

Thursday, May 15, 1997 (afternoon)

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 99)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:30 p.m., on the 15th day of May,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Paul Zuckerman, 1929 Stout Street,
P.O. Box 3563, Denver, Colorado, 80294, (303) 629-9285

APPEARANCES

PATRICK M. RYAN, United States Attorney for the
Western District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

JOSEPH H. HARTZLER, SEAN CONNELLY, LARRY A. MACKEY,
BETH WILKINSON, SCOTT MENDELOFF, and VICKI BEHENNA, Special
Attorneys to the U.S. Attorney General, 1961 Stout Street,
Suite 1200, Denver, Colorado, 80294, appearing for the
plaintiff.

STEPHEN JONES, ROBERT NIGH, JR., and ROBERT WYATT,
Attorneys at Law, Jones, Wyatt & Roberts, 999 18th Street,
Suite 2460, Denver, Colorado, 80202; JERALYN MERRITT, 303 East
17th Avenue, Suite 400, Denver, Colorado, 80203; CHERYL A.
RAMSEY, Attorney at Law, Szlichta and Ramsey, 8 Main Place,
Post Office Box 1206, Stillwater, Oklahoma, 74076, and
CHRISTOPHER L. TRITICO, Attorney at Law, Essmyer, Tritico &
Clary, 4300 Scotland, Houston, Texas, 77007, appearing for
Defendant McVeigh.

* * * * *

PROCEEDINGS

(Resumed at 1:30 p.m.)

THE COURT: Be seated, please.

(Jury in at 1:30 p.m.)

THE COURT: Please come in and resume the witness
stand.

Ms. Ramsey, you may inquire.

MS. RAMSEY: Thank you, your Honor.

(Deborah Thompson was recalled to the stand.)

CROSS-EXAMINATION

BY MS. RAMSEY:

Q. Good afternoon.

A. Good afternoon.

Q. When did you first become aware that Timothy McVeigh was anyone different than any other prisoner in the Noble County Jail?

A. Before lunch.

Q. On what day?

A. On the 21st.

Q. On the 21st?

A. Yes.

Q. And is that the day that you took the inventory of the property? Is that correct?

A. Yes, ma'am.

Q. And how did you become aware that he was someone special or

different from any other prisoner?

A. I received a telephone call.

Q. And that was the first you knew about it; is that correct?

A. Yes.

Q. Is it usually your job responsibility to take the phone calls?

Deborah Thompson - Cross

A. Yes.

Q. You answer the phone and then give it to whoever the call is for, or you take care of the matter; is that correct?

A. Correct.

Q. Are you the only secretary in the office?

A. Yes.

Q. Okay. And what are your normal working hours?

A. From 8 in the morning till 4:30.

Q. And do you work Monday through Friday?

A. Yes.

Q. So this was on a Friday that you first found out or received a phone call that Mr. McVeigh was not like any other prisoner in the Noble County Jail; is that correct?

A. Yes.

Q. When you went to work on Wednesday, did you go to the jail on the 4th floor?

A. I do every morning.

Q. Okay. And what do you do when you go up there every morning?

A. I receive the paperwork that was done through the night.

Q. And is that the paperwork for new people who are arrested?

A. Yes.

Q. And do you prepare that to get it ready to go to court or whatever needs to be done?

A. Yes.

Deborah Thompson - Cross

Q. Do you routinely see prisoners when you go up there in the mornings?

A. No.

Q. Okay. And did you ever see Mr. McVeigh?

A. No.

Q. Never at all?

A. No.

Q. Okay. And did you ever see what he had on when he came into the Noble County Jail?

A. May I correct that?

Q. Yes, go ahead.

A. Okay. I never seen him prior to Friday.

Q. Friday?

A. The 21st.

Q. The 21st?

A. Yes.

Q. Where did you see him on the 21st?

A. In the county jail.

Q. Okay. In a cell actually?

A. No. In the booking area.

Q. All right. And was that -- what was happening when you saw him?

A. He was being fingerprinted.

Q. Okay. And that's when you went up to get the property; is that correct?

Deborah Thompson - Cross

A. I really can't remember what I was doing up there. See, I was -- I had booked in a prisoner, too, a female prisoner, that day, too, right before. So I can't remember -- I think that's when I was booking the female prisoner.

Q. Okay. And what time was it; do you know?

Well, let me ask this. Was it before or after you received the phone call about Mr. McVeigh?

A. After.

Q. All right. And who was doing the actual fingerprinting of Mr. McVeigh, if you know?

A. One of the agents.

Q. An FBI agent as opposed to a Noble County sheriff's deputy?

A. Yes.

Q. All right. Do you know if Mr. McVeigh had been fingerprinted when he was booked in, originally?

A. To my knowledge, yes.

Q. All right.

A. That's the procedures.

Q. So did you ever have any dealings with Mr. McVeigh whatsoever personally?

A. No.

Q. Okay. You never got him out of his cell or helped take him to court or not to court or anything like that?

A. No.

Q. All right. Did you ever talk with him on the phone or

Deborah Thompson - Cross

anything like that?

A. No, ma'am.

Q. Are there any phone records that are kept with regards to the phones that are in the Noble County Jail?

A. Are you saying to what? Phone records?

Q. Where are the -- are there phones located in the jail cells --

A. Yes.

Q. -- that the prisoners can use?

A. Yes.

Q. And are records kept of those phone calls?

A. No.

Q. If you know.

A. No.

Q. They'd have to call collect, isn't that correct, to go out?

A. Yeah, it's not like a regular bill.

Q. Right. And the person who receives the call has to accept it and then they pay for it; isn't that correct?

A. Yes, ma'am.

Q. It's not an expense to the Noble County Jail, is it?

A. No.

Q. Do you know of your own personal knowledge whether or not Mr. McVeigh made any phone calls, collect or otherwise?

A. No, ma'am.

Q. Is it normal procedure for someone who is being booked into

Deborah Thompson - Cross

the Noble County Jail to be allowed to make phone calls?

A. Yes.

Q. And that is if they're intoxicated or not; correct?

A. Yes.

Q. All right. Do you of your own knowledge know whether or not Mr. McVeigh placed any phone calls while he was being booked in?

A. I was not there. I'm not aware.

Q. Is there any notation that's made anywhere with regard --

A. There should be in the log.

Q. And that is the jail log that is kept on the 4th floor with regard to what happens to prisoners; is that correct?

A. Yes.

Q. That's different than the book-in log, isn't it?

A. No. Everything is recorded in that logbook.

Q. But isn't there another --

A. The booking, the releasing. Anything you have to do with the inmates, feeding them, everything's recorded in that book.

Q. Right. But isn't there a different log that just states when someone is arrested, what the charge is, what their bond is, and when they're released?

A. No, it's all recorded in that book.

Q. It's all the same?

A. Yes.

Q. Okay. Now, can you tell me when -- on the 21st, when you

Deborah Thompson - Cross

were told by Sheriff Cook that you needed to go retrieve Mr. McVeigh's clothing, where did you go?

A. Up to the jail.

Q. Did he tell you only to get his personal property?

A. At which time?

Q. At the first time.

A. The first time, it was just his bag of clothing.

Q. Right, just his -- did he say clothing or personal property or do you recall?

A. The items he was wearing, clothing, when he was arrested.

Q. All right. And you only got the paper sack; is that correct?

A. Yes.

Q. You did not get the canvas bag that you talked about earlier?

A. No.

Q. Why did you not get that canvas bag?

A. I wasn't asked to.

Q. That wasn't considered part of his clothing?

A. No, that's personal, you know, money and rings, jewelry, watches -- that's personal property. What Jerry asked me to get was the items he was wearing, clothing.

Q. And that is handled differently in the Noble County Jail, isn't it, the two things are handled differently?

A. They're just put in two different places.

Deborah Thompson - Cross

Q. But isn't one locked up and one not?

A. Yes.

Q. Okay. Now, on April the 19th, 1995, was there a trustee at the Noble County Jail?

A. Yes, there was.

Q. And who was that trustee?

A. Carl Hite.

Q. And how long had he been a trustee, if you recall?

A. I really don't recall. It was a while.

Q. Okay. And a trustee is a prisoner who is able to help out;

is that correct?

A. Someone we can trust, yes.

Q. Trustee; right?

A. Right.

Q. And was there -- was he also the trustee on the 20th and the 21st?

A. To my knowledge, yes.

Q. And did you only have one trustee at that time?

A. No.

Q. Who else was a trustee?

A. There was another trustee. Herbert Dean Ferguson.

Q. All right.

A. But he wasn't the jail trustee, so to speak. He was working for the county commissioners.

Q. So he went outside the jail?

Deborah Thompson - Cross

A. Yes.

Q. And the other individual stayed inside the jail --

A. Yes.

Q. -- is that correct?

Where do both of these individuals sleep?

A. In the -- they were locked down at night.

Q. So they actually slept in their cells?

A. In their cell areas, yes.

Q. Now, would you describe for us when you went to -- describe the Noble County Jail for us. When you come up the elevator, you come out on the 4th floor; correct?

A. Right. There's a gate.

Q. Right, come out the gate.

A. And then directly in front of it, maybe, what, 5 1/2 feet, 6 feet, there's the kitchen.

Q. Uh-huh.

A. And you go around the elevator, and then there is the south side; and if you go around the elevator and go straight east of it, that would be -- the booking office would be to the north, the storage rooms to the south, going back out the same way you came in there, the south side. Then there's the north side and then the women's cell.

Q. The north side and south side have cells in them; correct?

A. Yes.

Q. All right. And the west-most portion of the jail is the

Deborah Thompson - Cross

kitchen area that you were talking about earlier; correct?

A. Yes.

Q. And on the east side of the jail, which is the east side of

the courthouse, there's the booking area on the north side and on the south side is the storage area as you called it?

A. Right.

Q. What's in that storage area besides the bags of clothing that you talked about earlier?

A. Our files.

Q. As in file cabinets?

A. Yes.

Q. Is there a desk in there and a chair?

A. Yes.

Q. Okay. And what's that desk and chair used for?

A. For when the attorneys come on the floor.

Q. And are prisoners typically taken into that area to discuss

their case or whatever with their client?

A. If the attorney request it, yes.

Q. And that door can be closed, can't it, but not locked?

A. Yes.

Q. And if I'm recalling correctly, there's a hole in the doorknob area where the lock's been taken out, isn't there?

A. Yes.

Q. Now, what else is stored in there besides the files?

A. At one time we had commodities.

Deborah Thompson - Cross

Q. Uh-huh.

A. Donated flour and noodles, stuff for the jail. They were stored in there, too.

Q. Is it just a general storage area for anything that you need to put there?

A. Well, that's all that was stored there is just files and the commodity foods, the inmates' bag, you know, the --

Q. -- bags of clothing?

A. Yeah, clothing.

Q. Is there a bed in there, still?

A. No.

Q. That's been taken out?

A. I think that was taken out a while ago. Long time.

Q. Are the files that are kept in there old files that have been closed, or are they files that you get into on a regular basis?

