols' residence in Herington, Kansas.
Q. All right. And Exhibit 59?
A. It's from the right rear of that same residence.
Q. Point out the residence, if you would, with your finger.
A. Yes.
Q. Do you have a little pen there that would --
A. Here's the back door of the residence. This is the garage. Whoops. That's the garage.
Q. Okay. Those are attached?

Mary Jasnowski - Direct

- A. The garage is detached from the residence.
Q. Detached. Okay. Okay. If you will erase those marks. I think this is simply another view, but if you would help the jury orient a little bit on this.
A. Yes. This is the rear of the garage, looking at the rear of the house.
Q. Okay. Now, you assisted in the preparation of a diagram of the inside of the home, did you not?
A. Yes, I did.
Q. And this, again, has already been admitted into evidence as Exhibit No. 87.
A. Yes.
Q. Is this the diagram that you and Joanne Thomas participated in preparing?
A. Yes, it is.
Q. All right. Now, with reference to this diagram, tell -- tell us how you and your team collected the evidence, what you did with the evidence --
A. All right.
Q. -- after you got it and how you marked it.

A. All right. Each room in the residence was assigned a letter; and as the team spread out, we started in Room A and worked our way around. When a piece of evidence was located in a room, it was logged in. Each room had a separate log, and each item had a separate number, so you could tell which room,

Mary Jasnowski - Direct

where it was collected. And as it was collected, it was packaged. The seizing person or the log-keeper -- it depended on which room -- would either describe the contents on the bag or they would simply list it by file number and item number, their initials and then I counter-initialed it.

Q. All right. Let's just assume something was taken out of the kitchen.

A. Yes.

Q. And an agent gathers up some things. Tell us what the agent would do with that.

A. Well, if someone gathers something from G, which is the kitchen, they would take it, package it, seal it, mark it with their initials, the file number of the case, the date, and they would be given an item number from the log-keeper, who would also note that item number on the log, and then they would turn it over to me and I would initial it, as well.

Q. If it was the first thing taken out of the kitchen, what would they mark on the bag?

A. G1.

Q. So if it was the fifth thing taken out of the thing, what would they mark it?

A. G5.

Q. Okay. The same would be true for all the other rooms?

A. That's correct.

Q. If it was the second thing taken out of the living room,

Mary Jasnowski - Direct

what would be on the bag?

A. It would be A2.

Q. Okay. Now, in the -- the course of the search of the Nichols' home, did you yourself participate in searching as well as receiving evidence?

A. Yes, I did.

Q. And what areas of the house -- of the Nichols' home did you search?

A. Well, generally, I searched -- it's not shown on this diagram, but there was a basement that we called Room I, and I also searched one of the rooms in the garage. I think it was Room K.

Q. And can you tell us what you found in the garage.

A. In the garage, I found four 55-gallon, white plastic barrels.

Q. All right. Would you please turn to -- you have a folder there in front of you with some exhibits inside. If you would please turn to Exhibit No. 191.

A. Yes.

Q. Would you please tell us what that is.

A. This is a photograph that was taken that night of those barrels that I seized.

Q. Is this photograph what you saw when you went into the garage?

A. Yes, it is.

Mary Jasnowski - Direct

MR. RYAN: Your Honor, we'd offer Exhibit 191.

MR. TRITICO: Just, a moment, Judge.

THE COURT: Yes.

MR. TRITICO: Well, I object to this at this time, your Honor, pursuant to Rule 402 and 403 of the Federal Rules of Evidence.

THE COURT: Overruled. 191 received.

You may display it.

MR. RYAN: Thank you, your Honor.

BY MR. RYAN:

Q. All right. Tell the jury what they are observing here with the photograph we've marked as Exhibit 191.

A. Well, these are the four barrels as we found them. They were stacked on top of each other; and they were, I believe, located -- I can't remember now whether it was the north wall or which direction. I'd have to look at my chart to tell you where it was, which wall.

Q. All right. Do the barrels say they were 55-gallon?

A. Yes, they do. It's on their -- on the label there, I believe you can see there, and I also believe that you can see markings on the side of what their capacity is.

Q. All right. And what are these blue things that are in the -- on this exhibit?

A. I'm sorry. These are the rims of the barrels. They are not lids. They are the rims of the barrel.

Mary Jasnowski - Direct

Q. Do these barrels have lids?

A. No, they did not.

Q. Okay. All right. At some point during the search, did Ms. Thomas bring to you a plastic bag out of the -- I believe it was the kitchen?

A. Yes, she did.

Q. And would you describe the bag.

A. It was a bag that contained a number of coins and there was a -- within that, there was a -- what I -- a pink piece of paper wrapped around several of the coins.

Q. All right. And did -- was that item of evidence -- these coins with this pink slip of paper around it, was it in a bag?

A. Yes, it was.

Q. Plastic bag?

A. Yes.

Q. Would you tell us what was on the outside of the bag.

A. On the outside of the bag was a list of the contents of that bag. It was given an item number. Again, it had her initials on it. I believe it had the log-keeper's initials, as well, the file number, the date --

Q. All right. Now --

A. -- and an inventory of the items in that bag.

Q. All right. And what -- you've given us this numerical number that indicated what room it was taken out of, where it was in the series of items taken from the particular room.

Mary Jasnowski - Direct

What number did this bag have on it?

A. It had the number G7.

Q. All right. Now, would you please look in the envelope there and see if you can find a copy of what's been marked as G7. Excuse me, Ms. Jasnowski. You don't have it up there. I have it.

A. Thank you.

Q. Now, if you would please turn to Exhibit 62A.

A. Yes.

Q. Can you identify what 62A is.

A. Yes. This is the bag that the money and the receipt was -- was given to me from Joanne Thomas.

Q. Tell me what you did with that bag.

A. I took this bag and placed it with my other items of valuable evidence.

Q. Did you look at the contents of it from outside looking inside --

A. Yes.

Q. -- the plastic bag?

A. Yes, I did.

Q. All right. What did you ultimately do with that bag? Was it opened at the top when you got it?

A. No, it was not. It was sealed.

Q. All right. And what did you do with it?

A. I took it and placed it with my items of valuable evidence,

Mary Jasnowski - Direct

and later, I sealed it myself for -- prior to turning it over to -- for transport.

Q. Did you take anything out of the bag between the time Ms. Thomas gave it to you and the time that you sealed the bag?

A. No, I did not.

Q. Did you put anything in the bag?

A. No, I did not.

Q. All right. Now, how did you seal the bag?

A. The -- the bag that I sealed, I used a heat sealer, and I also put a label over the top of it.

Q. What does a heat sealer do?

A. It melts the edges of the plastic together.

Q. So no one could enter --

A. That's right.

Q. -- without breaking the seal?

2. without breaking the seal.

A. That's correct.

Q. And what other type of seal did you put on top of the heat seal?

A. I put a paper label, too, so that -- it's a tamper-resistant label so that it can be seen whether it was tampered with in any way.

Q. All right. Now, please turn to Exhibit 62B. Tell us what that is.

A. This is the bag, the actual evidence bag that I used.

Q. All right. Did you seal it, as well?

Mary Jasnowski - Direct

A. Yes. This is the heat-sealed bag.

Q. Okay. So -- I'm sorry. Let's go back and clarify this a little bit. 62A is the bag that Ms. Thomas gave to you with the coins and the pink slip?

A. That's correct.

Q. All right. And had she sealed it?

A. Yes.

Q. How had she sealed it?

A. She had put a tape -- again, a tamper-resistant tape over the top of it.

Q. And do you see that tamper-resistant tape?

A. Yes, I do.

Q. Does it bear any initials?

A. Yes. It has the initials JLT, which I recognize as Joanne Thomas.

Q. All right. Now, you took that sealed bag of Ms. Thomas and you did what with it?

A. I stored it with my other items of valuable evidence.

Q. All right. And then ultimately, you put it in another bag?

A. Yes, I did.

Q. And that bag is Exhibit what?

A. 62B.

Q. And how did you seal that bag, if you did?

A. This is the bag that I sealed with the heat sealer and with the tamperproof --

Mary Jasnowski - Direct

Q. And ultimately, what did you do with this bag, 62B, that contained 62A?

A. I turned it over to the custody of Mr. -- Agent Burmeister for transport back to the FBI laboratory.

Q. And who was with Mr. Burmeister at the time that you gave over custody?

A. There were a number of other individuals. Mr. Hupp was there. The members of my team were present.

Q. All right.

A. A number of people.

Q. So there were a number of people that you -- that witnessed you handing over Exhibit 62A and B to Mr. Hupp?

A. That's --

Q. Excuse me. To Mr. Burmeister?

A. Yes. That's correct.

Q. And then when you handed the exhibit off to Mr. Burmeister, what was done with the exhibit?

A. He -- it was placed on an -- in a plane that the FBI had for transport to our FBI laboratory at Washington.

Q. All right. Now, take a look at Exhibit 62.

A. Yes.

Q. Did you ever see the writing on the inside of Exhibit 62?

A. No, I did not.

Q. Tell us what you saw inside the bag. Describe it as best you can. And the bag I'm talking about is Exhibit 62A.

Mary Jasnowski - Direct

A. Right. I saw the two coins that -- well, I knew there were two coins because of the thickness and you could examine through the plastic, and they were wrapped around a triangular -- obviously, this was folded around them, these two coins in the bag. Tightly folded.

Q. And what color was the wrapping?

A. It was pink, and it was rectangular.

Q. Did you recognize any indentations or markings on the pink piece of paper?

A. At the time, I could see that the coins were making an impression in the paper.

Q. All right. And taking a look at Exhibit 62, can you tell us or compare for us the size and type of markings that you recall seeing on the pink piece of paper with what you have marked there as Exhibit 62?

A. Yes. They are consistent with that, yes.

Q. Now, turn, if you would, to Exhibit 484 and 484B. Now, again, I've got you faked out. I have it here.

Turn first to 484B.

A. Yes.

Q. And tell us what that is.

A. This is another evidence bag that was given to me by Joanne L. Thomas. This time it's from Room A, and it contains items A1, 2, and 3.

Q. All right. What does that mean, take -- it's marked A1, 2

Mary Jasnowski - Direct

and 3.

A. This would correspond with the log that we created from that. A1 is a telephone address book. A2 would be -- I'm sorry, not A2. This is Item A14, but this is subgroup 1, 2, and 3. I'm sorry.

Q. A14?

A. A14 -- it's the fourteenth item that was taken out of Room A, and these were subgroups from A14.

Q. All right. Excuse me.

A. I was saying that the sub 1 was the telephone address book; the sub 2 was a Spotlight prepaid telephone card in the name of

Darrell Bridges; and A14, sub 3, is a -- are money order stubs, two of them.

Q. All right. Now, with respect to Exhibit 484B, what markings are on there, if any, that indicate that Ms. Thomas gave this series of items to you?

A. Well, her initials are definitely on it, as are the log-keeper's, and my initials are on it, as well.

Q. And was the -- tell us what the condition of 484B was at the time that you received it from Ms. Thomas.

A. It was in this same condition. Well, without some of these other markings.

Q. Was the bag sealed?

A. Yes, it was sealed.

Q. Which -- and -- tell us how it was sealed.

Mary Jasnowski - Direct

A. Well, it was -- the plastic part was closed. Later, I have -- I can see another sealing tape that I put on when I photocopied this item. After I photocopied it, I sealed it again to show that it had been opened since the initial seizure.

Q. All right. Now, with respect to Exhibit 484, itself, will you please turn to that.

A. Yes.

Q. Now, can you tell us whether or not you can identify this document, 484.

A. Yes. I recognize it as subitem 2 from A14.

Q. When did you first examine or see this document?

A. I first --

Q. 484.

A. I first saw it when Ms. Thomas -- Mrs. Thomas gave it to me. I then saw it when I photocopied it, and then I've saw it now.

Q. All right. Is it in the same or substantially the same condition as it was when you saw it during the search of the Nichols' home?

A. It is other than the fact that it's obviously been processed for whatever tests were conducted. It's not the same color.

Q. All right. You recognize some laboratory smudging?

A. Exactly.

Mary Jasnowski - Direct

Q. Okay.

MR. RYAN: Your Honor, we would offer Exhibits 484 and 484 B.

MR. TRITICO: May I have just a few questions on voir=20 dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TRITICO.

BI MR. TRITICO:

Q. Good morning.

A. Good morning.

Q. 484B is the bag; is that correct?

A. That's correct.

Q. Did I understand you to say that the bag had been opened since you sealed it?

A. It has been opened -- well, it's opened now, yes.

Q. Obviously, it's opened now. I mean from the time that you sealed it until somebody at the lab opened it, it had been opened prior to that; is that correct?

A. No. I'm the last person to have opened it before the lab got it.

Q. But you don't know that, do you?

A. Well, I don't know that, no.

Q. As a matter of fact, several items after they were sealed were opened for photocopying -- excuse me -- outside of your presence; isn't that correct?