A. Regular basis.

Q. So there are people in and out of this room on a constant -- constantly; correct?

A. People, the jailer.

Q. Jailers, prisoners, attorneys?

A. Yes.

Q. Whoever has access to the jail can go in and out of that room fairly freely; correct?

A. There's very few that have access to the jail.

Deborah Thompson - Cross

Q. I understand that, but attorneys usually go in there and talk to their clients; right?

A. Yes.

Q. Unsupervised; right?

A. Yes.

Q. Now, when someone is booked into the Noble County Jail, the person who is doing the actual booking, whether it's a male or a female, takes care of everything having to do with that prisoner to get them into the cell -- is that correct -- or directs what has to be done?

A. Okay. The jailer does all the paperwork per se, the fingerprinting and the photo-taking. Usually the arresting officer that brings them in, most time being a male being brought to jail, that officer will go into the storage room for him to change out into our jail uniform.

them to change out into our jail uniform.

Q. Is that only if you were the jailer or if Miss Moritz was the jailer?

A. Correct.

Q. If it was one of the male jailers, would they go into the room and watch them change their clothes?

A. If the officer was busy doing his paperwork, yes.

Q. So it's standard procedure for whoever's on duty that the officer who brings the person in goes into the room and watches them change clothes; correct?

A. Basically, yes.

Deborah Thompson - Cross

Q. So the jailer didn't usually see what goes into the paper bag; is that correct?

A. The only thing -- well, they see it one way or another, when they're releasing or booking. It's just the items that they're wearing.

Q. Right, I understand that.

A. Right.

Q. But if --

A. I mean they see that. They have to write that down on the booking card.

Q. Okay. Do they actually write it down? Is the procedure for the Noble County Jail to write down what the person was wearing as it's taken off piece by piece --

A. No.

Q. -- or at some other time?

A. As they're being booked in. They're still fully clothed while you're doing the paperwork.

Q. Uh-huh.

A. And that's including, you look over and you see that they're wearing jeans and tennis shoe and the size, you ask them the size they're wearing.

Q. The size tennis shoe?

A. Yes.

Q. Okay. Go ahead.

A. You see what they're wearing, you write it down on the back

Deborah Thompson - Cross

of the booking card.

Q. Okay. Do you also further ask them questions about what they have on, like if they have on two shirts or if they have on underwear or something like that?

A. No, the underwear they keep on.

Q. So all that you inventory is what's actually supposed to be in the bag; correct?

A. Visual, yeah.

Q. Now, what goes into the -- I believe valuables go into the other bag, the canvas bag?

A. Yes.

Q. I believe that's a bank bag?

A. Yes.

Q. And that has a number on it that you also put on the paper sack; is that correct?

A. Correct.

Q. Who determines what goes into the canvas bag, the jailer or the person who's being booked in?

A. The jailer.

Q. All right. And what normally goes into that bag?

A. All items out of their pockets, wallets, cash, coins, rings, necklace, bracelet, earrings, ribbons, you know, the clippies.

Q. Is it something that is of more value and might be stolen, so you want to keep track of it and that's why you lock it

Deborah Thompson - Cross

away? Maybe I shouldn't have used the word "stolen."

A. The original reason for -- it's just been that way ever since I've been employed there. This is just the procedures how we do it.

Q. And that is locked on the 4th floor in the booking area; is that correct?

A. Yes. Yes.

Q. And who has access to get into that file cabinet?

A. The jailer.

Q. And that's all; correct?

A. Yes. The keys are up there with the jailer. And the sheriff, of course.

Q. Right. Anyone who is with the Noble County sheriff's office and has the key can get into that area and get into the file cabinet; correct?

A. Only clearing it through the jailer first.

Q. And that would be one of the four of you that are on duty; correct?

A. Yes.

Q. Now, when you retrieved the property from the room, did you actually go get it out of the storage room, or I believe you said Ferrel Stanley went and got that?

A. And you're talking about the first time? First time Ferrel Stanley brought it to me, into the kitchen.

Q. All right. Did you not go into the east area of the jail

Deborah Thompson - Cross

at all?

A. No.

Q. How did he know you were coming to get the sack?

A. When you -- right there in the kitchen, right by the door, there's a phone. I just dialed intercom.

Q. And told him to bring it?

A. Ferrel, yes.

Q. And did you tell him that you wanted the bag or the sack from the storage room with Mr. McVeigh's name on it?

A. Yes. His clothing.

Q. Okay. And when he brought that to you, did he stand there and watch you take the items out?

A. Yes.

Q. All right. And that's when you made your handwritten list; is that correct?

A. No.

Q. All right. Tell me what you did with that, then.

A. Okay. I replaced the items after letting Jerry know, the clothing, what was in the bag.

Q. Why did you not make a handwritten list at that time?

A. Because I wasn't taking it anywhere. It was staying right on the jail floor.

Q. Okay. All right. What were you supposed to be doing, then; just reporting what was in the sack?

A. Yes.

Deborah Thompson - Cross

Q. What articles or items of clothing there were?

A. Yes. What he was wearing the day he was arrested.

Q. Okay. And when you called Sheriff Cook and told him what he was wearing, did you describe it, or did you just say, "T-shirt, jeans, boots"?

A. I described it.

Q. Okay. Now, you did not take any notes at that time?

A. No.

Q. Did you write anything on the items of clothing?

A. No.

Q. All right. And then did you give it back to Mr. Stanley?

A. I replaced it back into the same sack I took them out of and gave it to Ferrel to take back to the storage room.

Q. All right. And when you took this property out --

A. Uh-huh.

Q. -- did you have on any gloves?

A. No.

Q. Okay. Didn't treat it any differently than --

A. I just picked it up like from the corners. That's how I did it.

Q. But you didn't treat this any differently than anyone else's personal property at that point, did you, as far as gloves or anything like that?

A. Well, I've never had to do this before, to go up and check on someone's property.

Deborah Thompson - Cross

Q. I understand that, and I'm not trying to ask you a trick question or anything. Just you don't normally handle personal property of any inmate with gloves, do you?

A. Well, it all depends, Miss Ramsey. If they're nasty, you know, dirty, yes, of course we use gloves.

Q. Or if they're bloody or something like that; correct?

A. Yes.

Q. But in normal procedure, when someone is booked in, the clothes are merely placed in the bag; and when it's time to get

clothes are merely placed in the bag, and when it's time to get them out, you just pull them out of the bag?

A. They pull out their clothes.

Q. But you did not have on gloves at any time on the 21st when you took the clothing out of the bag, at any time, did you?

A. No, and it was only one time that I took the clothing out.

Q. You didn't take it out downstairs?

A. No.

Q. Did Agent Hupp do that?

A. He was the one that -- I never touched the box again.

Q. Or the bag or anything in it?

A. No.

Q. All right. And did you write down on a card or something when you took the clothing out of the bag when you were in the kitchen area?

A. No. I didn't record anything.

Q. Okay. Did you not record anything until Agent Hupp

Deborah Thompson - Cross

recorded the time and everything on the sheet of paper that you typed?

A. No. I recorded when I was asked to retrieve all property, everything pertaining to Mr. McVeigh. That's when I did the handwritten list.

Q. And that was about 3:00 or so?

A. Somewhere right in there, yes.

Q. And when you had Mr. Stanley retrieve the bag from the storage room and he brought it to you, was it sealed in any way?

A. No.

Q. Have any tape on it or anything?

A. No.

Q. Was it open or closed?

A. It was just like a bag of groceries, how it's open. That's -- it had his clothing in it.

Q. Was it full?

A. Pretty much so, yes.

Q. Okay. And could you clearly see the markings on it as to the name?

A. Oh, yes.

Q. And could you clearly see I believe the number "2" which is on there, which is the number of the canvas bag?

A. Yes.

Q. You didn't have any trouble in deciding that that was the

Deborah Thompson - Cross

actual bag of clothing; correct?

A. No.

Q. And do you recall how the items of clothing were stacked in

the bag? Were they neatly folded and put away, or were they

just jumbled in there?

A. Kind of jumbled in there.

Q. And that's probably pretty usual; correct?

A. Correct.

Q. Now, you called Sheriff Cook and advised him of what was in the bag; correct?

A. Yes.

Q. And then what's he tell you to do?

A. I just went back downstairs.

Q. Was there anyone with Sheriff Cook at that time?

A. When I phoned him?

Q. Uh-huh.

A. I was upstairs. There might have been. There was agents in the office.

Q. The FBI had already arrived, then, when you went upstairs the very first time to check the clothing; is that correct?

A. Yes.

Q. But none of the FBI agents went upstairs with you to check on that clothing; correct?

A. No.

Q. When you went back downstairs, then, what were your next

Deborah Thompson - Cross

duties?

A. Answering the phones.

Q. Okay. Did Sheriff Cook tell you to bring the items into -

-
or I'm sorry. When did Sheriff Cook next tell you to go upstairs?

A. To retrieve all the property?

Q. Yes.

A. It was shortly after I'd been up there. Maybe an hour or so. Maybe less.

Q. Had Sheriff Cook been meeting with anyone during this time when you went up originally and when you went back up at around 3:00?

A. There was a lot of agents there. The two that I clearly remember was Agent Lou Hupp and . . . I'm sorry.

Q. That's fine. I don't need to know those names.

A. Zimm.

Q. Zimms?

A. I think.

Q. Zimms?

A. Yes. Floyd.

Q. Floyd Zimms.

And had they been meeting with Sheriff Cook about Mr. McVeigh, as far as you know?

A. As far as I know. I was in the outer office. They were in Jerry's office.

Deborah Thompson - Cross

Q. So you went upstairs, you retrieved all of the property?
A. Yes.
Q. And did you actually retrieve it this time, or did you have Jailer Stanley do that?
A. I retrieved his clothing bag and the canvas bag property. Ferrel Stanley retrieved all items out of the cell.
Q. And how did you know that those were the items that came from the cell that Mr. McVeigh was in?
A. The jailer knows what goes in and goes out.
Q. Is that what's on that log that you were talking about earlier?
A. On the inventory sheet?
Q. No, on the log that you said that's kept with regard to what happens in jail.
A. Yes.
Q. It also has who's in what cell; is that correct?
A. No. No. The guys will switch around in the cells sometimes, they don't get along with other inmates.
Q. Which side of the Noble County Jail was Mr. McVeigh on, the north or south side?
A. I don't remember.
Q. Okay. But was he in a separate cell or was he in a cell with other people, if you know? If you know.
A. I really -- I don't remember. I didn't have no dealings with Mr. McVeigh.