Mary Jasnowski - Voir Dire

A. Not that I'm aware of, no.

Q. Did you author a 302 or take part in authoring a 302 with respect to the search of the home?

A. Yes, I did.

Q. Have you reviewed that 302?

A. Yes, I have.

Q. And when you did that, did you find that several items had been opened for photocopying outside of your presence?

A. I photocopied those items.

Q. Were any other items photocopied?

A. Not that I'm aware of.

Q. Could have been?

A. I don't believe so, no.

Q. Could they have been?

A. I don't believe so.

MR. TRITICO: Okay. That's all I have on voir dire, your Honor.

I will object at this time to the introduction of both of these documents pursuant to Rules 402, 403 of the Federal Rules of Evidence and improper chain of custody at this time.

THE COURT: Well, I'm confused about what this exhibit is. I have a copy here that's a multiple-page exhibit. What does the witness have?

MR. RYAN: The witness has the multiple-page exhibit, your Honor, but it's in a plastic bag there.

Mary Jasnowski - Voir Dire

THE COURT: What are you offering?

MR. RYAN: The exhibit, 484.

THE COURT: And all of its pages.

MR. RYAN: Yes.

THE COURT: You better lay a better foundation than you have.

MR. RYAN: All right, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. RYAN:

Q. Ms. Jasnowski, did you open up Exhibit 484?

A. Yes.

Q. Did you examine all the contents?

A. Yes.

Q. Did you xerox all the contents?

A. Yes.

Q. And can you tell us today whether the contents here, Exhibit 484, is the document that you were provided by Ms. Thomas during the search of the Nichols' home and that you photocopied and placed back in the evidence bag?

A. I recognize it as such.

MR. RYAN: Your Honor, we would reurge our --

THE COURT: Well, I want to see the exhibit. Please give me the exhibit.

Okay. This is one of those situations where the Xerox copy doesn't show what the exhibit is just by the nature of it.

Mary Jasnowski - Direct

MR. RYAN: We apologize --

THE COURT: The objection is overruled. I'll receive the Exhibit 484.

MR. RYAN: We apologize, your Honor.

THE COURT: What was 484B? Did you offer that, too?

MR. RYAN: 484 and 484B, yes, your Honor.

THE COURT: What is B?

MR. RYAN: B is the plastic envelope in which it was contained.

THE COURT: All right. Received.

BY MR. RYAN:

Q. Now, if you would, please turn to Exhibit 572 and 572B. Do you have those exhibits before you?

A. Yes, I do.

Q. If you would, please, please first identify Exhibit 572B.

A. And this is the bag that -- 572 was initially given to me in. This was -- this time, the seizing person is JAT, who I recognize as Jerry Tucker, and I see my initials. And it -- it describes it on the bag as the Marion National Bank note pad.

Q. All right. Now, where was this Exhibit 572 obtained within the Nichols search? Where in the home?

A. It was Room A, which was the living room, from the tabletop, and it was given Item No. All.

Q. Meaning it was the 11th item taken from that particular room?

Mary Jasnowski - Direct

A. That's correct.

Q. All right. Now, in what condition was Exhibit 572B at the time that you received it?

A. Again, shall I look at 572? The same condition as now, except it's obvious that testing has been done on it because it's discolored.

Q. Now, let's turn to 572B. What condition was that exhibit in at the time you received it?

A. In substantially the same condition as it is now.

Q. Was the document -- the plastic bag sealed?

A. It was sealed again. The zipper top was closed.

Q. Was there any sealing tape over it?

A. At that time, I don't believe there was. There might have been. Again, I photocopied this item and I put another seal on top of it.

Q. Tell us about the seal that you placed on top of it.

A. After the -- at the conclusion of the photocopying, I put a seal on the top with the date and my initials.

Q. Do you see evidence of that?

A. Yes, I do. I see my initials and the date 4-24-95.

Q. All right. Now, tell the Court about your copying and Xerox copying of this Exhibit 572.

A. We were asked by the members of the Kansas City team to make photocopies of all the documents that we discovered. We removed those items from the other items of evidence and

Mary Jasnowski - Direct

photocopied those items, being careful to reseal them and keep them in our custody at all times.

Q. All right. So you examined each page of the Exhibit 572?

A. Yes, I did.

Q. Why don't you take the exhibit in your hand and review it -- take some deliberation here and review the exhibit and then answer the question, if you can, as to whether or not that is, in fact, the exhibit that was provided to you by Mr. Tucker from the search of the Nichols home.

A. Yes. It is.

MR. RYAN: Your Honor, we would offer Exhibits 572

and
572B.

MR. TRITICO: May we inspect?

THE COURT: Yes.

MR. JONES: Your Honor, may I go with Mr. Tritico?

THE COURT: Yes.

MR. TRITICO: May I have just a moment, Judge?

THE COURT: Yes.

MR. TRITICO: No objection.

THE COURT: All right. 572 -- and did you offer B?

MR. RYAN: Yes, your Honor. 572B.

THE COURT: Received.

MR. RYAN: May I retrieve those from the witness, your
Honor?

THE COURT: Yes.

Mary Jasnowski - Direct

MR. RYAN: Your Honor, we would offer Exhibits 572 and 572B.

MR. RYAN: Your Honor, may I publish to the jury Exhibit 484?

THE COURT: Yes.

BY MR. RYAN:

Q. Ms. Jasnowski, what are we looking at here?

A. We're looking at the Spotlight telephone calling card and the name is Darrell Bridges.

Q. And the address?

A. Oh --

Q. Can you read it?

A. I can't see it that clearly. Decker, Michigan. I see that, but I can't read the second line.

Q. See if you can read it now.

A. Oh, thank you. 3616 --

Q. That would probably help you.

A. -- North Van Dyke Road, Decker, Michigan, 48426.

Q. And this is the inside copy that I'm showing you.

A. Yes.

Q. Can you read the handwriting into the record.

A. On the left, or the right side?

Q. Well, the left. Start with the left.

A. It says, "Assist (800)576-8896. I can't read the first word. But Bower.

Q. Okay.

A. And then "(202)546-5611. Bill" -- I can't read that.

Mary Jasnowski - Direct

"Sapeda." And then "Paul," and I can't read that.

Q. All right. Now, if you can, try to read for us the writing to the right of that.

A. Okay. "World Call 2,000. Prepaid calling service. To place a call, No. 1, dial 1(800)793-3377 from any touch tone phone. No. 2, upon request, enter your private calling code.

(3) For domestic calls, dial 1 plus area code, plus phone number. No. 4, for an international call, dial 011 and country code and city code and local number. No. 5, for assistance or to recharge by VISA or MasterCard, dial 1(800)576-8522.

Private calling code 56757736577532. Amount 500" -- I believe it's 5, or it could be an 8. Dollars. "Assist (800)576-8896."

Q. Could that be a 50, instead of 500?

A. It's possible. I can't tell.

Q. All right. Now --

A. 50.

Q. There's some stubs in this document, as well, aren't there?

A. Yes, there are.

Q. All right. The first stub is before you on the screen there. Can you read into the record what is contained on the first stub.

A. On the first stub, it says, "Date, 17 February, '94. Check No." it says "MO" and "amount paid, \$50."

Q. And these are -- these are records of payment stubs, are they not?

Mary Jasnowski - Direct

A. That's what it's titled at the top, yes. "Your record of your payment."

Q. Then the next one?

A. 22 August, '94. Again, check number is MO; amount paid, \$50.

Q. Okay. Next?

A. 29 September '94. Check No. PMO and amount paid, \$30.

Q. The next stub?

A. 7 November, '94, Check No. 48878798016, amount paid, \$100.

Q. The next stub?

A. 21 January, '95, PMO, \$100.

Q. The next stub?

A. 14 February '95, PMO, \$100.

Q. Thank you.

MR. RYAN: Your Honor, may I publish Exhibit 572?

THE COURT: Yes.

BY MR. RYAN:

Q. Can you see that and are you able to read it from where you are?

A. Yes.

Q. Will you please tell us what is stated on the front of the Exhibit 572.

A. It's Marion National Bank, Marion Kansas, 66861; Phone No. (316)382-2109.

Q. I'm not going to go through every entry here, but I am

Mary Jasnowski - Direct

going to publish a few entries with you. What is the -- what is taped to the inside cover of the -- of this exhibit?

A. It -- it's an advertisement from a newspaper in the want ad section -- or classified section, I would say.

Q. Please read one of the contents of one of the pages into the record, please.

A. "Darrell Bridges. Assist 1(800)576-8896. 1(800)793-3377. 56757736577532.

Q. And do you -- do you recognize those as being the same numbers that we read out of the -- out of Exhibit 484, the Spotlight prepaid telephone card?

A. Yes.

Q. Now, did you have occasion to perform a further search in the house in which you came upon a license plate?

A. Yes.

Q. Would you please tell the jury about that.

A. The following day, we were sent back to the Nichols residence to -- to retrieve some items that had been left behind the night before.

Q. Tell us about the license plate.

A. It was located in -- I believe it was the south room of the garage, lying on one of the shelves in that area.

Q. All right. Would you please turn to Exhibit No. 85.

A. Yes.

Q. Do you see a copy of Exhibit 85 before you?

Mary Jasnowski - Direct

A. Yes.

Q. Can you identify that for us?

A. Yes. It's the -- the -- a photograph of that license plate. I believe this is in the garage at the Nichols residence.

Q. And how do you know this is the license plate that you saw during the Nichols search?

A. I recall it as the same.

Q. Do you recall the number?

A. Not specifically, but I know that there was a license plate in that room with -- from Michigan.

Q. Do you recognize this as a photograph of that license?

A. Yes, it is.

Q. Do you recognize the table that it's sitting on?

A. Yes, I do.

Q. And where was this table located?

A. In the garage located at the Nichols residence.

MR. RYAN: Your Honor, we would offer Exhibit No. 85.

MR. TRITICO: No objection.

THE COURT: 85 received.

MR. RYAN: May I publish, your Honor?

THE COURT: Yes.

BY MR. RYAN:

Q. Okay. Please indicate to the jury what we're looking at here in this exhibit.

Mary Jasnowski - Direct

A. This is a photograph of the license plate that was located in Mr. Nichols' garage.

Q. Please read into the record the contents of Exhibit 85.

A. It's a Michigan, WX1460. Expiration, I guess, Michigan, April of '95. Great Lakes.

Q. Thank you. Now, with respect to Exhibit 62, 62A and 62B, which we have not admitted into evidence -- but with respect to those exhibits, how did you maintain custody and control over those exhibits?

A. I kept those exhibits in my possession until I was given a safe to put them in, to which I only had access in; and I turned them over to Special Agent Burmeister.

Q. Were they in your exclusive custody and control at all times prior to turning the exhibits over to Burmeister and the other people from the FBI lab?

A. Yes, they were.

MR. RYAN: Excuse me just a moment, your Honor.

THE COURT: Yes.

MR. RYAN: If I could, before we close here, return

to

Exhibit 85. And the number again is WX1460.

THE WITNESS: Yes.

MR. RYAN: All right. Now I'd like to turn to another

exhibit that is in evidence, Exhibit No. 83, which is a receipt from the Starlight Motel. And with the Court's permission, I would like to publish it to the jury.

Mary Jasnowski - Direct

THE COURT: It's in evidence?

MR. RYAN: Yes, your Honor.

THE COURT: Okay. You may.

BY MR. RYAN:

Q. Now, there is a -- focus it in for you a little bit.

That's a little too much.

What is the name indicated on this registration card?

A. I believe it's Terry Havens or Haver. I can't -- it's not in focus.

Q. That didn't help.

How about that? Does that help you any?

A. Again, it's either Haver or Havens. Haven or Havers.

Q. Okay. Now, let's look at the car license of Mr. Havens.

Can you read what is written here on this exhibit?

A. Yes. It says WX1640.

Q. And how did -- how does that compare -- do you have a photocopy of --

A. Yes, I do.

Q. -- Exhibit 85? How do they compare?

A. It's the same number.

Q. I believe 85 says --

A. I'm sorry. It's not. It's transposed. It's 1640. The photo says 1460.

Q. But both of them say WX?

A. That's correct.

Mary Jasnowski - Direct

Q. Then the 4 and the 6 are transposed?

A. That's right.

Q. Yes. Mr. Hartzler called something to my attention. With respect to the -- can you see where it says the state of the license plate?

A. Yes. It's MI, for Michigan.

MR. RYAN: Thank you. No further questions, your Honor.

THE COURT: Mr. Tritico?

MR. TRITICO: Yes, your Honor.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good morning again.

A. Hi.

Q. My name is Christopher Tritico. You and I have never met before, have we?

A. No, we haven't.

Q. I've never had the privilege of sitting down and talking with you about what you've done with respect to the investigation into this case; is that right?

A. That's right.

A. That's right.

Q. Now, let me see if I understand how this process took place. You got the call to go and be the team leader -- is that what you recall -- for this search?

A. I was told to assist the Kansas City division.

Mary Jasnowski - Cross

Q. Okay. And you showed up on what day?

A. The 21st of April.

Q. And they told you to wait until the next day?

A. To come back the next day.

Q. You came back the next day and they told you to wait again?

A. That's right.

Q. And eventually, you were allowed to conduct the search of the home pursuant to the warrant; correct?

A. That's right. Yes.

Q. Were you in charge of this, or were you in charge of marshaling the evidence once it was gathered by the other agents? I'm confused.