Deborah Thompson - Cross

Q. Okay. And when Mr. Stanley brought you back this other property, how did he bring it back to you?
A. Carried it in in his arms.
Q. Okay. But he didn't have it in a container of any kind?
A. No.
Q. And I believe you said it was the mattress cover, two Styrofoam cups, and what else?
A. The blanket, toothbrush, toothpaste.
Q. And other hygiene items?
A. Yeah, and some papers.
Q. And did you mark these items in any way to show that you were receiving them from the jailer?
A. Only on my list, the handwritten list.
Q. Okay. When he brought those in, did he read them off to you and you write them down?
A. Yes, as he was putting them in, he was telling me what it was.
Q. Okay.
A. And I was writing them.
Q. And that all went into the box; is that correct?
A. Yes.
Q. And that's in the box with the sack?
A. Yes.
Q. And when you put the items of clothing of Mr. McVeigh back into the sack, you didn't fold them neatly, did you?

Deborah Thompson - Cross

- A. No.
- Q. Put them back the same way they were?
- A. I never touched the clothing again after the first time.
- Q. Right. And the bag was still open; is that correct?
- A. Yes.
- Q. And then where did you put the canvas bag, in the box or in the sack?
- A. In the box. In the box.
- Q. In the box by itself?
- A. Well, not by itself. With the rest of the property.
- Q. Is there any lock on that bag, that bank bag?
- A. The zipper bag?
- Q. Uh-huh.
- A. No.
- Q. When you gathered up all of these items, then did you personally take them down to the first floor of the sheriff's office?
- A. Yes, I did.
- Q. And you took them to Sheriff Cook's office; is that correct?
- A. Yes, I did.
- Q. And who was in Sheriff Cook's office at that time?
- A. No one.
- Q. All right. Was the door open or closed?
- A. It was open.

Deborah Thompson - Cross

- Q. All right. Was the door to the sheriff's office that goes out onto the first floor open, also?
- A. Yes.
- Q. Was anyone else in the office at the time that you went back?
- A. No.
- Q. But you could come in and out without your keys; correct?
- A. Correct.
- Q. All right. And what did you do with the box?
- A. I set it inside of Sheriff Cook's office, and I went over to my typewriter and started to do the list.
- Q. Okay. And how long was it before someone came in to the office? Short period of time?
- A. Yes.
- Q. And who came in at that point?
- A. Everybody. All the agents and Jerry and my undersheriff, Raymond, some of our reserve officers.
- Q. And did Undersheriff Henry, Sheriff Cook, and the two agents then go into Sheriff Cook's office?
- A. Jerry went in his office, and I believe Lou Hupp went in there. I seen him go in. The other agent, I don't remember his name, but he went in there, too.
- Q. All right. Zimms?
- A. No, it wasn't Floyd that time.
- O. This was a different one?

Deborah Thompson - Cross

A. Yes.

Q. But they went into Sheriff Cook's office; correct?

A. Yes.

Q. And where was the box at that point?

A. Up against his wall, in front of his desk.

Q. You had not sealed it, though, at that point; correct?

A. It was closed. You know, it's the kind with flaps. You can close them like that; and I had them not interlocked, but I did have the flaps closed over the top.

Q. And you set it down by Sheriff Cook's wall; and when he went in, did he pick that up, or could you see?

A. I couldn't see.

Q. Did they close the door when they went in?

A. No.

Q. All right. Door generally stays open, doesn't it?

A. Yes.

Q. All right. Now, were you at this point working on your list that you were typing? Correct?

A. Yes.

Q. And that was based on your handwritten list?

A. Yes.

Q. Is that what Sheriff Cook told you to do?

A. No.

Q. You just did that on your own?

A. Right.

Deborah Thompson - Cross

Q. Is it easy to read your handwriting?

A. Yes. But not when I was -- not when I'm writing fast. I misspell words. Sorry.

Q. Okay. Now, I believe you've identified Government Exhibit 424.

MS. RAMSEY: Kathi. I believe that's been admitted.

BY MS. RAMSEY:

Q. It should be on the screen below you.

A. Yes.

Q. Can you see that?

A. Uh-huh.

Q. Is this the list that you typed in order -- is this the list that he prepared with the items of clothing that came out of the sack as well as the canvas bag? Correct?

A. Yes.

Q. Now, at the bottom there is some handwriting with the numbers 24 through 29. Do you see that?

A. Yes.

Q. Is that where you were talking about that Agent Hupp added as being the personal hygiene items?

A. Yes. That I didn't. I hadn't had typed on the

Q. All right. And over to the right side I believe is Agent

Hupp's signature; is that correct?

A. Yes, it is.

Q. Now, when you made this list, you put on here that it was

Deborah Thompson - Cross

released and you have put several different items on here, but I want you to look at . . . the number where it has his shirt, which is No. 13.1 and 13.4. Do you see that?

A. Yes.

Q. And 13.1 is an off-colored white T-shirt and 13.4, an off-colored white T-shirt with three-quarter-length blue sleeves; correct?

A. Yes.

Q. Now, when you were in the sheriff's office or after you typed the list, what happens next?

A. In between typing the list, I'm answering phones and doing errands.

Q. How long was it after you typed the list before you went into Sheriff Cook's office to deal with the actual property?

A. I really couldn't tell you. There was a lot of interruptions. As soon as I finished with the list, I went into the office.

Q. And why in particular did you deal with Agent Hupp and these items of property as opposed to Sheriff Cook, if you know?

A. Because he's the one that spoke with me, too. He's the one that asked.

Q. Agent Hupp or Sheriff Cook?

A. Both.

Q. Okay. So when you went into the room to speak with Agent

Deborah Thompson - Cross

Hupp, what were you told to do?

A. I wasn't told to do anything. Agent Hupp put his gloves on, and we started going over the list.

Q. And did you read down the list and he would check to see if

it was in the box? Is that correct?

A. No. He had it in his hand and with a pen in the other hand.

Q. The piece of paper?

A. Yes.

Q. Or the item?

A. The inventory.

Q. All right.

A. This paper.

Q. All right. And when he would see that item in the box, he would check it off?

A. Yes.

Q. Correct? Did he take the items out of the box?

A. No. They were -- it wasn't crammed in the box. It was a bigger box than what the property was.

Q. When it came time to do the clothing in the sack, did he open the sack -- or I guess it was already open -- did he take the items out of the sack?

A. I remember him using his pen and pulling back, you know, a few items. If he pulled something out, I don't remember that.

Q. Okay. But he did not take anything directly out, hold it

Deborah Thompson - Cross

up, look at it, and make any notations?

A. No.

Q. Did Agent Hupp make any notations on anything other than what's been exhibit -- what has been marked as Government's Exhibit 424?

A. No. This is it.

Q. Okay. He didn't have any other note pad that he was using for anything else regarding this property?

A. Not to my knowledge.

Q. When he was looking at the property, did he ever change his gloves, or did he only use one pair of gloves from beginning to end?

A. I believe it was just one pair. I'm not sure. He could have done it. I don't remember him doing it.

Q. All right. That's fine. Now, when you went through this inventory, you added or Agent Hupp added the Items 24 through 29, and then it was signed.

A. Yes.

Q. Correct?

What next happened to the property?

A. He closed it up, sealed up the box.

Q. And was Sheriff Cook in his office also watching this procedure?

A. I want to say yes, he was there, but -- to think back, I don't remember seeing him.

Deborah Thompson - Cross

Q. Okay. Was there any other agent there?

A. I think it was mostly just Lou and I in there. At a point,

there was just Lou and me there.

Q. Did he go through the canvas bag?

A. Who?

Q. Agent Hupp.

A. Hupp. Yes.

Q. And did he take each item out, or just generally look in it like he did the bag?

A. I think he just looked at it. Okay. Like you -- you know,

you just open and you see everything in there.

Q. Okay. And did he take the canvas bag with him?

A. I don't remember if he did or didn't.

Q. When he put -- when he took the box or when you finished going through the list, was anything packaged differently than when you had brought it down to the Noble County Jail sheriff's

when you had brought it down to the Noble County Jail Sheriff's office -- I'm sorry, to the sheriff's office?

A. It could have been. I don't -- I don't remember it being packed any differently, really.

Q. Did Agent Hupp --

A. Nothing was arranged or folded.

Q. Did he use any other type of packaging, plastic bags or any other sacks?

A. I remember seeing the plastic bags, but I can't honestly tell you if he put something in there. He could have. I

Deborah Thompson - Cross

just -- it's been a long time.

Q. Right, I understand that.

A. Okay.

Q. After you finished the inventory, then did you also include the items of evidence that had been taken by Trooper Hanger from Mr. McVeigh?

A. I'm sorry, would you repeat that.

Q. After you went through this evidence -- or personal property in 424, did you retrieve the items that Trooper Hanger had taken from Mr. McVeigh?

A. I never touched those items, the confiscated property. I was given a scratch pad, yellow, just tore off. And when I was typing up the property, that was given to me, so I added it.

Q. Added it in?

A. Yes.

Q. All right. And you did not have anything to do with retrieving those items or putting them in the box?

A. No.

Q. Is that correct?

A. No, I did not.

Q. Were they in the box when you and Agent Hupp went over this list?

A. I don't believe so. I think they were on Jerry's desk.

Q. All right. Were they kept separately, then, from the items of personal property?

Deborah Thompson - Cross

A. I'm sorry, I can't remember.

Q. Okay. That's fine. Where is the evidence kept in the Noble County sheriff's office?

A. What do you mean, evidence? You mean the confiscated property?

Q. Yes.

A. It's put into the evidence locker.

Q. And where is that?

A. It's right there in the sheriff's office.

Q. It's on the 1st floor of the courthouse, as opposed to the 4th floor; isn't that correct?

A. Right, uh-huh.

Q. Who is the actual property clerk? Does Sheriff Cook take

care of that, himself?

A. Yes.

Q. And so do you think that he is the one who retrieved that property and put it on his desk?

A. He had to have been, yes.

Q. Is he the only one that has the key, or does Undersheriff Henry have that key, also?

A. Undersheriff Henry has it, too.

Q. Are they the only two that has that?

A. No, we have a spare key in the lockbox with all extra keys in it.

Q. All right. Now, after all of this property is together,

Deborah Thompson - Cross

what happens to the box? Is it sealed in any way?