A. My team was in charge of the -- the search; and as team leader, I would have been in charge of the whole thing.

Q. So you were in charge?

A. Right.

Q. And being the person in charge, are you the one who makes the decision as to when you begin the search and who goes in first and how these things are accomplished, or is that decided by someone else --

A. At the time, someone else told us when to enter the residence. That was made by another person. As to who went in first, it was a joint decision reached by myself and other members of my team.

Q. And the people who went in first -- the absolute first

Mary Jasnowski - Cross

people in were some people from Fort Riley, Kansas: Army people, bomb disposal, if you will, people; is that right?

A. That's -- that's correct.

Q. And they went in and they had on the bomb suits, the flak jacket, or whatever they call it, I don't know; but they had that on when they went in; right?

A. I didn't observe them.

Q. Oh. Were you present when they went in?

A. I was down the street in a vehicle, waiting.

Q. I see. And did you see them get ready to go in?

A. No, I didn't.

Q. Do you know if they wore the suits?

A. I do not know, no.

Q. If they did wear the suits, do you know if anybody took test samplings of the suits to see if they were contaminated with explosives residue?

A. I have no knowledge.

Q. Now, they went in and then eventually said that it was okay for you and the rest of your team to go in; is that right?

A. That's correct.
Q. Oh, by the way, do you know who the people were that were from Fort Riley, Kansas, who went in absolutely first?
A. I do not know their names, no.
Q. Are they listed in your 302?
A. No, they are not.

Mary Jasnowski - Cross

Q. Who would have those names?
A. I would imagine the agent -- there was an agent from Kansas City who was with them; and I would imagine that he had those names.
Q. And do you know who he was?
A. Yes. SA Mall.
Q. I'm sorry?
A. SA Mall.
Q. M-a-u-l?
A. M-a-l-l.
Q. M-a-l-l. And do you know his first name?
A. Edwin.
Q. Edwin?
A. Uh-huh.
Q. E-d-w-i-n?

A. Yes.
Q. And was SA Mall responsible for finding a team of people to go in and conduct this -- this search, the bomb disposal unit search?
A. I have no -- I don't know.
Q. And SA Mall works at the Kansas City division?
A. Yes, that's correct.
Q. Is he still stationed there; do you know?
A. I believe he is.
Q. Okay. Now, after you get approval to go in and begin the

Mary Jasnowski - Cross

search, how many agents searched this house total?
A. Total, there were the six from my team, of which four were agents. Are you talking only agents, or personnel?
Q. Right now, we're talking agents.
A. Four agents from Omaha, one agent from the lab, four agents from the Kansas City division, and then one agent from ATF.
Q. 12?
A. Approximately, yes.
Q. And there were others involved?
A. There were support personnel.
Q. And how many support personnel went into the home?
A. Two from Omaha and three from the lab.
Q. So we're up to about 17 people?
A. I would say so. Close to that, yes.
Q. Does that include you?
A. Yes.

Q. Anybody else?

A. Searching, no.

Q. How many other people went in there who were not searching?

A. We had some military officers who came to take possession of hazardous materials, and they entered the premises. And there was a military person who also entered the premises, but they did not do any searching.

Q. How many of the military personnel went in?

A. I believe there were three.

Mary Jasnowski - Cross

Q. So we're at about 20 now?

A. Right.

Q. Anybody else?

A. That's all.

Q. No local law enforcement involved?

A. No, they were not.

Q. Were they present?

A. They were on the scene outside of the -- the building down the street.

Q. Okay. They didn't -- they didn't come on the property, I take it?

A. They may have come on the property, but they did not enter the house or the garage.

Q. Okay. Now, when you went into the home to begin the search, you were not wearing a protective suit by the lab?

A. Yes, I was.

Q. You were?

A. Yes, I was.

Q. You weren't all wearing them, were you?

A. The first people who entered were all wearing suits.

Q. Every one?

A. Yes, we were.

Q. And after you went in and did that, did you take your suit off?

A. Yes, we did.

Mary Jasnowski - Cross

Q. How long did that part of the search last?

A. That lasted until roughly 7 p.m.

Q. And who is the photographer that was on present -- on scene for this?

A. Eugene Grindstaff.

Q. Grindstaff?

A. Grindstaff, yes.

Q. Okay. And the photographer is there to document what's going on and what you're doing; right?

A. Yes.

Q. Okay. Now, after the -- the initial team goes in, as I understand it, then the rest of you go in?

A. Yes.

Q. And are you all wearing gloves?

A. Yes, we are.

A. Yes, we are.

Q. And do you change gloves every time you touch a piece of evidence?

A. Not every time we touch a piece of evidence.

Q. And you don't know after you touch one piece of evidence what you're putting on another piece of evidence, do you?

A. No, we don't.

Q. Now, you take this 20 people, if I understand you correctly, and you all start in Room A, whatever that was. Everybody at once is in Room A?

A. No.

Mary Jasnowski - Cross

Q. Okay. You spread them out throughout the house?

A. Yes, I did.

Q. And you make the decision as to who goes where?

A. That's right.

Q. Some of the people who were searching in this search are not special agents of the Federal Bureau of Investigation; is that right?

A. That's correct.

Q. And they have not gone through the rigorous training that a special agent gets to learn how to follow the parameters of a search warrant when they are conducting a search, have they?

A. No, they haven't.

Q. And then these people, whomever they are, the agents or the nonagents, gather the items and they bring them to you; is that right?

A. That's correct.

Q. Where are you stationed in the home?

A. I'm moving from room to room, answering questions, assisting where I can.

Q. Oh, you're not in one central place?

A. No, I'm not.

Q. Okay. And as you're roving around the house, are you carrying all the items that they are seizing with you?

A. No. We're placing them in -- by room, I -- when I accept

the custody of it, we would either put them in a box or in a

Mary Jasnowski - Cross

general area for each room.

Q. Okay. Now, let's take the living room, just so we have a room to talk about for a moment. You've got however many agents -- you made the decision as to how many people go into each room; right?

A. Right.

Q. And you've got your agents in the living room, some agents, nonagents who are gathering the items up, they make the determination as to what they're going to pick up; right?

A. Well, if there were a question, they would ask me.

Q. Yes, ma'am. But they make the initial decision as to what they are going to get?

A. Right. Oh, absolutely, yes.
Q. Okay. And then they bring the stuff to you; is that right?
A. Yes.
Q. There's no intermediary; it's from them to you?
A. Yes.
Q. And then are you the person with the final authority to determine what is going to be seized on any -- from any given agent or nonagent?
A. Yes. Ultimately, yes.
Q. And are you the person with the sole responsibility of -- once they give it to you and you say, "Yeah, I'm going to keep that," are you the only -- only one who puts them in the bags and does the heat-sealing and melting and the sealing with the

Mary Jasnowski - Cross

evidence tape?
A. I'm the only one in this case who did that, yes.
Q. And what you want to do when you're doing these things, is (A) you want to have an accurate log of what you're -- what you're keeping; right?
A. That's right.
Q. And you want to make sure that you're getting everything sealed properly; right?
A. Yes.
Q. And you want to make sure everything is marked appropriately and properly; right?
A. Right.
Q. Now, one of the things that you found after you had conducted this search is that everything had been marked with the wrong case number; right?
A. That's correct.
Q. And you had to go back and redo it?
A. I didn't redo it.
Q. Oh, you didn't. Okay. So everything is still marked with the wrong case number?
A. Right.
Q. And this was somebody else's case; right?
A. Well, it was the Oklahoma City case.
Q. I see. And you also found that some of the items that you -- individual items you had seized had been marked with the

Mary Jasnowski - Cross

wrong numbers; right? 1A, 1B, whatever the room number was; right? Did you have that problem?
A. I don't believe so, no. But there may have been misspellings or mis -- nothing that was misidentified.
Q. There was at least one occasion -- you seized some cash, did you not?
A. Yes.
Q. There was at least one occasion that some of that currency was inadvertently described as having been -- I'm sorry -- inadvertently described as having been located in a particular

place when it was located somewhere else, you determined?

A. Right.

Q. How many times did that happen?

A. That was just the one occasion.

Q. That you're aware of?

A. Yes.

Q. Okay. In reading your 302, I note that you had somebody there by the name of Steven Jones; is that right?

A. Steven Jones. I can't recall him right now. May I refresh my recollection?

Q. That's okay. It's really not that important. Thank you.

Now, after you seized the items -- after you accepted custody of the items and sealed them up, put them in the bag, melted the plastic and all of that, did you personally take it and put it on the Army truck?

Mary Jasnowski - Cross

A. You're talking about two different kinds of evidence. The money, the valuable evidence which was heat-sealed, I did not put that money on the truck. It stayed with me.

Q. I see.

A. The other evidence, I either did it myself or directed people to do it.

Q. To put it on the truck?

A. Yes.

Q. This was a truck from Fort Riley, Kansas?

A. Yes, it was.

Q. Did you -- did you direct anybody to take control swabs of the truck prior to placing the evidence on it to determine --

A. No.

Q. -- if it had any explosives residue?

A. No, I didn't.

Q. It wasn't done?

A. I don't know. I don't believe so.

Q. Now, the barrels that you talked about, you talked about the -- the blue ring.

A. Yes.

Q. That is literally just a ring that goes around the top? It's a barrel with the top off; right?

A. Right.

Q. The ring is just a piece that fits on the top?

A. Yes.

Mary Jasnowski - Cross

Q. And the top is sealed all the way across the top, and it's only got one hole in it to fill it up or pour it out; right?

A. One large hole.

Q. A couple inches around?

A. I don't know what you mean.

Q. The hole is a couple inches around?

A. The hole --

Q. The opening in the top?

A. In the top?
Q. Okay.
A. Of the barrel?
Q. Right.
A. They are very large-opening barrels.
Q. Was there a top on the barrel?
A. No, there wasn't.
Q. No tops on the barrel at all that you seized?
A. No.
Q. Did you see any barrels with tops on them?
A. There were buckets. There were not barrels.
Q. Okay. Did you see any tops for the barrels other than the ring?
A. No, I did not.
Q. And the ring did not go all the way across the top; it just went around the side?
A. It just went around the side.

Mary Jasnowski - Cross

MR. TRITICO: May I have just a moment, Judge?

THE COURT: Yes.

BY MR. TRITICO:

Q. I want to clear -- clear just one matter up. After -- the initial team goes in and you say they were all wearing the -- talking about you being the initial team?
A. Yes. Yes.
Q. Wearing the lab suits, whatever they are called. Do you know what those are called?
A. Tyveks or something like that.
Q. Okay. How long did that last?
A. It lasted from approximately 5:30 until 7.
Q. Hour and a half?
A. Yes.
Q. We're talking morning or evening?
A. Afternoon.
Q. Okay. And then everybody takes them off once somebody gives the okay, let's take these off?
A. Right.
Q. And did you handle -- you handled evidence after that; right?
A. Yes.
Q. After that, after you take the suits off?
A. Yes.
Q. How many people were on this initial team that were wearing

Mary Jasnowski - Cross

the -- the suit?

A. Well, Mr. -- Special Agent Burmeister, Ron Kelly, Gene Grindstaff, Sonya Hernandez and myself.

MR. TRITICO: Okay. Thank you, ma'am.

I pass the witness.

THE COURT: Mr. Ryan, do you have any follow-up?

THE COURT: Mr. Ryan, do you have any follow up.

MR. RYAN: Just a couple, your Honor.

THE COURT: Right.

REDIRECT EXAMINATION

BY MR. RYAN:

Q. Do you see this studious man up with here with his face up against the side of his head -- with his hand up against the side of his head?

A. Yes, I do.

Q. He wasn't around anywhere during the Nichols' search, was he?

A. No, sir, he was not.

Q. Mr. Tritico established it was real crowded in Mr. Nichols' house?

A. Yes.

Q. And it was; right?

A. Yes, it was.

Q. Do you know how cash was found in the house?

A. We found approximately \$5,200 in currency, and then there were the gold -- the coins.

Mary Jasnowski - Redirect

Q. Now, there was some discussion about some numbers that were fouled up and whatnot. I'm only interested in five things.

Okay. Is there any problem with the barrels?

A. No problem.

Q. Any problems with the Michigan license plate?

A. No problems.

Q. Any problems with this pink slip with the coins?

A. No.

Q. Any problem with the Marion Bank note pad?

A. No, there were not.

Q. Any problem with the Spotlight credit card?

A. No, no problem.

MR. RYAN: That's all, your Honor.

MR. TRITICO: I just have one or two.

THE COURT: All right.

REXCROSS-EXAMINATION

BY MR. TRITICO:

Q. I'm not going to ask you about Mr. Jones.

There's no problems that you're aware of; right?

A. No.

Q. Okay. But you don't know if something happened later on; right?

A. That's correct.

MR. TRITICO: Thank you. I'll pass the witness.

THE COURT: All right.

Is she going to be back?

MR. RYAN: We've done everything we need to do with her, your Honor.

MR. TRITICO: No, Judge.

THE COURT: All right. You may step down. You're excused.

We'll take our morning recess now. Members of the jury, of course, as with all these recesses, please continue to

keep open minds, avoiding discussion about anything relating to the case, recognizing that sometimes evidence comes in, you know, and is not apparently -- not apparent to you what it means; and of course, you have to wait until you hear it all to determine what, if anything, any of the evidence means. So please continue to follow these cautions.

You're excused now. 20 minutes.

(Jury out at 10:26 a.m.)

THE COURT: Recess, 20 minutes.

(Recess at 10:26 a.m.)

(Reconvened at 10:46 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:47 a.m.)

THE COURT: All right. Next witness, please.

MR. HARTZLER: The Government calls Brett Mills.

Ms. Wilkinson will question him.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Brett Mills affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

THE WITNESS: Yes, ma'am.

THE COURTROOM DEPUTY: Would you state your full name for the record and spell your last name.

THE WITNESS: My name is Brett, B-R-E-T-T; Ashley, A-S-H-L-E-Y; Mills, M-I-L-L-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Ms. Wilkinson.

MS. WILKINSON: Thank you your Honor.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Mills. How are you doing?

A. I'm fine.

Q. Could you tell us where you work?

A. I work in the FBI laboratory at FBI headquarters.

Q. How long have you worked with the FBI?

A. Approximately eight years.

Q. Have you worked in the laboratory your entire time?

A. All except the first nine months, yes.

Q. What did you do during your first nine months with the FBI?

A. I worked in the mail room.

Q. I'm sorry. I didn't hear you.

A. I worked in the mail room.

Brett Mills - Direct

Q. Where were you first assigned at the FBI laboratory?

A. The Firearms/Tool Mark Unit.

Q. How long did you stay there?

A. Approximately a year and a half.

Q. What did you do at the Firearms and Tool Marks Unit at that time?

A. I was a physical science technician.

Q. Could you tell us just briefly about the education you had before you joined the FBI?

A. I have a bachelor's of science in biology from Towson State

University.

Q. Now, did you use some of that education in your job as a physical evidence technician?

A. Not so much biology but scientific analysis, yes.

Q. How long did you stay in the Firearms and Tool Marks Unit at that time?

A. Approximately a year and a half.

Q. And where did you go next?

A. The Explosive Unit.

Q. And how long were you in the Explosives Unit?

A. Approximately four years.

Q. And can you tell the jury a little bit about what the Explosive Unit does at the FBI laboratory?

A. The Explosives Unit will gather in materials from either bombings or before a bombing and we will try and identify the

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component parts of it, whether batteries, if it's a pipe bomb, just the materials that can make up the composition of the bomb itself.

Q. Now, does the Explosives Unit examine evidence for chemical or explosive residue?

A. No, ma'am.

Q. Who does that?

A. Chemistry toxicology.

Q. And where is the Chemistry Toxicology Unit located in connection or in reference to the Explosives Unit?

A. It's on the other side of the building.

Q. Now, what were your duties and responsibilities when you were assigned to the Explosives Unit?

A. As a physical science technician?

Q. That was your title?

A. Yes, ma'am.

Q. Yes. Tell us what you did.

A. As a physical science technician, when evidence would come in from the field or the contributor, depending on the agency, I would read the incoming, inventory all the items that were in the box itself, make sure everything matched up. Then I would give it an identifier number that we used in the laboratory.

After it was checked in, I made up my worksheet; and with the worksheet, I would go ahead and get what we refer to as an auxiliary examiner, who will perform other types of exams

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besides what the Explosives Unit would do. And after the worksheet was created and I had my list of things -- of auxiliary examiners, I would then parcel out the evidence.

Q. Let's go back and define some of the terms you used. You said when you first get evidence in, you review the incoming. Is that right?

A. Yes, ma'am.

Q. What is the incoming?

A. It's a letter of communication. Depending -- sometimes it

A. It's a letter of communication. Depending -- sometimes it lists the crime that was or took place; but mostly it lists an inventory of the evidence that they're sending in and the request of the evidence, whether it be for hair and fibers, explosive, etc.

Q. Do you sometimes see the evidence recovery log that's created at the scene?

A. Yes, ma'am.

Q. And that defines for you what items you're supposed to be receiving in that shipment; is that right?

A. Yes, ma'am.

Q. Now, once you review that list, do you compare it to the evidence that's in the boxes that you've received?

A. As we're checking it in, yes, ma'am.

Q. And what do you try to determine?

A. Make sure that the description that is on the evidence recovery log is accurate with the evidence that we're actually

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receiving.

Q. Okay. Now, tell us how you handle this evidence when it comes into your unit?

A. At what -- which point?

Q. When you're trying to take it out to examine it to see if it's the same evidence that's listed on the evidence recovery log.

A. I'm not really -- are you talking about the actual procedure?

Q. Yes.

A. Okay. When we receive a case and we have a -- I had a bench-top area. I would clean my bench-top area with a cleaning solution; and then I would go across the hall and get what we would call butcher paper -- it's a brown craft paper -- and we would lay that out.

Then we would set the box on top of it, open the box up, read our incoming communication and start itemizing the list as we're pulling them out.

Once we've made sure that all the items are there, we'll go ahead and we'll put our identifier number on there itself.

Q. Now, do you wear gloves when you're doing this?

A. Yes, ma'am.

Q. And when you take the evidence out of the boxes that you've received from the field, are they oftentimes contained in

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plastic bags or other containers?

A. Yes, ma'am.

Q. And if they're not, what do you do with them?

A. We'll go ahead and put them into a container. Usually is a plastic bag.

Q. Let's talk about an example where you have a piece of evidence that comes in and it's already marked and sealed in a

plastic bag.

A. If it comes into the bag itself and it's in a Ziploc bag or a clear envelope that we can actually see it, if we're not performing any examinations at that moment, it has to go to other units, then we'll leave it inside of that bag. We can still identify the item that is inside this bag, so we will keep it sealed.

Q. So you don't open the bag unless your unit is going to do an examination; is that correct?

A. Or we cannot see into the bag, yes.

Q. And are those bags usually marked with numbers from the field that give some kind of identifying information?

A. Relevant to the field, yes.

Q. Okay. And then you said you create another identifying number. Is that right?

A. Yes, ma'am.

Q. What's that number called?

A. We have a Q/K system. A Q is what we refer to as a

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questioned item. We don't know what it is. A K item is what we refer to as a known item. Usually that would consist of known handwriting from someone, a firearm, or a tool of some type.

Q. But you put a Q number on there if you're going to do an examination to determine something about the item. Is that right?

A. Yes, Q or K.

Q. Now, how long did you stay in the Explosives Unit doing this type of work?

A. Approximately four years. Approximately four years.

Q. And from what year to what year were you assigned there?

A. September, '91 until August of '95.

Q. So you were assigned there in April, 1995, during the -- right after the bombing?

A. Yes, ma'am.

Q. In Oklahoma City?

Where were you transferred to after serving your time in the Explosives Unit?

A. I transferred back to the Firearms/Tool Marks Unit.

Q. Is that where you're currently assigned?

A. Yes, ma'am.

Q. What are your duties and responsibilities there today?

A. I'm an examiner trainee as a firearms/tool-marks examiner.

Q. What does that mean?

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A. I'm trying to become qualified as an expert in the field of firearms and tool-marks identification.

Q. And how long have you been undergoing the training to qualify as an examiner?

A. Approximately a year and a half.

Q. And what types of things do you do to get qualified as an examiner?

A. Well, I train under other qualified examiners in my unit. I go on factory tours of -- well, firearms manufacturers, tool manufacturers, and ammunition manufacturers. I read literature and I work test cases and have them reviewed by qualified examiners, and then I'll go through a series of oral boards and moot courts.

Q. So you're no longer performing your physical evidence technician duties?

A. No, ma'am.

Q. Let's go back to the time you were, on April 19, 1995.

A. Yes, ma'am.

Q. Where were you on the day of the bombing?

A. I was home.

Q. Why were you home?

A. I was sick. I was on sick leave.

Q. Did you come into work the next day?

A. Yes, ma'am.

Q. And did you receive an assignment in connection with the

Brett Mills - Direct

Oklahoma City bombing investigation?

A. Yes, ma'am. I'd be the technician handling the evidence coming in.

Q. And what did that mean? What were you responsible for doing?

A. All the evidence that would come in from any crime scene, search scene, would come through my unit first. I would assign it the numbers, check it in, inventory it and then parcel it out to any other examiners who had to perform their work.

Q. Were you the person along with others in your unit who created the laboratory worksheet that you described for us that was the Q numbers and the description of the evidence?

A. Yes, ma'am.

Q. Because of the nature of the Oklahoma City bombing investigation, were you the only one responsible for logging in evidence?

A. No, ma'am.

Q. Tell us about that.

A. There were other technicians who helped me out at the time, because there was such a large volume of evidence, and we had to keep getting the evidence processed in a timely manner. They actually gave me a couple people to help me out.

Q. Let's turn to May 9, 1995. Were you in the unit that day?

A. Yes, ma'am.

Q. Were you working by yourself, or were you with others?

Brett Mills - Direct

A. I was with others.

Q. Who were you with?

A. Michael Fanning.

Q. What is Michael Fanning's

Q. Who is Michael Fanning?

A. He is another physical science technician in the Explosives Unit.

Q. And how was he assisting you?

A. On May 9, I'm not positive. He could have been helping me, you know, check in evidence or anything like that.

Q. Well, can you tell us generally the procedures you would follow with him when you worked together on cataloguing and logging in evidence?

A. Normally if we got in a case that had a large number of specimens or items, one of us would go ahead and write the information down on the bag while the other one would go ahead and type up the worksheet and do the comparison of the worksheet with the items in the bag itself.

Q. Okay. I want to turn your attention to May 18 of 1995.

A. Yes, ma'am.

Q. Do you recall that day?

A. Yes, ma'am.

Q. Were you checking in evidence from the Oklahoma City bombing investigation on that day?

A. Yes, ma'am.

MS. WILKINSON: Your Honor, may I approach?

Brett Mills - Direct

THE COURT: Yes.

BY MS. WILKINSON:

Q. Mr. Mills, I'm showing you a group exhibit which has been marked Government's Exhibit 151, which has been introduced into evidence. Do you see that?

A. Yes, ma'am.

Q. And do you also see the plastic bag, clear plastic bag?

A. Yes, ma'am.

Q. Do you recognize that bag?

A. Yes, ma'am.

Q. Do you recognize the handwriting on that bag?

A. Yes, ma'am.

Q. And is there a Q number on that bag?

A. Yes, ma'am.

Q. Did you place that Q number on that bag?

A. Yes, ma'am.

Q. Can you determine, is it hard to read?

A. Yes, ma'am. It's faded out in some spots.

Q. Can you tell the ladies and gentlemen of the jury what Q number you placed on that bag?

A. Q2898.

Q. What was contained in that bag?

A. This Makita drill box.

Q. That's Government's Exhibit 151?

A. Yes, ma'am.

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Q. And did you mark the items in there with the same Q number?

A. Individually?

... individually.

Q. Was the box marked with that same Q number?

A. The box itself, no, ma'am. The box was placed inside the Ziploc bag.

Q. And why was it that you marked the bag and not the box?

A. There were just so many items of it, we just went ahead and put it in the Ziploc bag.

Q. Do you keep that Ziploc bag with the toolbox at all times?

A. Yes, ma'am.

Q. Could you open up the box, please, and determine whether the items that you saw in Government's Exhibit 151 on May 18 are all contained in that box today.

A. Yes, ma'am.

Q. On May 18, 1995, when you were checking in this piece of evidence, did you inspect it as you inspected it here today?

A. Yes, ma'am.

Q. All right. Could you turn to the yellow case. I think you have it open.

A. Yes, ma'am. This one here?

Q. Tell the jury what that is.

A. It's a set of drills bits, ranging in size from 1/16 to 11/64.

Q. And was that box filled with drill bits when you examined it on May 18, 1995?

Brett Mills - Direct

A. Yes, ma'am.

Q. Is there now one missing from there?

A. Yes, ma'am.

Q. Can you locate Government's Exhibit 151B.

A. That's this one here.

Q. Okay. What's in that?

A. It's a quarter-inch drill bit.

Q. Do you recognize the bag?

A. No. I did not mark this bag.

Q. Do you recognize the Q number?

A. Yes, ma'am.

Q. Does it have the same Q number that you've assigned to the entire exhibit?

A. Yes, ma'am.

Q. What Q number is that?

A. It's from Q2898.

Q. Okay. Can you -- have you examined the drill bit prior to coming to court today?

A. Yes, ma'am.

Q. And have you determined what size drill bit that is?

A. It's a quarter-inch.

Q. Now, can you look back into the drill bit box?

A. Yes, ma'am.

Q. And describe for the jury which bit is missing from that box.

Brett Mills - Direct

A. The quarter-inch.

Q. And have you also compared the types -- have you compared the types of metal from that drill bit with the rest of the drill bits in that box?

A. Yes, ma'am.

MS. WILKINSON: The Government offers 151B, your Honor.

MR. JONES: Object on the same basis, Rule 402 and 403 Federal Rules of Evidence, your Honor.

THE COURT: Overruled. 151B is received.

BY MS. WILKINSON:

Q. Now, is it your practice, Mr. Mills, when you get a group exhibit like that to mark any items that are contained in that with the same Q number or Q number plus a letter designator?

A. A letter designator, normally you'll just identify the entire box and give a description of it. If -- I believe in this case, anything is added to it, you will give it an alphanumeric character, so it will be a subletter of that Q.