A. I believe I remember seeing Agent Hupp seal the box. After everything was said and done, it was sealed.

Q. With tape or what?

A. I don't remember --

Q. Okay.

A. -- that.

Q. Did you at any time ever initial any clothing or any items of personal property of Mr. McVeigh?

A. Did I initial? Did I touch?

Q. Uh-huh.

A. No.

Q. Did you ever initial any of the items of evidence that Sheriff Cook had kept in the evidence locker on the 1st floor?

A. No, I never touched that.

Q. All right.

MS. RAMSEY: Your Honor, if I might have just a moment?

THE COURT: Yes. Excuse me.

BY MS. RAMSEY:

Q. I forgot to ask you. Are the canvas bags reused on a regular basis?

A. Yes.

Q. The paper bags are not until you run out; is that correct?

A. Correct.

Deborah Thompson - Cross

Q. Is that a common occurrence?

A. We only have so many bags, canvas bags.

Q. How many do you have? One for each cell, probably?

A. Pretty much.

Q. Okay. Are the trash -- the grocery sacks used over only when you run out? Is that correct?

A. Yes.

Q. Are these bags that the Noble County sheriff's office buys from the Best Yet that's around the corner, or --

A. Yes.

Q. -- or do you buy your groceries for the jail and then keep

them and use them?

A. Yes.

Q. Which one is it?

A. When I go to the market for the jail, and they are folded up and put behind the -- in the booking area. The door, they're put behind there next to the locked cabinet.

Q. And they're used whenever you need to; right?

A. Right. We pull them out then.

Q. You don't recall whether or not Agent Hupp took the canvas bag, do you?

A. No, I don't.

Q. Okay. Was that canvas bag, though, reused prior to -- was it used before Mr. McVeigh's items of property were put in it?

A. I'm sure.

Deborah Thompson - Cross

Q. Okay.

MS. RAMSEY: I have no further questions, your Honor.

THE COURT: All right. Do you have any redirect?

MR. MENDELOFF: Yes, your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Miss Thompson, do you remember being asked questions on cross-examination regarding the storage room and the use of that room?

A. Yes.

Q. Do you remember being asked about whether attorneys met in that room with their clients?

A. Yes, they do.

Q. From the period of Wednesday, the 19th of April, 1995, until Friday, the 21st, have you checked the jail log to see how many attorneys used that room?

A. Yes, I did.

Q. Who used that room?

A. Royce Hobbs.

Q. Whose attorney was he?

A. He was appointed to Mr. McVeigh.

Q. At the time?

A. Yes, sir.

Q. And that was on the 21st?

Deborah Thompson - Redirect

A. Yes.

Q. Other than Mr. Hobbs, did any other attorney use that room with their client?

A. No.

Q. All right. Now, you were also asked questions about the trustee, Carl Hite. Do you know what he was in jail for?

A. DUI.

Q. Now, how big is the population of your jail as a general matter?

A. We get -- holding 19 is really pushing it, but 19 is our

A. we get -- holding 19 is really pushing it, but 19 is our capacity.

Q. 19 total inmates?

A. Yes.

Q. And typically how many are there?

A. About 14 is our minimum.

Q. Do you have a lot of hardened criminals in, or are there a lot of people charged with DUI and that sort of offense?

A. Mainly, yes.

Q. Now, you were asked questions on cross-examination regarding your handling of this clothing.

A. Uh-huh.

Q. Miss Thompson, prior to the time you handled this clothing; did you handle any high explosives like dynamite or TNT?

A. No, sir.

Q. Did you ever handle a water-gel explosive called Tovex?

Deborah Thompson - Redirect

A. No, sir.

Q. On the inventory sheet --

MR. MENDELOFF: And I'm going to need the overhead to do this.

BY MR. MENDELOFF:

Q. You were asked some questions about the entries here, and Ms. Ramsey asked you about Entry 11.1. Do you see that?

A. Yes.

Q. Is that 11.1, or is that No. 11, one pair of faded jeans?

A. That's No. 11, one pair of faded black jeans.

Q. Now, on this inventory sheet, at the top, you see "Released on April 21, 1995, at 1517 hours" or 3:17. Is that actually the time you released the clothing, or is that some other time?

A. That's when I started typing the inventory list. I looked up at the clock and

Q. And the time you actually released it is handwritten in here?

A. Yes, by Agent Hupp.

Q. At what time?

A. 4:30.

Q. Now, the storage room that we're talking about, that is part of the jail facility?

A. Yes, it is.

Q. How do you get up to the jail facility?

A. You have to have an elevator key, special key to get up to

Deborah Thompson - Redirect

the 4th floor.

Q. And when you get up to the 4th floor, do you just walk in or is there another security?

A. No, there's a gate.

Q. Is that gate locked?

A. Yes.

Q. When you get up to the 4th floor and you get up to that locked gate, is there always a jailer on duty?

A. Always.

Q. And where is the storage room in relation to the booking counter?

A. To the booking counter?

Q. Right.

A. Straight across the hall.

Q. Now, you were asked questions about prisoners having access to that storage room. Does the general prison population have free access to that storage room?

A. No, sir.

Q. When prisoners are going to that storage room to be booked in, as a general matter are they accompanied?

A. Yes, they are.

Q. And when they're booked out, are they accompanied?

A. Yes, they are.

Q. During the time that you worked in the jail and for the sheriff's office -- for what, nine years?

Deborah Thompson - Redirect

A. Yes, sir.

Q. During that entire time, have you ever heard of an instance where a prisoner had been caught tampering with the clothing?

A. Never.

Q. And those prisoners know, as I take from your direct testimony, that there are no valuables enclosed in that clothing; is that correct?

A. Exactly.

MR. MENDELOFF: Nothing further, your Honor. Thank you.

I'm sorry. One other thing.

Oh, sorry. I got it. That's all.

THE COURT: Miss Ramsey.

MS. RAMSEY: Yes.

THE COURT: All right.

MS. RAMSEY: Kathi.

Your Honor, may I approach?

THE COURT: Yes.

RE-CROSS-EXAMINATION

BY MS. RAMSEY:

Q. You've been handed what's been marked J409A. Do you recognize that?

A. Yes.

Q. And can you tell me what that is?

A. This is a -- when a prisoner has never been in our county,

Deborah Thompson - Recross

they're issued file numbers, new numbers, so this is a new inmate listing.

MS. RAMSEY: Kathi. I'm sorry, I handed her the wrong

copy. She needs this copy.

BY MS. RAMSEY:

Q. Is that a document that's kept in the regular course of business in the Noble County sheriff's office?
A. The first document here or the second?
Q. The first one -- or the second one, I'm sorry. I believe they're both the same, aren't they?
A. Yes.
Q. All right. Is that normally kept in the business records of Noble County?
A. Yes.
Q. All right. And I want you to turn -- look down to line 16. That's a two-page document, isn't it?
A. Yes, it is.
Q. And isn't that both sides of a logbook?
A. Yes.
Q. It's all one; correct?
A. Yes, it would be like a book, yes.
Q. All right. And do you see at that point the name of an individual that has been arrested by the name of, I believe, Cornelius?
A. Yes, I do.

Deborah Thompson - Recross

Q. And what is the name below that?
A. Allen . . . I can't read it. It's too small.
Q. All right. Would you look at the corresponding lines on the second part of that and tell me what they were arrested for.
A. Just a second. Cornelius and Allen?
Q. Yes, I believe they were both arrested for the same items.
A. Okay.

Can I have this enlarged? I really can't read it.

THE COURT: Do you have a magnifying glass?

THE WITNESS: Clearer or something.

MS. RAMSEY: Your Honor, at this time I would offer

it
into evidence. I believe we can enlarge it on the ELMO.

THE COURT: All right.

Is there objection to it?

MR. MENDELOFF: No, your Honor.

THE COURT: What is it, J409A?

MS. RAMSEY: J409A, yes, your Honor.

THE COURT: All right.

BY MS. RAMSEY:

Q. Can you see that now?
A. Okay. Let me find them. Well, I don't have a name here.
Q. All right. You need to put the two pages together. I believe it states that they're arrested for possession of a controlled, dangerous substance; possession of marijuana;

Deborah Thompson - Recross

possession of illegal explosives; is that correct?

A. Thank you. Yes. It does say that.

Q. Okay. And do you know what would be the name of that person?

Q. Okay. And do you know what cells these two individuals were placed in?

A. No, I don't. I wasn't up there.

Q. And can you tell by looking at this the date of their arrest?

A. Can you put that back?

Q. Sure.

A. Thanks.

Q. See that?

A. Okay. Where your finger is.

Q. Yes, that's Mr. Cornelius?

A. 3-5-95.

Q. Right. And Mr. Bargenstock, I believe is the other name. Is that also March --

A. Yes, 3-5-95.

Q. And do you have any idea what cells that they were kept in?

A. No, I don't.

Q. Now, you were asked just a few moments ago about Royce Hobbs being the only attorney who had been up on that floor -- on the jail floor at that time.

A. Yes.

Q. And Mr. Hobbs has the court-appointed contract for Noble County, doesn't he?

Deborah Thompson - Recross

A. Yes, he does.

Q. So he is up there on a routine basis to see all of the prisoners, isn't he?

A. He should be, yes.

Q. He goes up there all the time; right?

A. Yes.

Q. And isn't it normal that when someone comes to the Noble County Jail, they're not in -- not a jailer or a law enforcement person, you ring the bell and then you're brought up? Isn't that correct?

A. Only if the court clerk is called and asked if --

Q. Right. You have to call in advance?

A. Right.

Q. But you ring that bell, the elevator is brought up, and then you come out; isn't that correct?

A. Someone unlocks the gate. Right.

Q. You can either go in the kitchen and have a cup of coffee or you go around and go the booking area; right?

A. Yes.

Q. And that's pretty much an area of congregation; right?

A. I wouldn't say congregation.

Q. That's where you go to get the prisoners out of jail; right?

A. Right.

Q. To talk with you in the room across the hall?

Deborah Thompson - Recross

A. Yes.

... 100.

Q. Trustees, though, have access to that room when they're out and about during the day, don't they?

A. To be honest with you, they're pretty much kept busy in that kitchen. That's not to say they haven't been in there, yes, they have to sweep or mop, but --

Q. Or to get commodities, things of that nature?

A. But usually the jailer goes in there, too.

Q. But I didn't mean to imply the general population of the Noble County Jail has access to that room, because they don't, do they?

A. No, they do not.

Q. But the trustees can go in and out if they need to get items because it is not a locked area; correct?

A. Right. Correct.

Q. Do you know how many times -- withdraw that.

Do you know if the two people that were arrested, Cornelius and Bargaenstock, had any personal property when they went to jail by looking at this sheet?

A. I would have to research their information. I didn't book them in.

Q. Okay.

MS. RAMSEY: Just a moment, your Honor.

BY MS. RAMSEY:

Q. Do you know if Mr. McVeigh took a shower on Thursday?

Deborah Thompson - Recross

A. All inmates -- I -- no, because they take these showers at night and it's usually the male jailer that gives the showers. I wasn't up there. I did not personally see Mr. McVeigh go to the shower.

Q. I understand that. Is it kept in a logbook whether someone takes a shower or not?

A. Yes. Yes.

Q. Okay. And so if he was booked in on Wednesday, then he probably -- he did sleep on his bed on Wednesday night; correct?

A. Correct.

Q. And then they take showers on Thursday evening when the male jailer comes in?

A. Yes.

Q. All right.

MS. RAMSEY: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. You were asked questions about the Cornelius and Bargaenstock case?

A. Yes.

Q. Do you know the explosive that was involved in that case, offhand?

A. No, sir, I do not.

Q. Would referring to the information or the charge in that

Deborah Thompson - Redirect

case help you remember what kind of -- or to indicate what kind of explosive was involved?

A. I think it was like -- I was thinking it was like fireworks or something like that. That's what I was thinking it was, but I don't know.

Q. If you looked at the information or the charges in the case, would it help you remember?

A. Yes, if I could see their

MR. MENDELOFF: May I approach, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. You see the count that refers to use of an explosive?

A. Yes.

Q. You see the kind of explosive listed there?

A. Railroad torpedo.

Q. And do you know what a railroad torpedo is?

A. No, sir, I don't.

MR. MENDELOFF: I'm going to need that exhibit back, your Honor.

THE WITNESS: I think that's why I thought it was like a firecracker.

MR. MENDELOFF: If I might consult with counsel, please, your Honor?

THE COURT: Yes.

MR. MENDELOFF: Your Honor, we have a Department of Labor document which I believe is not objected to.

THE COURT: I can't hear you.

MR. MENDELOFF: I'm sorry. We have a Department of Labor document relating to the underlying explosives which I don't believe is objected to --

MS. RAMSEY: No, your Honor, I did object to that.

MR. MENDELOFF: Oh, you did.

MS. RAMSEY: Yes.

MR. MENDELOFF: I'll deal with that else-wise.

THE COURT: Is this witness's time in the chair completed?

MR. MENDELOFF: Yes, your Honor.

MS. RAMSEY: Your Honor, I would like to keep Miss Thompson on call; however, I don't have any objection to her going back to Perry. If we need her, we can call her.

THE COURT: All right. You may go back to Perry. We will recall you if need be.

Next witness.

MR. HARTZLER: We'd like to recall Lou Hupp.

Mr. Mackey will question.

THE COURT: All right.

Mr. Hupp, you're being again recalled to the stand under your earlier oath.

THE WITNESS: Yes, sir.

THE COURT: Please resume the stand.

(Louis Hupp was recalled to the stand.)

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Your name again is Special Agent Lou Hupp from the FBI?
A. Fingerprint specialist, Louis Gale Hupp.
Q. Let me turn our attention immediately, Mr. Hupp, to Friday, April 21, 1995, and tell the jury if you had occasion to go to the Noble County Jail and courthouse in Perry, Oklahoma.
A. Yes, I did.
Q. And what was your first purpose for going there?
A. I had been instructed to proceed to the Perry jail and ordered to fingerprint a Mr. Timothy McVeigh.
Q. In the course thereafter same afternoon, after arriving at the jail, did you take on another assignment?
A. Yes, I did.
Q. What was that?
A. I was detailed by a supervisor on scene, who I recognized as being a supervisor, to take possession of certain articles that were there in order to return those back to headquarters in Washington.
Q. Collecting evidence on behalf of the FBI?
A. That is correct, yes.
Q. Did you carry out that assignment?
A. Yes.
Q. Tell the jury how and where you did that.

Louis Hupp - Direct

A. Basically at the time, I was on the 1st floor of the jail there in Perry. I was directed to a young lady, a Miss Deborah Thompson, who I was to take into possession of certain items from her. We proceeded to another office that was sort of off to the side where we could take this -- undertake it with some care. My main concern at the time was to make sure that I had a listing of everything that I was taking possession of because this was not necessarily evidence that I was going to be examining, but I was merely transporting it.
Q. In the course of taking into custody certain evidence, did you use or rely upon a written inventory?
A. Yes, I did.
Q. Let me show you what's been previously admitted into evidence as Government Exhibit 424. Mr. Hupp, do you see Exhibit 424 before you?
A. Yes, I do.
Q. And do you recognize it?
A. Yes, I do.
Q. Let's show the top in a manner that perhaps we can read. And with benefit of this exhibit, tell the jury what steps you took to take into custody certain personal property of Mr. McVeigh on that day.
A. Well, as I stated, after we had -- I had been instructed to step aside with Miss Thompson, we -- I took this list and sit down at a desk, and there was a box there with -- containing

Louis Hupp - Direct

numerous items that were wrapped up. And my intent was to

numerous items that were wrapped up. And my intent was to carefully log and make sure that each one of these items was in fact in that box that I was going to transport.

So by wearing a pair of gloves so as not to contaminate anything, I very carefully, the very end of the bag, give it a sort of a review to see that it appeared like something that would appear on the list, taking great care not to in any way contaminate it with other things, because I realized it was trace evidence.

Once I found an item that matched up with something on the list, I placed a small check to the left-hand side of that number so it would indicate to me that I had reviewed this item and it was in fact still in the box.

Q. By way of example, the first item listed is all three fingerprint cards. Did you find three fingerprint cards in the box of items delivered to you by Miss Thompson?

A. Yes, I did.

Q. And how do you know that?

A. Well, I reviewed those, counted the three fingerprint cards, in fact then resealed them and placed them back in the box. But it was a careful review of everything that was in the box like that.

Q. Did you mark the inventory in any fashion to indicate what you had done on that day?

A. Yes, in this instance I checked a slight check to the left

Louis Hupp - Direct

of the number.

Q. Right here?

A. That is correct, yes.

Q. Well, jump down to Item 3. There's no check. What does that mean?

A. At the conclusion of the review of everything that was present in the box, it was determined by me that there was not a roll of film or any suspect photos in that box, so I made a notation outside -- or I in fact asked somebody what happened to this roll, and at that time I was advised it had been picked up previously by another individual.

Q. So the item was on her list, but the item was not in the box, and therefore you didn't check it?

A. That's correct.

Q. Conversely, did you find things in the box that weren't on her list?

A. Yes, I did.

Q. How did you account for those?

A. I made personal notations at the bottom of the list to indicate these things were there, that I did not in fact find them on the list, but they were included in the box. And there again, once I made the notation of what it was, I numbered it and checked off or just personally wrote the information out there in my handwriting as to what I had found.

Q. And do we find those notations, Items 24 through 29, at the

Louis Hupp - Direct

very bottom of Exhibit 424?

A. That is correct.

Q. And after satisfying yourself that you had an accurate inventory, both in written form that matched the contents of the box, did you make a notation as to when you on behalf of the FBI was taking into evidence those materials?

A. Yes, I did.

Q. Where does that appear, please?

A. That appears to the right lower portion of the letter where

I indicated Items 1 through 2 and 4 through 29 were received by me at 4:30 p.m. on April 21, 1995, and then I in fact signed my name.

Q. By 4:30 on that afternoon, were you satisfied that everything on this list was in the box that you reviewed?

A. Yes, I was.

Q. And after doing so, what did you do with the contents -- or the box itself, I should say?

A. Once I had signed the list for retrieving it, Miss Thompson made a copy of that list, and I in fact placed that in the top of the box and then sealed the box, because it was my intent to take it back to Washington D.C.

Q. Describe how you sealed it.

A. I put it into the box, closed the flaps, and then I used some brown tape that I had in my briefcase that I had brought with me to in fact seal the top of the box so that it could not

Louis Hupp - Direct

be opened or nothing could get in and out.

Q. At that point in time; that is, 4:30 on that Friday afternoon, had you accomplished your first mission of taking the fingerprints of Mr. McVeigh?

A. No, I had not.

Q. Did you do so thereafter?

A. Very shortly thereafter or a short period of time thereafter I made it known that I had in fact not printed Mr. McVeigh, my sole purpose for being there, and was then afforded an opportunity to print him.

Q. Where was the box of materials when you went to print Mr. McVeigh?

A. Wherever the -- I went, the box of materials went with me. I took it with me to the 4th floor. It in fact sit on the floor at my feet with my briefcase on top of it while I printed

Mr. McVeigh, and then I hand-carried it back downstairs at the completion of my printing.

Q. Later that same afternoon, did you leave Noble County?

A. Yes, after -- at the conclusion of my activities, I went

downstairs, retrieved my coat --

MS. RAMSEY: Your Honor, we object as not being responsive to the question asked.

THE COURT: Overruled. Go ahead.

THE WITNESS: When I in fact went down, I picked up my coat. I was proceeding at that time to leave Perry County

Louis Hupp - Direct

(sic) by airplane.

BY MR. MACKEY:

Q. Did you go out to the airport?

A. Yes, I did.

Q. And as you did so, did you have the box -- the sealed box with you?

A. Yes, I did.

Q. What did you do with it when you got to the airport?

A. At that time I was entered onto the airplane. It was there to transport me back to Washington, D.C., and in fact I placed it on the seat -- a passenger seat about two rows back.

Q. Was there anything else in that same seat on that same plane?

A. There was nothing on that seat, and there was some things a distance back, but nothing close.

Q. Was that the last time that you had physical possession of that box that you had taken from Miss Thompson that afternoon?

A. Yes.

Q. Let me turn your attention now to the second subject matter, Mr. Hupp, your field of specialty, fingerprints. And I want to ask you a few additional questions about your examinations in this case.

Let me show you two exhibits that have been previously admitted into evidence, Exhibits 495 and 498. Showing you first 495.

Louis Hupp - Direct

A. All right. Yes, sir.

Q. You recognize that?

A. Yes, I do.

Q. In the course of your duties, did you conduct examinations in an attempt to identify latent fingerprints on that money order?

A. Yes, I did.

Q. And what did you find?

A. I in fact developed two latent fingerprints of value for identification purposes on this particular document.

Q. Did you compare those latent fingerprints with the known fingerprints of either Tim McVeigh, Terry Nichols, or other persons?