Q. Now, were these items in Government's Exhibit 151, 151A, B and C, sent to other examiners in the laboratory for testing?

A. Yes, ma'am.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Mr. Jones?

CROSS-EXAMINATION

BY MR. JONES:

Brett Mills - Cross

Q. Mr. Mills, on April of 1995, which division were you working in in the lab?

A. Division 7.

Q. And what division is that?

A. That's the laboratory division.

Q. Well, I understand you work in the laboratory division; but I mean were you working Explosives Unit at that time?

A. Yes, sir.

Q. All right. Now, this drill that's been identified and admitted, 151 -- that doesn't have anything to do with the Explosives Unit, does it?

A. No, sir.

Q. So this -- these answers that you gave in response to questions that Ms. Wilkinson asked you had to do with your work in the Explosives Unit; is that correct?

A. I'm not following you on that.

Q. Well, in the beginning, Ms. Wilkinson asked you a series of questions; and you responded about how you clean your desk and you put brown paper down and you initial things. Now, were you describing what you were doing in the Explosives Unit lab, or some other unit?

A. That's my practice whether I'm in the Firearms Unit or in the Explosives Unit.

Q. All right. So you weren't specifically describing to the exclusion of others what you did in the Explosives Unit; is

Brett Mills - Cross

that correct?

A. If you're saying am I -- do I just clean in the Explosives Unit?

Q. No. I'm asking you -- you remember the questions that she asked you and the answers that you gave.

A. Yes, sir.

Q. Before Exhibit 151 was identified by yourself.

A. Yes, sir.

Q. All right. Now, my question is were your answers to her questions then describing what you do generally, or describing what you did in the Explosives Unit, or both?

A. I'm assuming generally -- I mean which specific question are you asking about? I mean, when I was cleaning my countertop and everything? That would be in the Explosives Unit. I haven't actually become an examiner in the Firearms Unit.

Q. All right. Now, the work, though, with the drill doesn't have anything to do with the Explosives Unit; isn't that correct?

A. That's correct, yes, sir.

Q. So when you got the drill, you had been sent down to do what? What area were you working in then?

A. I was still in the Explosives Unit, but we were administrating the evidence as it was coming.

Q. All right. So you had been detailed down to look at the

Brett Mills - Cross

evidence as it came in?

A. And check it in, yes, sir.

Q. Whether explosives or not.

A. Yes, sir.

Q. All right. Now, you indicated that you had taken certain courses and that you were trying to be qualified and that you took visits to various factory sites and examined various items at the laboratory and assisted other examiners, and then you said something about moot court.

A. Yes, sir.

Q. What is moot court?

A. Moot court -- I haven't actually attended one yet, but I will in my training -- I will receive a case, and then I will work it and process it; and then my peers from my unit and from other units can come in and act as prosecution and defense.

Q. So it's a kind of a mock trial?

A. Yes, sir.

Q. In which you learn how to respond to questions asked of you in court?

A. Yes, sir.

Q. And is that something that all special agents of the FBI go through?

A. It's not just limited to special agents. It's all the examiners in the lab, yes, sir.

Q. All right. So special agents and examiners in the lab?

Brett Mills - Cross

A. Yes, sir.

Q. And have you ever been to one of these moot courts before today?

A. A moot court?

Q. Yes, sir.

A. I've been to two moot courts, yes, sir.

Q. And that's when you did work in other areas? In other units?

A. Are you asking if I personally --

Q. Yes, sir.

A. Okay. No, sir. I've never personally had a moot court. I've attended moot courts.

Q. So you sat there as an observer?

A. Yes, sir.

Q. And watched others, so to speak, go through the baptism by fire?

A. Yes, sir.

Q. Would that be a correct statement?

All right. Now, what is the purpose of the moot court?

A. To show that you're qualified and can accurately present your opinion in a professional manner.

Q. On behalf of the FBI and the case that's involved. Is that correct?

A. No, sir. We can testify for the defense or the

Brett Mills - Cross

prosecution.

Q. Well, have you ever testified for the defense?

A. I've never testified.

Q. Well, welcome to the club.

Now, this drill that you've got there, Exhibit 151: Did you check to see if there is a battery in there?

A. Yes, sir. That's what I was looking at in the bottom of the box.

Q. And is there a battery?

A. Yes, sir.

Q. And can you tell how old the battery is?

A. No, sir.

Q. I don't believe -- oh, I do have a couple of other questions here.

The gloves that you testified that you put on --

A. Yes, sir.

Q. Now, do you change gloves when you go from item to item?

A. Depends on the situation.

Q. What varies?

A. Normally, if it's one large box and items are all inside of it, I don't change my gloves. But if it was in an individual paint can, then yes, I would go from glove to glove.

Q. I'm sorry. You said if it was in an individual paint can?

A. Yes, sir.
Q. What is that?

Brett Mills - Cross

A. Just a regular paint can that usually samples are sent into.
Q. That's what the FBI uses to send samples?
A. Sometimes, yes, sir.
Q. All right. And what type of samples might be sent in a paint can?
A. It could be debris from a bombing. That's usually the only time -- or an arson case. I have seen a couple of those.
Q. All right. So what is the procedure with respect to the gloves when you receive something in a paint can?
A. The procedure that I use is that I will use -- put on my gloves, I will check the material in, make sure it verifies with my inventory, seal the paint can back up, change my gloves, and go to the next paint can.
Q. All right. And then in a box -- is there usually more than one item in a box?
A. It depends. Depends on what's in there. But yes, it's possible.
Q. So what is your usual practice and procedure, say, if you get four boxes in a given case on a given morning? What do you do with respect to changing gloves or wearing gloves?
A. I'll change the gloves from box to box.
Q. All right. Now, did you maintain all of the torn or ripped packages that this material came in with respect to the Oklahoma City bombing investigation?

Brett Mills - Cross

A. Which torn packages are you referring to?
Q. Well, the boxes that the material came in. If it came in an envelope, or, as you said, a paint can, were those kept in some place, or were they discarded?
A. No, sir. We kept all the original wrappings.
Q. I'm sorry. You kept all the original what?
A. All the original paper or boxes.
Q. The boxes and all of that. And those are at the lab today?
A. No, sir. I don't know where they are.
Q. Now, do you know how many people had handled an exhibit before you received it?
A. No, sir.
Q. And do you know how many handled it afterwards?
A. Not off the top of my head, no, sir.
Q. And do you know at what point, at any point, control samples might have been taken of what you were looking at, if it was in the nature of an explosive residue?
A. No, sir, I have no knowledge of residues.
Q. Now, I noticed in looking at some of this material -- did you ever write down Mr. Dave Williams' initials on any bags?
A. Yes, sir.

Q. And why would you do that?

A. That was the way I was trained. I would write out the lab number or Q number, our identifier; and then I would put DW, which are his initials, after the Q.

Brett Mills - Cross

Q. Why would you write his initials instead of yourself?

A. That was the way I was trained. I was trained to put his initials afterwards.

Q. Do you know the reason for that?

A. No, sir, I do not.

Q. All right. Now, in the bag or box when you might receive -- we'll just say objects, these objects -- how are they packaged in the box generally?

A. It can vary from box to box. Can you give me more of a specific --

Q. Sure. What types have you seen?

A. I've seen materials come in Ziploc bags. I've seen them come in just regular grocery sacks or brown paper bags that have been created for evidence recovery, manila envelopes.

Q. Now, grocery sacks wouldn't be -- those wouldn't be manufactured specifically for evidence recovery, would they?

A. Oh, no. But what I'm trying to say is you have the brown paper bag you normally see as a grocery sack and someone has actually printed an evidence symbol up there. That's what I meant by that. Accordion envelopes, paint cans, and boxes.

Q. All right. And what is the usual protocol on whether more than one object may be placed in a bag or a Ziploc container?

A. I don't know. I don't know how the field -- I don't know the field procedures or anything.

Q. All right. One final question, Mr. Mills: Having

Brett Mills - Cross

testified here today and being questioned by both the defense and the prosecution, does this excuse you from the moot court requirement?

A. No, sir.

MR. JONES: Nothing further. Thank you, sir.

THE COURT: Ms. Wilkinson, any other questions?

MS. WILKINSON: No, your Honor. We would like to

keep

this witness on call, though.

THE COURT: All right. You may step down now.

THE WITNESS: Do I do anything with this?

THE COURT: Leave it right there.

THE WITNESS: Thank you, sir.

THE COURT: Next witness?

MR. HARTZLER: The Government calls James Cadigan.

THE COURTROOM DEPUTY: Raise your right hand, please.

(James Cadigan affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and

spell your last name

spell your last name.

THE WITNESS: James J. Cadigan, C-A-D-I-G-A-N.

THE COURTROOM DEPUTY: Thank you.

MR. HARTZLER: Pardon me, your Honor. We'll be using this exhibit with that witness. Thank you.

DIRECT EXAMINATION

BY MR. HARTZLER:

James Cadigan - Direct

Q. Mr. Cadigan, where are you employed?

A. I'm a special agent of the Federal Bureau of Investigation, and I'm currently assigned to the Firearms and Tool Marks Unit of the FBI laboratory.

Q. What are your responsibilities?

A. As a member of the Firearms and Tool Marks Unit, I have three areas of responsibility. One is serial number restoration, one is firearms identification, and one is tool-mark identification.

Q. How long have you been employed as a tool-marks examiner, qualified as a tool-marks examiner for the FBI?

A. 20 years.

Q. Can you tell the Court and ladies and gentlemen of the jury what a tool-mark comparison is?

A. Tool-mark comparison or tool-mark identification deals with the comparison of a mark left at the scene of a crime with a particular tool. For instance, in a burglary in which a crowbar is used to pry open a window, tool-mark comparison would be looking at the mark on the windowsill and comparing that with marks made by a known crowbar to determine whether or not the mark left on the window sill during the burglary was produced by a particular tool to the exclusion of any other tool produced.

Q. Did you conduct a tool-mark comparison for this case?

A. Yes, sir, I did.

James Cadigan - Direct

Q. And did it involve a padlock and a drill bit?

A. Yes, it did.

Q. How long -- give us an idea of your educational background, if you would.

A. I have bachelor of science degree in chemistry from the University of Maryland in College Park.

Q. What year did you graduate?

A. 1971.

Q. And what year did you join the FBI?

A. 1971.

Q. When did you become a tool-mark examiner?

A. I was assigned to the laboratory in January of 1976, and I was qualified as a tool-mark examiner in January of 1977.

Q. What type of training is necessary to become a tool-mark examiner?

A. Upon my assignment to the Firearms Unit, I underwent a long and extensive training program that included reading literature

in the field of tool-mark identification, visits to manufacturing plants, so that I could view firsthand the manufacturing processes that go into the production of tools and subsequently be familiar with the marks that those tools leave when they are used.

And also, my training included on-the-job training, which included thousands of examinations.

Q. How long was this period of training?

James Cadigan - Direct

A. One year.

Q. I don't mean to sound like I'm advertising for the FBI, but you got paid for all this?

A. Yes, sir.

Q. So you were basically trained by the FBI to do work in the FBI lab?

A. Right. As a member of the Firearms Unit, I examined evidence submitted in cases -- state, federal, and local cases.

Q. So your work extends beyond federal prosecutions?

A. Yes, sir.

Q. And during that training period, do you examine actual cases?

A. Yes.

Q. Real crimes?

A. Yes, sir.

Q. And can you testify in court during the training period?

A. No, sir.

Q. We've heard some testimony moments ago before you took the witness stand about a moot court process.

A. Yes, sir.

Q. Are you familiar with that process?

A. Yes, I am.

Q. Can you -- and did you go through that process?

A. Yes, I did.

Q. When was that?

James Cadigan - Direct

A. November, January -- November, December, and January -- November and December of 1976 and January of 1977.

Q. So more than 20 years ago?

A. Yes, sir.

Q. And the same technique and process is in place today?

A. Yes, sir, essentially.

Q. What's the purpose of that moot court process?

A. The purpose of the moot court process is to ensure two things: (1) an examiner is given a case in which he does not know the results. He is asked to examine the case and then present his findings, and the purpose of the moot court process is to ensure that he does correctly examine the evidence and also that he effectively presents it.

Q. I take it that the other participants know the correct

result, or know how the tool mark was produced?

A. Yes, sir, they do.

Q. And who conducts these moot court tests?

A. The unit chief of the particular unit -- in our case, the Firearms Unit -- and all of the other qualified examiners in the unit at the particular time.

Q. What do you have to do to pass the moot court test?

A. Well, you have to correctly examine and come to the correct conclusions concerning the evidence that you are given in your test cases and then in the judgment of the qualified examiners, you present the evidence, show that you have the knowledge --

James Cadigan - Direct

the required knowledge of a member of the unit, and you have to in their judgment be qualified to be able to testify.

Q. Majority rule?

A. No, unanimously.

Q. Have you taken any proficiency tests since you passed your moot court testing 20 years ago?

A. Yes, sir.

Q. Please explain that.

A. As part of the quality assurance program that is in place in the FBI laboratory now, each examiner in each unit is given a proficiency test, at least two a year; and he does not know the results. He examines the particular case, the evidence, and then presents his findings.