A. Yes, I did.

Q. Did you make any identification?

A. Yes, I did.

A. Yes, I did.

Q. Would you tell the jury whose fingerprints you found on Government Exhibit 495?

A. I identified these, the two prints that I developed on this particular document, with the fingerprints of Terry Nichols.

Q. Drawing your attention now to 498, second money order. Did you also examine that?

A. Yes, I did.

Q. Did you find any latent fingerprints on that piece of evidence?

Louis Hupp - Direct

A. Yes, sir.

Q. Were you able to identify the maker of those prints?

A. Yes, sir.

Q. As who?

A. There again, it was Mr. Terry Nichols.

Q. Direct your attention to Government Exhibit 250A, previously admitted into evidence. Did you examine the original of that exhibit in the course of your work?

A. Yes, I did.

Q. And did you identify or develop latent fingerprints from the contents of Exhibit 250?

A. Yes.

Q. Would you tell the jury how many latent fingerprints you found on Government Exhibit 250?

A. In fact developed 11 latent fingerprints and four palm prints which were suitable for identification purpose.

Q. And were you able to associate or identify the maker of those prints?

A. Yes, I was.

Q. Tell the jury what you found.

A. I in fact found that seven fingerprints had been identified with the fingerprints of Mr. Terry Nichols, four fingerprints and three palm prints had been identified with Marife Nichols, and one print remained unidentified.

Q. Directing your attention to one page of Government Exhibit

Louis Hupp - Direct

250A, was that a page that was in the exhibit at the time that you examined it in the course of doing your fingerprint work?

A. Yes, it was.

Q. It reads, "Joe Kyle, No. 40," and thereafter?

A. Yes.

MR. MACKEY: Your Honor, at this time we'd renew our motion to admit into evidence Government exhibits previously identified by the witness Sharri Furman, Exhibits 107, 107A, 108, 109, 111, 111A, and 112.

MR. JONES: Make we have just a moment, your Honor?

MS. RAMSEY: May I see that, your Honor?

THE COURT: Yes, you may. I'm a little confused

about

250 and 250A here.

MR. MACKEY: I can clarify that.

THE COURT: Yes, which one is the witness talking about?

BY MR. MACKEY:

Q. Mr. Hupp, the original of the notebook, is that Government Exhibit 250?

A. That's correct, yes.

Q. And is 250A a copy that is more legible --

A. Yes.

Q. -- of the same exhibit?

A. Yes.

THE COURT: So it's 250 that you --

Louis Hupp - Direct

THE WITNESS: That's correct, your Honor.

THE COURT: -- identified the printing?

MS. RAMSEY: Your Honor, we object on the basis of Rule 402.

THE COURT: Objection overruled. The exhibits are received.

BY MR. MACKEY:

Q. Before you on the stand, Mr. Hupp, you should find Government Exhibit 142. Do you see that?

A. Yes.

Q. In the course of your work, did you examine that exhibit for fingerprints?

A. Yes, I did.

Q. Is it a registration card in the name of Joe Kyle?

A. Yes, it is.

Q. And as a result of your examination, did you make an identification as relates to this case?

A. Yes, I did.

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 142, previously identified by the witness Patel. We're offering Mr. Hupp's testimony solely for the purpose of --

THE COURT: I didn't hear his testimony about it.

MR. MACKEY: I wanted to move it into admission before --

THE COURT: I think it depends on testimony.

Louis Hupp - Direct

MR. MACKEY: I'll do so.

BY MR. MACKEY:

Q. Were you able to identify a fingerprint on Government Exhibit 142?

A. Yes, I was.

Q. How many prints did you develop?

A. I develop two latent fingerprints which were suitable for identification.

Q. And were you able to associate those latents with any persons?

A. I was able to identify one fingerprint with a fingerprint

of Mr. Terry Nichols.

MR. MACKEY: Your Honor, with that testimony, I'd
move
into admission Government Exhibit 142.

MS. RAMSEY: Object as irrelevant, your Honor.

THE COURT: Overruled. 142 is received.

BY MR. MACKEY:

Q. Finally, Agent, or Mr. Hupp, do you find Government Exhibit
26 before you?

A. Yes.

Q. Do you also find Exhibit 26B, that being a clean copy, a
more legible copy, of Government Exhibit 26?

A. Yes, sir.

MR. MACKEY: Your Honor, for the record, Exhibits 26
and 26B have been previously admitted through the testimony of

Louis Hupp - Direct

Ms. Nichols.

THE COURT: Yes.

BY MR. MACKEY:

Q. I want to turn your testimony specifically to what appears
in 26B. Noted at the bottom as page 47.

A. Yes, sir.

Q. Did you examine that page?

A. Yes, I did.

Q. Is this the page that begins at the top with the
handwritten entry: "Read all, start here, just 'catch up'
subject: Waco.

A. Yes.

Q. Did you find any latent fingerprints on page 47 of
Government Exhibit 26?

A. Yes, I did.

Q. And how many?

A. Three.

Q. And did you identify any of those three?

A. Yes, I did.

Q. As who?

A. Mr. Terry Nichols.

THE COURT: I'm confused about this exhibit. That
isn't what I show as this exhibit. 26 --

MR. MACKEY: 26 is the original letter addressed to
Gwenn Strider with attachments. This is one portion of the

Louis Hupp - Direct

attachments.

THE COURT: Oh, attachments. I showed it as a
three-page letter, but you're talking about the attachment.

MR. MACKEY: Yes, your Honor.

THE COURT: All right.

BY MR. MACKEY:

Q. Pages 47, 48, 49, and 50 are attachments to the three-page
letter on top of that exhibit; is that correct?

A. Yes.
Q. Did you also examine page 49 of that same exhibit?
A. Yes, I did.
Q. Did you find any fingerprints on that page?
A. Yes, I did.
Q. How many?
A. One.
Q. And were you able to identify the maker of that print?
A. Yes, I was.
Q. And who was that?
A. Mr. Timothy McVeigh.

MR. MACKEY: That's all I have of this witness, your Honor. Thank you.

THE COURT: Ms. Ramsey.

MS. RAMSEY: Yes, your Honor.

CROSS-EXAMINATION

BY MS. RAMSEY:

Louis Hupp - Cross

Q. Agent Hupp, you identified -- or handled many documents with regard to fingerprints, didn't you, with regard to this case?
A. Yes, ma'am.
Q. Did you also test the Ryder rental truck reservation form?
A. Yes, I did.
Q. And did you find Timothy McVeigh's fingerprints on that?
A. No, ma'am.
Q. Did you find Timothy McVeigh's fingerprints on the Ryder rental truck form where he actually -- where it was actually rented?
A. No, ma'am.
Q. Now, I want to turn your attention to the other items that you just described that had Terry Nichols' fingerprints on them. Okay. Do you know where these items came from?
A. Only that they were forwarded to me; and the majority of them, as I understood it, were picked up from his residence in Herington, Kansas.
Q. And is it unusual for someone to have fingerprints on something that it's in their own home?
A. No, ma'am.
Q. Pretty standard, isn't it?
A. Yes, ma'am.
Q. Now, you've identified Government's Exhibit 250 as having fingerprints of Terry Nichols and I believe Marife Nichols --

Louis Hupp - Cross

is that correct -- and one other unidentified photograph?

A. Yes, that's correct.

THE COURT: You said photograph, but you meant --

MS. RAMSEY: I'm sorry, I meant fingerprint.

BY MS. RAMSEY:

Q. And in that, did you look at this when you were doing the fingerprints as far as reading it?

fingerprints as far as reading it.

A. For the most part, we may have scanned it in order to identify; but to read it in detail, no, ma'am.

Q. All right. Now, going to place a page from that document on the ELMO for you to look at. It's already been admitted into evidence. Could you read that for me, just the first line?

A. Okay. "Marife, T. Nichols and Nicole."

Q. All right. And does it give an address?

A. In care of G-L-E-C-E-R-I-A L-A-W-A-S. I'm not very good with the Hispanic names, but P-O-B-O-A-C-I-O-N. The next word is L-I-L-O-A-N. Cebu 6000 Philippines.

Q. So that would appear to be an address; correct?

A. Yes, ma'am.

Q. And then the other notations down below that also appear to be an address; is that correct?

A. It would appear that, yes.

Q. All right. I also want to turn to the next-to-the-last page of that document and have you look at that although it's

Louis Hupp - Cross

not a very clear copy because of some smudging that's on that. Can you read that?

A. "Dear Diary, March 1." Then I don't really make that out.

Q. All right. Does this appear to be a book that was used perhaps by the whole family?

A. It could have been, yes.

Q. Not anything special; correct?

A. That's correct.

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MS. RAMSEY:

Q. And that only had the fingerprints of Mr. Nichols and his wife that you could identify; correct?

A. That's correct.

Q. Do you know who else lived in the residence of Mr. and Ms. Nichols?

A. I realize they had a small child.

Q. Okay. None of the other documents from Terry Nichols' house had anything else of significance on them as far as fingerprints were concerned; is that correct?

A. I don't know what you mean by significance. I certainly developed prints, but

Q. Right. Did you go to Elliott's Body Shop when you were dealing with the Ryder truck?

A. Yes, ma'am.

Louis Hupp - Cross

Q. And did you dust that for prints, also?

A. Merely went in and I retracted or removed some stuff that we felt would be beneficial for the case and transported it back to headquarters in order to properly process it under laboratory conditions.

Q. And did you find any fingerprints of Timothy McVeigh?
A. No, ma'am.
Q. Did you also examine Government's Exhibit 699, which is the key, to determine if there were any fingerprints on that?
A. Yes, ma'am.
Q. And did you find any fingerprints of Timothy McVeigh on that key?
A. No, ma'am.
Q. Now, when you were at the Noble County Jail, you were there to fingerprint Mr. McVeigh -- is that correct -- mainly?
A. Yeah, that was my initial duty was to proceed there to fingerprint Mr. McVeigh.
Q. And you also collected this evidence; is that correct?
A. I was advised to collect it after I arrived on the scene, and I had been there some period of time.
Q. All right. So is it normal when you -- do you have any protocols in your lab, fingerprinting area of the lab, as far as the collection of evidence is concerned?
A. Yes, ma'am.
Q. And what are those protocols, please, sir.

Louis Hupp - Cross

A. Well, the protocols, we would secure the item that we were looking for fingerprints. We'd properly package it, in this instance; and it would be transported to or it would be field processed. Anything that can be field processed would be a nonmovable item or something that might cause you great hardship to do without.
Q. All right.
A. If it's a small item or a portable or what we call a mailable item, our protocols call for us to package that up. It may involve some sort of preprocessing at the scene, but initially we would process the things back in Washington under laboratory conditions, which is better.
Q. And freer of contamination, I would assume?
A. In my field with fingerprints, we're not generally really overly concerned with contamination because of what we do. The other aspects, yes, ma'am.
Q. Does your lab, with regard to fingerprints, have any protocols with regard to contamination of items of property?
A. We have some protocols; but there again, generally it is to keep things separate, divide them up and the like.
Q. Are you usually the last people to get something?
A. Yes, ma'am.
Q. And when you examine something for fingerprints, that's where all these smudges come from, isn't it?
A. Yes, ma'am.

Louis Hupp - Cross

Q. That's from your processing of it; correct?
A. Yes, ma'am.
Q. So all of the other people that need to examine a piece of

property, whatever that might be, have done their work before you get to it because you're really going to mess it up; isn't that correct?

A. That's generally the case.

Q. Do you know if your area has any protocols for contamination now?

A. We're establishing protocols as we speak.

Q. They were not in place in 1995; is that correct?

A. That is correct.

Q. Now, do you -- when you receive items of evidence, whether it be fingerprints or something else, do you log it in?

A. Yes, ma'am.

Q. And do you use the same Q numbering system that we've heard about here in court with other witnesses?

A. Generally the Q numbering system that you've heard about here in court, has come in place. In our section everything we

do post this period of time, this is just something recently instituted. Many times the items come to latent print were not Q'd unless they came through another section of the laboratory.

Q. If it already does have a Q number, do you keep that same Q number?

A. Yes, ma'am.

Louis Hupp - Cross

Q. You don't give it an independent number that would deal strictly with your lab?

A. Our independent number is a tracking number that we use. It would be independent, it would be the same throughout and not change the Q numbers.

Q. Are there any protocols with your lab with regard to what you were supposed to do when you collect evidence of some kind, not fingerprints?

A. Yes.

Q. And what are those?

A. Those protocols are we are -- if we are troubled by what we

see, to contact appropriate people in Washington if we see something that's out of ordinary, to process, as to how to do it. Generally the types of trace evidence and stuff, we know to keep that separate, try to keep it as contained in a noncontaminated state as possible, take everything possible with it, package it, and ship it to Washington as expeditiously as possible.

Q. What is the protocol with regard to your clothing?

A. The clothing that I wear?

Q. That you wear.

A. You would hope to change it at or after every crime scene-type examination.

Q. Do you wear different clothing when you know you're going to be doing something with regard to evidence than when you

Louis Hupp - Cross

Louis Hupp - Cross

don't know and you just happen to pick some clothing up, say, perhaps?

A. Yeah, pretty much. Yes, ma'am.

Q. Okay. And when you handle evidence, do you handle it differently than you do a fingerprint?

A. Yes, ma'am.

Q. All right. When you went to the Noble County Jail, you -- I believe the testimony has been that you used gloves.

A. Yes, ma'am.

Q. Did you use one pair of gloves?

A. Yes, ma'am. Because I never came in contact with the items themselves, merely was looking to see -- that's why many times it was not verified exactly what was in the item. If it said an off-color T-shirt and I saw what appeared to be a off-color T-shirt, I was merely making a field examination to determine I had a off-colored T-shirt or something very similar to it. And it was packaged up because I was in no way, shape, or form prepared to do those type of examinations at that location.

Q. The purpose of you taking the clothing was simply for you to inventory it; is that correct?

A. That is correct.

Q. You were not going to do anything evidentiary with that clothing that you knew of at that time; correct?

A. That's correct.

Q. When you fingerprint someone in your field, do you normally

Louis Hupp - Cross

wear gloves?

A. In some instances, yes. It's up to the individual examiner. However, coming under the scrutiny now of the other labs, we are starting to wear gloves at all times.

Q. Did you in 1995?

A. No.

Q. When you took the fingerprints of Mr. McVeigh, did you use gloves at that time?

A. No, I did not.

Q. So the only time that you used gloves in the Noble County Jail was when you -- or in Noble County was when you were in the sheriff's office looking at the personal property of Mr. McVeigh. Is that correct?

A. That is correct.

Q. Now, I assume also from what you've told us that you did not dress differently to come to this location because you did not expect to take any evidence; correct?

A. That was correct, yes.

Q. So you took no precautions before you got to the Noble County Jail with regard to protecting your clothing so that you would not contaminate anything; is that correct?

A. That's correct.

Q. Okay. Now, when you went to the Noble County Jail, was your first duty to receive this property?

A. No, ma'am.

Louis Hupp - Cross

Q. All right. When in relation time-wise did you receive the property? What time did you arrive? I guess that would be a better question.

A. I arrived, to the best of my recollection, somewhere in the neighborhood of 3:30 to 4:00, 3:45 to 4:00, somewhere in that general vicinity of time.

Q. Did you arrive by yourself?

A. No, ma'am.

Q. Who were you with?

A. There was a group that had ferried us down from Junction City, or Manhattan, Kansas, on a plane; and they all went in. I had a fellow latent print examiner with me. I also had a latent print photographer with me that were there just as a team. And it was some pilots that were involved -- now, they were --

Q. Let me ask you -- is that normal to take a latent print photographer?

A. Yes, sir -- yes, ma'am.

Q. Go ahead.

A. And when we proceeded into the jail, it was merely a fact at the time that they went with me, because there was no place outside of there to really stay out of the public eye, and that's what we were trying to do.

Q. The plane that you were in, that you took from Herington, I believe, you said, or Junction City?

Louis Hupp - Cross

A. Herington or Manhattan, yes.

Q. Was it an FBI plane, or was it a private plane owned by someone else?

A. It was an FBI plane.

Q. All right. Were there any special precautions taken inside of that plane with regard to contamination?

A. At the time that I placed the box, it was a sealed box. It was placed in an empty seat. That would be the extent of the precautions.

Q. On the way there, though, were there any precautions taken with regard to your clothing?

A. No.

Q. Now, when you got to Perry, then you somehow got to the Noble County Jail, or the courthouse?

A. Yes, ma'am.

Q. How did you get there?

A. I had called the jail, and I had asked for a ride, explained to them why I was there. They were aware that I was coming. And they said that they would send a ride out right away.

Q. All right. And did they do that?

A. Yes, ma'am.

Q. And how long did it take you to get from the Perry airport to the Noble County Courthouse?

A. There again, that, it's somewhere within that 3:30 to 4:00

Louis Hupp - Cross

time that we arrived in the jail, made a call, and were escorted into town.

Q. And you immediately reported to Sheriff Cook, I assume.

A. Actually, I recognized a superior on sight that I had dealt with in the past; and I introduced myself, in which he in fact recognized me, explained my situation, why I was there. And he sort of alluded to the fact that he knew that's why I was there.

Q. Okay. And what did you do next?

A. At the time, it was a very, very busy time in that area. So we kind of got off to the side just to get out of the way to

let everybody take care of business. They knew why I was there, so I was sort of in the back. And I just moved off to the side and just kind of stayed out of everybody's way.

Q. And when did you next do something with regard to Sheriff Cook or to Mr. McVeigh?

A. It would have been around 4, I would say 4:15 or so, somewhere in that time frame, that a supervisor that I recognized as being a supervisor tapped me on the shoulder and says, "I need you to sign for this. Inasmuch as you're going to D.C., we need you to take it back."

Q. Were you in the Sheriff's office waiting for something, for you to do something, or were you out in the hallway in the first floor of the courthouse?

A. No, we were in the -- in the sheriff's office, outside,

Louis Hupp - Cross

outside of an office. It was like a big room, is what we were in.

Q. Did you notice Mrs. Thompson typing up a list?

A. No, ma'am.

Q. Didn't pay any attention to that, either?

A. No.

Q. All right. So you got tapped on the shoulder, and you were given the opportunity to take back some items. And what were you told to do in relation to those items?

A. I was just instructed to take possession of them and transport them back to the laboratory in Washington, D.C., where they would in fact be turned over for other laboratory arrangements.

Q. And who were you supposed to make the arrangements in order to pick up the property with?

A. At that time, I turned and I was introduced to Miss Thompson. And we at that time proceeded to where these items were and then proceeded to sit down and go over the list.

Q. And where were the items in Sheriff Cook's office?

A. As best I remember, I went in, followed her in, and I stopped at a desk; and she placed the items on the desk.

Q. Do you know if she brought them in with her, or if they

were already in Sheriff Cook's office?

A. The best of my recollection, they were in that office at that time.

Louis Hupp - Cross

Q. All right. And what did they look like when you first saw them?

A. There was a box of bags of material or things, several things. And that was what I perceived that I was to take possession of. And I had no idea really what was in it.

Q. Cardboard box?

A. Yes.

Q. Just your typical cardboard box?

A. Cardboard box with some paper sacks, yes.

Q. Did she hand you the list that you've identified?

A. Yes.

Q. And you checked off each one?

A. Yes, ma'am.

Q. When you were checking them off, did you take these items out of the box or not?

A. There might have been some of the items that were removed from the box, set alongside of it to make room so we could adjust things in the box, so we could locate things, but not a great deal, if there were, in fact, any.

Q. Did you see any personal clothing of Mr. McVeigh?

A. From what I signed for, I recognized it to be clothing. There again, I was not sure what it was. I was just merely following instructions to sign for it.

Q. Were they loose in the box, or were they in some kind of a container?

Louis Hupp - Cross

A. They were in a container.

Q. What kind of a container was that?

A. They were in a paper sack.

Q. Was the paper sack sealed when you saw it?

A. To the best of my recollection, it was folded over.

Q. Was the bag full?

A. It was fairly full with the materials that were in there, yes.

Q. And when these items were checked off on the inventory, did you pull them out of the bag to see what they were?

A. No, ma'am.

Q. You just had --

A. Tried to maneuver to where I could account for what was in the bag.

Q. All right. And you agreed with the statements that were on the inventory as far as what they actually were, like one T-shirt or one pair of jeans, that kind of thing?

A. There were some exceptions; and there again, I merely agreed with what appeared to be in the bag.

Q. Okay. Now, after you received those items -- or when did you receive those items?

you receive these items.

A. There again, it was somewhere after 4:15 that we started the inventory. And it may have been a few minutes -- couple minutes prior to. But it was within that period of time. It didn't take that long, really, to register what was there.