Q. What's the nature of those tests; that is, a written, oral examination?

A. Well, it is just as if it was a normal case. The examiner is given items of evidence, also documentation with requests listed on the documentation; and then he examines it and then issues a dictation.

Q. Now that you've been qualified as a tool-mark examiner for more than 20 years, do you do testing of others?

A. Yes, sir. I'm currently involved in the testing of the two examiners in our unit who are going through the qualification process.

Q. And do you participate in the testing or the training of

James Cadigan - Direct

them?

A. The training of them, yes, sir.

Q. Is one of those Brett Mills, the man who we just met in here?

A. Yes, sir, it is.

Q. He's undergoing the training that you underwent 20 years ago?

A. Yes.

Q. Approximately how many tool-mark comparisons have you done in your career?

A. I would say thousands.

Q. And how many times have you testified in court?

A. Approximately 250 times.

Q. Always as a tool-mark or ballistics examiner?

A. In 250 times, in the three areas which I mentioned, serial number restoration, tool-mark identification and firearms identification.

Q. You were using an example a moment ago to explain to us tool-mark comparison, and your example, I think, was a window-sill.

A. Yes, sir.

Q. Can you give us a little more detail and explain how it is that you extract from the windowsill the tool mark?

A. Well, in my example in which I used a windowsill, in order to conduct a comparison of a mark left on a windowsill, the

James Cadigan - Direct

department that is investigating the case can either cut out the piece of windowsill and submit it directly to the laboratory -- that's the most -- the best process to do -- or the individuals that are at the scene of the crime or part of the crime-scene team can make a cast of the marks that are contained on the windowsill and then submit that cast to the laboratory, along with the suspect tool, so that the tool-mark examiner can compare the marks on that cast with marks that the examiner would make with the particular crowbar. If -- in the first case, where the windowsill is actually submitted, the examiner has the choice of either taking a cast and then comparing that, or actually taking test impressions with a -- or test marks with the crowbar and comparing those to the marks that are present in the windowsill.

Q. And if the suspect tool, as you referred to -- is that using the right phrase? Suspect tool?

A. Yes, sir.

Q. If the suspect tool has no unique characteristics, how could you do a comparison that would result in an identification?

A. Well, if it had no unique characteristics, the examiner could not make an identification, because the examiner looks at both class characteristics -- that is, the characteristics that are left by a class of tools. For instance, to return to the windowsill, if that mark on the windowsill is an inch and a

James Cadigan - Direct

half wide, then that would be a class mark of all crowbars that are 1 1/2 inches wide.

The examiner would then go from that class mark, narrowing it down to a particular class, to an even smaller category, that of unique characteristics which would be produced by the manufacturing processes that go into the production of the particular crowbar or the subsequent use or abuse of the tool in which the crowbar tip might be chipped or broken in some fashion and that mark be impressed on the windowsill. That's what the tool-mark examiner would try to compare

compare.

Q. Do you have to rely on gross imperfections in the tool mark -- in the tool, I should say, such as you referred to, a chip?

A. That can be one of the factors; but also it can be as small as small grind marks left on the surface of the crowbar from the grinding process or the finishing process that the tool was subjected to when it was manufactured.

Q. So these are imperfections not visible to the naked eye?

A. Yes, sir.

Q. Do you use a microscope in your work?

A. Yes, sir.

Q. For what purpose?

A. To look at the marks contained on an object and also to look at the marks produced by a suspect tool, and then another

James Cadigan - Direct

microscope is used to compare those two items.

Q. You said at the beginning of your testimony that you did a tool-mark comparison for this case, and we're going to present you with various items of evidence; but could you just in general terms explain to us what it was that you did?

A. I received a padlock that had some drilling impressions in it, and I received some drill bits; and the request was to determine whether or not the drill bits that were submitted produced any of the marks contained on the padlock.

Q. Upon receipt of the padlock, did you measure the hole?

A. Yes, I did.

Q. How large was that hole?

A. It was 1/4 of an inch in diameter. That would be considered a class characteristic. All drill bits that were 1/4 of an inch in diameter could have made that particular impression.

Q. So you were able to conclude that you needn't waste your time on 3/8 drill bits, and so forth.

A. That is correct.

Q. When you obtained the padlock, did you see any unique or significant markings?

A. Yes. I noticed that the padlock had two drill impressions in it, one that was shallow and one that was much deeper.

Q. And from these impressions, did you see anything that you would characterize as a tool mark?

James Cadigan - Direct

A. Yes. In both the shallow-drilled area and in the deep-drilled area of the lock, I noticed tool marks of value present.

Q. All right. I'd like to show you what we've marked as Government's Exhibit 126.

MR. HARTZLER: May we approach?

THE COURT: Yes.

BY MR. HARTZLER:

Q. Mr. Cadigan, could you remove this exhibit from the bag and

inspect it?

A. Yes, sir.

Q. Have you seen that item before?

A. Yes, sir, I have.

Q. Was it in that condition when you first received it?

A. No, sir, it was not.

Q. What was different about it?

A. There was a shackle portion of the lock that was on this side of the padlock that I had removed in order to facilitate my examination.

Q. And why did you need to remove the shackle in order to facilitate your examination?

A. So that I could fit the padlock under my comparison microscope.

Q. How is it that you know that that's the padlock that you examined?

James Cadigan - Direct

A. It bears my initials on it and also from the serial number that is present on the bottom of the padlock.

MR. HARTZLER: Your Honor, I move the admission of Government's Exhibit 126.

MR. TRITICO: I'll stand on my earlier objections to it.

THE COURT: Overruled. Received, 126.

BY MR. HARTZLER:

Q. Now, could you hold that up -- I have a better idea. Why don't we --

MR. HARTZLER: May I use the exhibit on the ELMO back with me to show -- to display it to the jurors?

THE COURT: All right.

MR. HARTZLER: Excuse me, your Honor.

There we go.

BY MR. HARTZLER:

Q. If you look to your -- I think it's your left hand, there is a light pen that you can use. If you reach underneath -- onto the face of the screen -- correct -- you might use that to display or point out to us what it was that you looked at.

Does it work? Can you mark that?

A. I'm not exactly sure how it's supposed to work. Is a dot of light supposed to show up on the screen, or do I just touch the screen?

Q. Yeah. Touch the screen with the pen. There we go.

James Cadigan - Direct

Go ahead and explain to us what markings you noticed on this exhibit.

A. On this particular padlock, I noticed this area here, which had striations, which are scratches, that are left by the tip of the drill bit that makes these impressions; that is, the area that I am highlighting -- I think.

Yes. Right there.

Q. That was the shallow impression.

A. There are tool marks present in this shallow impression for comparison with the suspect drill bit.

Q. Was there another area of tool-mark impressions you noticed?

A. Yes, sir, there was. Just below the K in "Milwaukee," there is another area.

Q. Where you're now pointing with an arrow?

A. Yes, sir.

Q. Okay. We're going to try to focus down in there. I'm not sure the lighting is suitable, but we'll give it a try.

Go ahead and try to focus that.

Can you change the focus?

So you're talking about down -- down in the hole, there are tool-mark impressions that you discerned?

A. Yes, sir, in this area where the dot is.

Q. Very well. Did you take any photographs of those impressions?

James Cadigan - Direct

A. Yes, I did.

Q. And did you produce a series of photographs that might assist the Court and ladies and gentlemen of the jury in understanding what work you did?

A. Yes, I did.

MR. HARTZLER: Your Honor, we would like to display a large chart that's behind Mr. Cadigan, I believe.

THE COURT: All right.

MR. HARTZLER: Can we get assistance?

THE COURTROOM DEPUTY: Exhibit number?

MR. HARTZLER: Should be on the chart.

MR. TRITICO: Your Honor, may I move over to examine it?

THE COURT: Yes. Do we have an exhibit number?

MR. HARTZLER: Yes, I do, your Honor. 152, I believe.

THE COURT: Don't display it to the jury.

BY MR. HARTZLER:

Q. Before we show it to the ladies and gentlemen of the jury, can you describe what that large chart depicts?

A. It's a series of photographs that I took of the impression that I examined.

MR. HARTZLER: Very well. I move the admission of Government's Exhibit 152.

MR. TRITICO: No objection.

THE COURT: Received. 152.

James Cadigan - Direct

Now it may be displayed.

MR. HARTZLER: Thank you.

BY MR. HARTZLER:

Q. Starting from the left side of the chart, can you describe for us what's depicted?

A. Yes, I can.

A. Yes, I can.

Q. Please proceed.

A. On the left side of the chart is the picture of the lock, padlock.

The second picture at approximately 10 power is a picture of the lock cylinder that has been removed from the padlock, and it shows both the shallow drill-bit impression and the deep impression.

To the right of that picture at approximately 20 power is a closer photograph of the tool mark or the drill-bit impression.

And then to the far right at approximately 40 power is a much closer picture of tool marks that are contained at the bottom of a lock cylinder of the padlock.

Q. Can you describe for us what the tool marks are?

A. Yes. Those marks would be the scratches left by the tip of the drill bit as it drilled the lock cylinder.

MR. HARTZLER: Your Honor, I'm sorry. I can't really see them from here.

Could Mr. Cadigan walk down and point out the ridges

James Cadigan - Direct

he's referring to?

THE COURT: Yes. Give him a microphone.

MR. TRITICO: Your Honor, may I be free to move over a little closer?

THE COURT: Yes, you may.

Is there a pointer there?

You may step down and go to the photograph.

THE WITNESS: As I testified, this is a photograph of the padlock as it was received, the lock cylinder when it was removed, taken at approximately 10 power.

Then focusing on the deeper drill-bit impression, which is here, then, at 20 power.

And then at 40 power, approximately, what I was looking at, one of the areas I was examining was this area of lines or scratches, so-called "striations"; and this would be left by the tip of the drill bit as it was drilling down into the lock; also in the shallow area, the scratches here which would be left by the tip of the drill bit as it was drilling into the lock.

BY MR. HARTZLER:

Q. Very well. Could you resume the stand, then, for a moment.

Mr. Cadigan, what items did you have or suspect tools did you have to compare to the markings down in that hole in the bottom of the padlock?

A. I had two drill bits to compare with the marks found in the

James Cadigan - Direct

lock cylinder of the padlock.

Q. It's obvious, but the size of those two drill bits was?

-
A. 1/4 of an inch in diameter.
Q. What did you do with those drill bits?
A. For each of the drill bits, when I received them, I put each of them into a drill and then made -- drilled small holes into pieces of lead to determine what kind of marks each of the drill bits made and then to compare those marks that each of the drill bits made, that I made with them, to the marks found in the lock cylinder.
Q. Why could you not simply make the comparison directly from the drill bit tool marks in the cylinder?
A. Because in tool-mark examinations, the best examination is like item to like item; in other words, a drill-bit impression to another drill-bit impression, as opposed to a drill-bit impression to a drill bit.
Q. Look in the box to your right hand and see if you can find Government's Exhibit 151B.
A. Yes, sir.
Q. This has previously been admitted into evidence. Can you tell us whether you can identify that particular item.
A. Yes. This is a -- one of the drill bits that I received in the laboratory for comparison with the padlock, the drill-bit impressions on the padlock.
Q. Did you examine the tip of that drill bit?

James Cadigan - Direct

A. Yes, I did.
Q. Prior to making the drill-bit impressions you just described?
A. Yes, sir.
Q. And did you photograph the very tip of the drill bit?
A. Yes, I did.
Q. Did you notice any unique characteristics about that drill-bit tip?
A. I noticed that it was worn.
Q. I want to show you what's been marked as Government's Exhibit 155 and ask if you can identify this.
A. Yes, sir.
Q. This is a picture that was taken of the drill-bit impression -- of the drill bit itself?
MR. HARTZLER: I move the admission of Government's Exhibit 155.
MR. TRITICO: No objection.
THE COURT: 155 received. It may be displayed.
MR. HARTZLER: Thank you.
We'll have to refocus this on our screen, at least.
There we go.
BY MR. HARTZLER:
Q. Do you have it?
Again, can you point out to us those unique characteristics that you found on the tip of the drill bit?

James Cadigan - Direct

And just to orient everybody, tell us what direction we're looking at on this.

A. The tip of the drill bit is pointing at the camera or at the viewer.

Q. So the bit is coming toward us, in effect.

A. That's correct, yes, sir.

Q. And you said that there were some characteristics that you discerned on the tip.

A. Yes, sir.

Q. Please point those out to us using that little light pen.

A. All along the edge of the cutting edge of the drill bit, there are signs of -- and marks of wear. In other words, the --

Q. Along here?

A. Yes. Along where the -- the finger is pointing. Also in these areas.

Q. For some reason, you seem to have a black color now with your pen.

A. Yes, sir.

Q. It's not showing up on my screen, but it's fairly clear. Where my finger is pointing, you're talking about that being the cutting edge of the drill bit?

A. Yes, sir.

Q. And the -- that's where the irregularities are that produce the drill-bit impressions. Is that correct?

James Cadigan - Direct

A. Yes, sir.

Q. Now, you also said that you used this drill bit to generate some impressions in some test material.

A. Yes, sir.

Q. What test material did you use?

A. Lead.

Q. Why?

A. Because lead is a soft metal and does not alter significantly the drill bit as you take the impression.

Q. All right. I want to show you what's been marked as Government's Exhibit 153, which is the chart behind you.

MR. HARTZLER: If we could, your Honor, get the assistance of the deputy marshal.

MR. TRITICO: Your Honor, may I move back over to examine?

THE COURT: Yes.

BY MR. HARTZLER:

Q. Can you look at 153?

A. Yes, sir.

Q. And does that depict the drill-bit impressions that you produced?

A. It's a series of photographs of the drill-bit impression that I produced, yes, sir.

Q. At different magnifications?

A. Yes, sir.

James Cadigan - Direct

MR. HARTZLER: I move the admission of Government's Exhibit 153.

MR. TRITICO: No objection.

THE COURT: 153 is received. You may display it.

MR. HARTZLER: And again, your Honor, could he just step down from the stand to explain what we have?

THE COURT: Yes, sure.

BY MR. HARTZLER:

Q. Mr. Cadigan, I think the microphone is right behind you. Thank you.

A. As I stated, this is a series of four photographs at differing magnifications of one of the drill-bit impressions that I made of Government's Exhibit --

Q. 151B?

A. -- 151B. This is the picture of the piece of lead showing the red arrow, the particular impression, that same impression at 10 power and at 20 power and at 40 power, showing the lines or striations or scratches that are left by the drill bit as it starts to cut and mark the metal.

And the tool-mark examiner compares these scratches with scratches on whatever he is examining.

Q. Before you sit down again, would it be difficult for you to hold up 152 beside that chart and explain what item you're comparing?

A. 152 being?

James Cadigan - Direct

Q. That's the other large chart that we have, that was just placed down off the easel.

On the other side, maybe.

A. And your question?

Q. I'm asking if you can use these two charts to show the Court and the ladies and gentlemen of the jury what it is that you're ultimately going to compare, if everyone can see.

A. Yes. I'm comparing the scratches or striations left by the tip of the drill bit in the lead with the scratches or striations that are present on the lock cylinder to determine whether or not this drill bit produced those scratches or striations.

Q. And why don't you resume the witness stand.

Thank you, sir.

Mr. Cadigan, how did you accomplish that comparison?

A. By the use of a comparison microscope.

Q. Can you describe for us what a comparison microscope is?

A. Yes, sir. A comparison microscope is two microscopes joined by an optical bridge or optically with a stereoscopic viewer; and what that allows the tool-mark examiner to do is to look at two items under high magnification to determine and compare the scratches or striations present on both of them at the same time, side by side, in order to make a determination whether or not a particular tool made a particular mark.

Q. Now, you obviously conducted that comparison for or between

James Cadigan - Direct

the marks you saw on the padlock and the marks you produced from the drill bit, 151B. Is that correct?

A. That's correct.

Q. What did you find?

A. I found that the marks present on the deep-drilled impression on the padlock were produced by the drill bit, Government's Exhibit 151B.

Q. And did you produce a chart or photograph of that comparison?

A. Yes, sir, I did.

Q. I'd like to show you what's been marked as Government's Exhibit 157 and ask if this is the comparison exhibit that you produced.

A. Yes, sir, it is.

MR. HARTZLER: I'd move the admission of Government's Exhibit 157.

MR. TRITICO: May I just approach?

THE COURT: Yes, you may.

MR. TRITICO: I have no objection.

MR. HARTZLER: Mr. Tritico, could you bring it back to the podium so we could display it from here, if his Honor would permit.

THE COURT: 157 is received.

MR. HARTZLER: Thank you. And may we publish it,

your
Honor?

James Cadigan - Direct

THE COURT: Yes.

BY MR. HARTZLER:

Q. Can you see on your screen now the right side of the demonstrative exhibit you've produced?

A. Yes, sir.

Q. And that shows -- shows us what?

A. That shows us a portion of the drill-bit impression that I made with Government's Exhibit 151B.

Q. So that's simply a portion -- and in fact of the final photograph you have on the chart that's displayed in the courtroom now?

A. It is a portion of one of them.

Q. Now we're showing you the left side of your demonstrative exhibit. What is that?

A. That is a portion of the tool marks present on the drilled-out portion of the lock cylinder of the padlock that I received.

Q. So that's in effect a section of the final 40-power photograph that we saw on the chart that was up there a moment ago from the inside of the padlock?

A. That is correct.

Q. If we show them both at the same time, they show your comparison?

A. Yes, sir.

Q. Describe, using your light pen, as best you can what it is

James Cadigan - Direct

you saw looking through your comparison microscope.

A. As I mentioned, the right side of the photograph -- on this right side, I am looking at this area here with these lines or scratches that go in this direction and comparing them with lines and scratches that I found on the padlock. And this particular photograph, I took with the comparison microscope.

Q. And based on that comparison, what was your conclusion?

A. That the Government's Exhibit 151B -- this drill bit -- produced marks that were contained in the padlock that was submitted.

MR. HARTZLER: Nothing further, your Honor.

THE COURT: Mr. Tritico?

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good morning.

A. Good morning, sir.

Q. My name is Christopher Tritico. You and I have never met before, have we?

A. No.

Q. I've never had the opportunity to sit down and talk with you about the testimony that you just gave here today. Is that correct?

A. That's correct.

Q. How many times have you met with Mr. Hartzler?

A. Approximately four or five times.

James Cadigan - Cross

Q. When was the first time? I'm talking about in reference to this case.

A. I don't recall.

Q. How long was that meeting?

A. I don't remember.

Q. Okay. And do you recall when the second one was?

A. Specifically, I don't recall the time. Routinely, they would be for an hour or so, two hours.

Q. Each time?

A. Yes, sir.

Q. Some of them here in Denver, some of them back in Washington or somewhere else?

A. Yes. I met with Mr. Hartzler in Washington and also here in Denver.

Q. And have you met with anybody else on the prosecution team other than Mr. Hartzler?

A. Ms. Wilkinson.

Q. And did you meet with Ms. Wilkinson with Mr. Hartzler, or separate?

A. With -- both with and separately.

Q. How many times did you meet with Ms. Wilkinson alone

without Mr. Hartzler?

A. One time that I can recall.

Q. And so we've got five or six total meetings?

A. Yes, sir.

James Cadigan - Cross

Q. Anybody else on the prosecution team?

A. Not that I recall.

Q. Okay. Now, you were talking about these moot courts that you attended, I believe back in the 70's.

A. Yes, sir.

Q. Have you attended one since the 70's?

A. I've attended many since then, yes, sir.

Q. Oh, okay. How many moot courts have you attended?

A. I don't know. It would be maybe 75 or 100.

Q. When was the last one?

A. Today is Tuesday (sic) -- it would have been last Thursday.

Q. Did you testify at the one last Thursday?

A. No. I -- I attended these as part of my duties as the training officer for our unit.

Q. I see. Now, the purpose of these -- when was the last time you testified in a moot court?

A. 1976 and '77.

Q. The purpose of a moot court is to (a) get you familiar with being in a courtroom; right?

A. That is one, yes, sir.

Q. (b) become familiar with how to testify in a courtroom; right?

A. To facilitate the presentation of your results, yes, sir.

Q. Sure. They teach you things like turning to look at the jury when you're answering a question and how to respond to

James Cadigan - Cross

direct examination; right?

A. Certainly.

Q. And they prepare you for confronting cross-examination from defense lawyers; right?

A. To give the examiner an ability to effectively present himself, yes, sir.

Q. Well, my question was did they teach you how to confront cross-examination and ready to confront cross-examination and be prepared for it?

A. To be prepared, yes, sir.

Q. You don't learn anything about tool marks at a moot court, do you?

A. Oh, no, sir.

Q. Now, you work in the FBI lab; is that right?

A. That is correct.

Q. The FBI lab is currently not accredited by any accrediting agency; right?

A. That is correct.

Q. You've been pending accreditation for over three years; right?

right:

A. I don't know of the time, but we are in the process of applying for certification from a crime laboratory directors association; that is correct.

Q. This would be the first time the FBI lab has ever been accredited; is that correct?

James Cadigan - Cross

A. That is correct.

Q. Now, you had two drill bits that were submitted to you for examination; am I correct?

A. That is correct.

Q. Two 1/4-inch bits?

A. Yes, sir.

Q. Do you know where those drill bits came from?

A. I was told where they came from, but I don't have any personal knowledge.

Q. Right. And if I understand your testimony correctly, you examined two areas on this one lock that both had bit -- drill -- strike that.

That both had tool-mark impressions; correct?

A. Yes, sir.

Q. One you called a shallow area and one you called a deep area; right?

A. That is correct.

Q. Now, you couldn't match the shallow area with either one of the two bits that you had; right?

A. That is correct.

Q. It could have been one or both or not either one; right?

A. That's correct.

Q. That could have been any drill bit; right?

A. Yes, sir.

Q. Now, one of the bits that you couldn't match the shallow

James Cadigan - Cross

area with is the drill bit that's in evidence as 151B. Is that right?

A. Well, the one that I identified was 151B.

Q. I'm sorry. I'm still talking about the shallow area. You examined 151B with respect to the shallow-impression area; right?

A. Yes, sir.

Q. And it didn't match. You couldn't match it with that area; right?

A. No, sir.

Q. Where is the other drill bit?

A. It's in this box.

Q. Still in that box?

A. Yes, sir.

Q. Where is the photograph that you took of the end of the other drill bit, like the one you have of 151B?

A. Well, I have several photographs of it.

Q. Okay. Who made those bits? Do you know?

A. One of them, I know the manufacturer. The other, I do not.
Q. Okay. Do you know the manufacturer of the one that you have identified today as making the deeper hole?
A. No, sir.
Q. Who made the one you do know?
A. Vermont American.
Q. Did you go to Vermont American in preparation for your

James Cadigan - Cross

investigation in this case?

A. Yes, sir, I did.
Q. When did you go there?
A. Approximately three or four months ago.
Q. And when you went there, did you find that they -- well, how many drill bits, 1/4 drill bits, did you find they make in a year?
A. They -- I don't recall the exact number, but it was in the millions.
Q. Okay. And these are tooled on a tool-and-die machine? Am I correct? Is that a fair statement?
A. It's a several-step process to produce drill bits like this.
Q. Well, they don't have a person just cutting them out all by himself. They're all done on a computerized machine; right?
A. They're done on several machines, yes, sir.
Q. And the machines are all keyed to make the exact same bit millions of times over, so they don't have to keep retooling it every time. Right?
A. The machines are set up to produce drill bits that match their specifications. That's correct.
Q. And they all come off the machine the same; right?
A. Yes, sir.
Q. And then they go through a process of sharpening the very end, the one you photographed; right?

James Cadigan - Cross

A. Well, the sharpening is part of the production of the drill bit, yes.
Q. It all comes through the machine that's keyed to tool to make everything the same; right?
A. Yes, sir.
Q. How many other bits from this company did you get -- When was this one made? Do you know?
A. When was it made? I don't know.
Q. How many other bits did you test from this company when you were conducting your investigation into this case?
A. Approximately 75.
Q. And -- but -- without knowing what year it was made, you don't know if you were really testing one that was tooled on the same tool and die; correct?
A. That's correct.
Q. And since you don't know who made the bit that you identify

here today as making the deeper impression, you couldn't test any of those bits against it; right?

A. Since I didn't know the manufacturer, I couldn't obtain bits from a manufacturer I didn't know. No, sir.

Q. Absolutely. Could be millions of bits came off the same tool and die that made that bit, 151, I think. Right?

A. 151B?

Q. 151B. Could be millions of bits that came off the same tool and die, make the exact same bit. Right?

James Cadigan - Cross

A. I would imagine there is.

Q. Now, when you test -- when you look at these bits on the microscope, do you know how -- it doesn't tell you how old the bit is, does it?

A. No, sir.

Q. Doesn't tell you how long the bit was in the yellow box, does it?

A. No, sir.

Q. Doesn't tell you how long the bit was in the house or place from which it was seized, does it?

A. No, sir, it does not.

Q. Doesn't tell you who drilled the hole that you're testing the impression on, does it?

A. Oh, no, sir.

Q. I want to show you, sir, what's already been introduced into evidence as Government's Exhibit 157. Do you see that on your screen?

A. Yes, sir.

Q. Now, let me see if I understand exactly what I'm looking at. On the right-hand side where I'm pointing out, this is the lead impression that you made from Government's Exhibit 151B. Is that right?

A. That is correct.

Q. And on this side here that I'm pointing at now, the left-hand side, is a piece that you took out of the interior of

James Cadigan - Cross

the lock. Is that correct?

A. No, sir.

Q. Where did you get that?

A. This particular photograph is of the interior portion of the lock cylinder. It's not something that I removed from the lock cylinder. It was part of it. It was removed from the padlock.

Q. Okay. We're talking about the same thing, and I didn't know it. This is a part of the lock; is that right?

A. Yes, sir.

Q. Okay. Now, did you ever -- do you slice it to get down to the portion, or you just photograph it?

A. On this particular padlock, we cut the padlock in order to be able to remove the lock cylinder, yes, sir.

be able to remove the lock cylinder, yes, sir.

Q. Okay. Now, this lock --

MR. TRITICO: May I see the lock, your Honor? I don't know where it is.

BY MR. TRITICO:

Q. This lock, Government's Exhibit 126 -- this is the lock we're talking about. Is that right?

A. Yes, sir.

Q. Can you see that?

A. Yes.

Q. Now, did you -- when you say you took it apart, did you take these brads or rivets out?

James Cadigan - Cross

A. No, sir.

Q. How do you take the lock apart without taking these rivets out?

A. Cut under the rivets and remove the base plate.

Q. Right here where I'm pointing now?

A. Yes, sir.

Q. Okay. So you cut this off and then you can take the whole lock apart?

A. Yes. I can take the lock cylinder out. Yes, sir.

Q. Do these slats that I'm pointing at right now, these individual pieces of metal -- do they come apart with the lock when you take it out?

A. We had to saw, cut through them, to remove them. But they did not come apart easily, no, sir.

Q. How many of these did you take off?

A. Six.

Q. To get down to the part that you wanted to photograph, which is right in here; right?

A. Yes, sir. To remove the lock cylinder that's in there, yes, sir.

Q. Now, is the tool-mark impression that you were testifying about today made as a part of the lock cylinder or a part of these metal plates that form the whole lock?

A. The portion that I identified as the lock -- in the lock cylinder itself, the brass-colored.

James Cadigan - Cross

Q. The brass part?

A. Yes, sir.

Q. Okay. Now, looking back at Government's Exhibit 157, if I understand correctly, you match these two together so that you can take these lines like I'm pointing at here and match them up. Is that right?

A. Yes, sir. That's part of the examination.

Q. Now, when you're looking at these two together here, I see a mark right here. Do you see that that I'm pointing at?

A. Yes, sir, I do.

Q. That does not exist on the part that you showed us here on your impression; right?

-----, -----

A. That's correct.

Q. Now, right here is a big area that appears to be a different type of marking. Is that fair?

A. Yes, sir.

Q. Doesn't look the same as your -- as your test impression, does it?

A. That is correct.

Q. Now, when you're following these lines around, your lines on your test impression are very symmetrical, aren't they? All round and come around nice and pretty. Right?

A. Yes, sir.

Q. And if you follow this mark right here that I'm following, it comes around; and yours is real nice and symmetrical. And

James Cadigan - Cross

then you get to the part that you took off of the photograph from the interior of the lock, and this one is not as symmetrical, is it? It comes around and makes a pretty sharp turn right there that's not in the same curvature as the impression you made. Right?

A. Yes, sir.

Q. And that happens pretty consistently throughout. You got one right here, one right here, here, here, and here, don't you?

A. Yes, sir.

Q. And that doesn't -- you don't see that anywhere on the photograph that you made, do you?

A. Not those -- that deformation, no, sir.

Q. And up here, you've got where the lines don't even continue anymore, do they?

A. That's correct.

Q. Did you bring with you today the photograph from any of the other bits that you did?

A. What do you mean? The other photographs?

Q. You made more than one lead impression. Right?

A. Yes, sir.

Q. How many lead impressions did you make of this bit, 151B?

A. Approximately three.

Q. And was this picture that we're looking at here the first, second, or third lead impression that you made?

James Cadigan - Cross

A. I don't recall.

Q. Did you bring the photographs of those?

A. The photographs of the --

Q. Of the lead -- other two lead impressions.

A. No, sir.

Q. Did you bring the lead impressions with you?

A. Yes, sir.

Q. Okay. Did you photograph -- did you make lead impressions from the other 75 bits that you looked at?

A. No, sir.

Q. Did you photograph any impressions made from the other 75 bits that you looked at?

A. No, sir.

MR. TRITICO: May I have a moment, your Honor?

THE COURT: Yes.

BY MR. TRITICO:

Q. Now, when you began your work on these tool-mark impressions, you were told that this bit and the other bit that you looked at were seized from Terry Nichols' home; right?

A. Most likely, yes, sir.

Q. Were you told that before you did your work, or after?

A. I don't recall.

Q. Could have been before you even started; right?

A. Yes, sir.

Q. You knew what you were working on when you got it; right?

James Cadigan - Cross

A. Yes, sir.

MR. TRITICO: All right. Thank you.

I'll pass witness.

THE COURT: Mr. Hartzler?

MR. HARTZLER: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. HARTZLER:

Q. Mr. Cadigan, you said that -- pardon me -- some drill bits are manufactured in the millions. Is that correct?

A. Yes, sir.

Q. So that the manufacturer of this particular quarter-inch drill bit that's 151B could have a number of -- large, large number of siblings. Is that fair?

A. Absolutely.

Q. How is it that you can distinguish this particular drill bit from all of the siblings?

A. From the unique microscopic marks that this drill bit leaves when I -- or when a test impression is taken, when the hole is drilled.

Q. How is a drill-bit tip manufactured?

A. It is the -- in the finishing process of the drill bit, the drill bit itself is ground using a grinding wheel. This grinding wheel has randomly placed particles that impart a random pattern of marks or striations to the tip of the screwdriver -- tip of the drill bit. And it is those marks

James Cadigan - Redirect

plus the use and abuse marks, the wear marks, present on the drill bit, specifically Government's Exhibit 151B, that allowed me to identify this drill bit with the padlock.

Q. Would you expect two consecutively manufactured drill bits to produce different drill-bit impressions?

A. No, sir.

Q. Why is that?

A. Because of the finishing process. When the grinder is

applied to the drill bit, it strikes the drill bit in a random pattern. Logically, if two drill bits were to produce the same exact microscopic scratches on a surface that they were used -- logically, you would expect that to be in two that were consecutively produced.

I looked at -- went to a manufacturing plant, Vermont American, obtained drill bits that were consecutively produced, took impressions of them, and compared them. They were not the same.

Q. I think maybe you misunderstood my question. I was asking if two consecutively produced drill bits would produce drill-bit impressions.

A. That is correct.

Q. Okay. Now, this lock that you've testified about is actually just taped together because it was cut apart. Is that not correct?

A. That is correct.

James Cadigan - Redirect

Q. In fact, I think if you have the bag with you, there is a little pill box -- wasn't there, that you had contained the cylinder in for some time? I think we have it back here, Mr. Cadigan.

A. Yes, sir.

Q. Do you recall if you put that into the little pill box --

A. Yes, sir.

Q. -- medicine box, and that was to try to protect it?

A. Yes, sir.

Q. And do you know how much handling that cylinder has had since you examined it?

A. Since I examined it?

Q. Right.

A. No, sir, I don't.

Q. Do you know how much handling it had before you examined it?

A. No, sir.

MR. HARTZLER: With the Court's permission, we will retape it; but could we remove the cylinder to show everyone what we're talking about?

THE COURT: All right.

MR. HARTZLER: Thank you.

BY MR. HARTZLER:

Q. All right. This is the cylinder, and we're looking inside the cylinder. Is that right?

James Cadigan - Redirect

A. Yes, sir.

Q. I understand you're not a metallurgist, but this at least appears to be a particular type of metal. Is that fair?

A. Yes, sir.

Q. What does it appear to be?

A. It appears to be brass.

Q. And do you recall one time when we were examining this

Q. And do you recall one time when we were examining this thing and it fell out on the floor?

A. Yes, sir.

Q. You were asked on cross-examination about some of the differences in the right side of your -- left side of your demonstrative photo, the comparison photo. Do you recall?

A. Yes, sir.

Q. Can you explain any of those differences, why it's not as smooth as your lead impression?

A. Well, it could be from subsequent handling of the lock cylinder. It could also be the lack of symmet -- symmetry. It could be the fact that this was just a portion of the lock on the bottom that was almost broken away.

Q. And Mr. Tritico, I think, pointed out to you a particular portion. Let me remove this and show you again Government's Exhibit 157.

Do you see the section I'm pointing to now?

A. Yes, sir.

Q. Can you offer an explanation for that?

James Cadigan - Redirect

A. Not other than subsequent handling.

MR. TRITICO: Excuse me. I'm going to object to the witness speculating at this time.

THE COURT: Yes. If he can't offer it, that's the answer.

MR. HARTZLER: Very well.

BY MR. HARTZLER:

Q. Mr. Tritico asked you about the bend in the ridges. We have curved linings, and there is a bend. Is that correct?

A. Yes, sir.

Q. Would it be fair to say that the bend appears at the same point on each of the ridges as you move up?

MR. TRITICO: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: Yes, sir.

MR. HARTZLER: Nothing further. Thank you.

MR. TRITICO: I have just a couple, your Honor. Take just a minute. I promise.

THE COURT: Okay.

RE-CROSS-EXAMINATION

BY MR. TRITICO:

Q. Mr. Hartzler was asking you about some of these differences that I pointed out in your photos, Government's Exhibit 157. And he specifically said, "Is it fair to say that all of these ridges that I pointed out show up in the same area of the

James Cadigan - Recross

photograph?" Do you recall that?

A. Yes, sir.

Q. But you still don't see any of those in yours, do you?

A. No, sir.

Q. They just don't exist over here, do they?

A. No, sir, they do not.

Q. Now, he asked you about anything that may have happened like when you dropped it. Do you recall that?

A. No, sir.

Q. When you were showing him the inside of the lock and you dropped it. Do you recall him asking you about that?

A. Oh, yes, sir.

Q. Would it be fair to say that any changes that occurred based on that would have occurred in the FBI's lab and not anywhere else; right?

A. Possibly, yes, sir.

Q. Now, you were talking about the way these grooves can be made on here; and I -- I think you said something about it's ground on a grinder. That makes an independent print, if you will, for each lock.

A. For each drill bit, yes, sir.

Q. How many drill bits came off that same grinder?

A. Hundreds of thousands.

Q. Or more?

A. Yes, sir.

James Cadigan - Recross

Q. And let me see if I understand exactly what you're saying here. Is that based on this? You can tell that these lines that are not symmetrical is the same as this one right here. Is that right?

A. I'm sorry. If you could repeat.

Q. The lines on the part you took out of the lock, even though they're not symmetrical, it's your claim that these are the same that match your symmetrical lines; right?

A. No, sir. This is a photograph of some of the marks that I saw as I examined the lock. It's not all of them that I based my identification on.

I took this picture to illustrate some of the marks that I saw.

Q. Sure. And you clearly brought the one that you thought was the best?

A. I brought the one that would show what I -- some of what I saw, yes, sir.

Q. That you thought was the best. Right?

A. Yes, sir.

Q. And this is the same bit made on the same grinder that you couldn't match on the shallow impression as regards the other quarter-inch mark on the box; right?

A. I could not identify the shallow impression, yes, sir.

Q. Because there was not any significant, separate, identifiable marks to exclude one or the other bit in the same

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box; right?

A. I don't understand that.

MR. TRITICO: May I have just a moment, your Honor?

THE COURT: Yes.

BY MR. TRITICO:

Q. You authored a report, did you not, or took part in a report that came from the FBI lab?

A. Oh, yes, sir.

Q. And your tool-mark examination is included within the report; right?

A. Yes, sir.

Q. Now, when you were discussing the shallow part of the lock in your report --

A. Yes, sir.

Q. -- did you say as regards the two individual bits, "However, due to a lack of sufficient corresponding individual tool marks of value, no further association could be made"? Do you recall that?

A. Yes, sir.

Q. And what you were saying there was I can't tell if either one of these bits made the shallow impression because they both appear to be close enough to the same?

A. What that says is that they could have made this impression, but I can't identify it to the exclusion of any other tool produced.

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Q. Even though they were ground on separate grinders.

A. On separate grinders?

Q. Or the same grinder; right?

A. Correct.

MR. TRITICO: Thank you. I'll pass the witness.

THE COURT: Is he going to be excused?

MR. HARTZLER: Yes, your Honor. Thank you.

MR. TRITICO: Yes, your Honor.

THE COURT: You may step down. You're now excused.

THE WITNESS: Thank you, your Honor.

THE COURT: Members of the jury, we'll take the noon recess here at this time for the usual hour and a half and of course with the usual cautionary instructions that you must avoid discussion of the case among yourselves and with all other persons and avoid anything outside of the evidence which could influence your judgment in the case.

You're excused now. Hour and a half.

(Jury out at 12:18 p.m.)

THE COURT: I have here a 404(b) objection that was made with respect to an upcoming witness. Do you have that?

MS. WILKINSON: We do, your Honor.

THE COURT: Is that an issue? I mean, do you intend to inquire into that area?

MS. WILKINSON: Yes, we do, your Honor, as to A and B listed on Page No. 1.

THE COURT: I intend to grant the motion. If you want to argue it, you can; but I don't see the relevance of that.

MS. WILKINSON: We would like to argue it, your Honor.

THE COURT: Well, when is this witness coming up?

THE COURT: well, when is this witness coming up?

MS. WILKINSON: At the end of the day. We could postpone it till first thing in the morning, if you'd like to argue it after 5:00.

THE COURT: All right. Court is in recess.

(Recess at 12:20 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
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126	6737				
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151	6748	6748			
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Exhibit	Offered	Received	Refused	Reserved	Withdrawn
484B					
484	6771	6772			
484B	6771	6772			
572	6774	6774			
572B	6774	6774			

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We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 5th day of May, 1997.

Paul Zuckerman

Bonnie Carpenter