Louis Hupp - Cross

Q. Did you actually receive the items and take possession of them after you finished the checking of the inventory?

A. At 4:30, yes, ma'am.

Q. Right. Okay. So at that point, you sealed it with the tape that you had in your briefcase; is that correct?

A. Yes, ma'am. Yes, ma'am.

Q. And did you have any problems in getting the top to stay on the box?

A. Not really. They were -- they were -- everything was appropriately laid in and it was folded down.

Q. Were the items of clothing and the other items in the actual box neatly folded?

A. These were in -- these were in paper containers, and their state of fold really escapes me. I really don't know.

Q. Don't recall whether they were or not?

A. Don't recall, no.

Q. Did you initial any of these items of clothing or of personal hygiene with your initials?

A. No, ma'am. There again, I was dealing with trace evidence; and my experience told me the less they were handled, the better off they would be.

Q. Did you ever put your initials on anything at all?

A. Only the invoice or the letter.

Q. All right. When you sealed it, or prior to that, did you look at the box, take everything out, and swab it in any way

Louis Hupp - Cross

before you put the items back in?

A. No, ma'am.

Q. All right. You just took the box that Mrs. Thompson handed you, sealed it, and then took it with you to Washington; is that correct?

A. Took it under my, into my possession, yes, ma'am.

Q. Where did you keep it during the time that you were still in Noble County, prior to getting to the plane and putting it in the seat?

A. It was, it was either in my arms or at my feet at all times.

Q. Now, did you go back to Washington by yourself?

A. No. As a matter of fact, I didn't go to Washington.

Q. Where did you go?

A. I went on to Oklahoma City.

Q. All right. When did you actually get back to Washington?

A. The following Tuesday. Evening.

Q. And where did you keep the box between the time you were at

Noble County and Tuesday evening?

A. Once I placed the box on the plane itself in a sealed condition, I turned it over to the other latent print examiner that was with me that I spoke of earlier.

Q. Uh-huh.

A. And he, in fact, accompanied it back per instructions from headquarters to the Washington area.

Louis Hupp - Cross

Q. And what airport did he land at, if you know?

A. I don't really know at this time.

Q. Is there any typical airport that you would land at?

A. Well, there is an airport that they use. However, there were occasions that it was not used. So for me to say they positively landed at one, I can't be certain.

Q. Do you normally land an FBI plane in a commercial airport, or private airport?

A. Private airport.

Q. Okay. Did you proceed, then, to take the fingerprints of Mr. McVeigh?

A. Yes, ma'am.

Q. And where did you do that?

A. Up on the 4th floor, in the booking area.

Q. All right. And did you notice the room across the hallway from the booking area?

A. No, ma'am. I -- when I got off of the elevator and entered

the booking area, I proceeded to immediately set up the area that I needed to conduct the business that I was there for. And when I was finished, I cleaned up; and they'd removed Mr. McVeigh, and I did not pay any attention to what was on the 4th floor whatsoever.

Q. Back up to the property just a second: On that log where you checked everything off, there were some handwritten notes that you made.

Louis Hupp - Cross

A. Yes, ma'am.

Q. Did you keep any other notes other than that one 8-1/2-by-11 sheet with regard to the property?

A. No, ma'am.

Q. And did you open the canvas bag that was in the box?

A. Yes.

Q. And did you notice any coins in that box?

A. There was, there were some --

Q. Or bag. I'm sorry.

A. There was some things in the bag. There again, I don't -- the recollection -- what's there, if I looked at the list, that would refresh my memory, but

Q. All right. Did you put down everything that was in the canvas bag?

A. I put down everything that I took possession of.

Q. What are the chemicals that you regularly and routinely use in the, in your fingerprint analysis?

A. Generally, the chemicals that I would use would be DFO, ninhydrin, and physical developer.

Q. Is that DFO?

A. DFO, yes.

Q. Do you use any aluminum powder?

A. On some of the items, that would not be a chemical. It would be a powder that might be applied to a porous item.

Q. There might be an aluminum-based powder?

Louis Hupp - Cross

A. We use aluminum-based powder and chalk powder.

Q. On all of your examinations?

A. It's examiner's choice. It depends on the surface type.

On some of them, we've found the white chalk works much better; and some of them, we prefer the aluminum powder. So it's one of the things that you process, you develop your feel.

Q. What do you normally use?

A. I generally use the chalk-type powder.

Q. Which does, or does not include aluminum?

A. No.

Q. And where is the protocol for evidence collection kept?

A. It's kept in the office there in headquarters. As a matter of fact, the protocols that were in effect at that point in time, every examiner had a copy of them.

Q. All right.

A. Manual of operations.

Q. Pardon?

A. We kept it as a manual of operations.

Q. All right. And when did those particular protocols go into effect?

A. Those have been in effect over a number of years, have been modified and the like. Over a number of years, as times change, they've been changed.

Q. And the ones that were in effect in 1995 are not in effect now; is that correct?

Louis Hupp - Cross

A. They are being revised and changed, yes.

Q. Now, I want to turn your attention to the letter I believe you have in front of you that you have identified fingerprints on.

A. Yes.

Q. In that letter, I believe

I believe it's 26, Government Exhibit 26.

A. Yes, ma'am.

Q. Do you have that in front of you?

A. Yes, ma'am.

MS. RAMSEY: Your Honor, if I might have just a moment.

THE COURT: Yes.

BY MS RAMSEY.

BY MS. RAMSEY:

Q. I believe it is the second page of that document, towards the bottom. In parentheses, the statement -- do you see where I'm talking about?

A. I see a couple parentheses. You're talking about closer to the bottom?

Q. Yes. You see that?

A. Where it starts out with "come" in quotations?

Q. Where it says, ". . . rip the bastards' heads off and shit down their necks." Have you ever heard that phrase in the common military phrase?

A. Not that I remember, but it's been some years since I was

Louis Hupp - Cross

in the military.

MS. RAMSEY: All right. No further questions, your Honor.

THE COURT: Mr. Mackey.

MR. MACKEY: May I, your Honor.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q. Mr. Hupp, as a fingerprint specialist, do you carry a gun?

A. No, ma'am. No, sir.

Q. Long afternoon, isn't it?

A. Oh, yes, it is.

MS. RAMSEY: I think that's the first time that's ever happened.

BY MR. MACKEY:

Q. Had you been to the bomb scene in Oklahoma City before you arrived in Noble County on Friday afternoon?

A. No, sir.

Q. Had you touched any high explosives prior to the time that you got to Noble County on Friday afternoon?

A. No, sir.

Q. Tell the jury again the last thing that you put into that box on that Friday afternoon.

A. The last thing I put into the box was the list that I had hand-checked and made notations on, signed and dated; and it was placed on top of everything else, and then the box was

Louis Hupp - Redirect

sealed.

Q. So the inventory that you had verified was sealed inside the box?

A. Yes, sir.

Q. When you last put it on the plane, it was headed to D.C.?

A. Yes.

Q. Things had changed and you were now headed to Oklahoma City?

A. Yes.

Q. Miss Ramsey asked you of your examination of the Bob Kling documents. Did you find any latent fingerprints on those

documents?

A. I found one.

Q. Whose was that?

A. It was a Miss Vicki Beemer.

Q. Did you examine a registration card taken from the Dreamland Motel?

A. Yes, I did.

Q. Showing you Government Exhibit 294A, previously admitted into evidence.

A. Yes.

Q. Did you find any fingerprints on that document?

A. No, I did not.

Q. Mr. Hupp, could you tell us based on your many years of experience, how it is a person could touch a document and you

Louis Hupp - Redirect

not find any prints?

A. It's very common that an item is touched and there is no transfer of residue or --

MS. RAMSEY: I'd request that he direct his answer to Mr. Mackey.

THE COURT: Yes, please. Look at counsel.

THE WITNESS: There are many occasions where the outlines or designs are not transferred to an item when it's touched merely because there's no perspiration on the item. There may have been an occasion to wipe the hands on clothing or in fact wash the hands. We find it quite often when somebody handles a tremendous amount of items that they don't leave latents at all, because everything's been absorbed. The bottom line is it's a chance impression, and there must be something on the fingers to transfer that will react.

BY MR. MACKEY:

Q. If a person had simply water, not sweat, not perspiration, but water on their fingers, and touched a document, would you find a print?

A. There has to be more than just water there. These chemicals that I used, the ninhydrins, the DFO, the physical developers, react with certain properties which are present in sweat. And in the absence of those properties, we're not going

to get a reaction, or a very, very faint reaction, if any.

Q. So someone whose fingers were wet from mist, touched a

Louis Hupp - Redirect

document, you wouldn't find a print?

A. It's quite possible.

MR. MACKEY: Nothing else, your Honor.

MS. RAMSEY: Yes, your Honor, just a few more questions.

THE COURT: All right.

RE-CROSS-EXAMINATION

BY MS. RAMSEY:

Q. Did you check the counter at Elliott's Body Shop for fingerprints? I don't recall if I asked you that or not.
A. The countertop was removed by me and transported back to headquarters and was in fact processed for latent prints.
Q. And did you find any fingerprints of Timothy McVeigh?
A. No, ma'am.
Q. And did you also check to see if there were any fingerprints on any of the storage units that have been discussed in this case?
A. Yes, ma'am.
Q. And did you find any fingerprints of Timothy McVeigh?
A. No, ma'am.
Q. And did you also check the barrels that were at Terry Nichols' home?
A. Yes, ma'am.
Q. And did you find any fingerprints of Timothy McVeigh?
A. No, ma'am.

Louis Hupp - Recross

Q. Did you also check the ammo cans at Terry Nichols' -- in Terry Nichols' garage?
A. These were not all processed for the latent prints. It was a decision based at the time on the people on site. I did not examine all of the ammo cans that were there.
Q. Did you examine some of them?
A. There were a couple that were examined in Washington at a later time.
Q. Did you find any fingerprints of Timothy McVeigh?
A. No, ma'am.
Q. And did you go into the home of Terry Nichols and check for fingerprints there?
A. No, ma'am.
Q. You did not check anything --
A. I did not do any printing inside the house, no.
Q. And why not?
A. That was -- I was there to assist them. That was a decision made that they were there to do a search and remove items, and at that point in time there was not -- we were not going to fingerprint the inside of the house.
Q. All right. Did you also do any fingerprinting in Terry Nichols' pickup?
A. Yes, ma'am.
Q. And did you find any fingerprints of Timothy McVeigh?
A. No, ma'am.

Louis Hupp - Recross

Q. Are you aware that any fingerprints -- or that any fingerprinting was done with regard to any of the motel rooms in this particular case?
A. Yes, ma'am.
Q. And did you find anything there?
A. I found fingerprints, but none of Mr. McVeigh.

A. I found fingerprints, but none of Mr. McVeigh.

Q. And why would you do motel rooms but not do Terry Nichols' home?

A. This was a decision that based -- I'm merely there to do what is requested. I don't make the request to do or I'm not the investigator.

Q. But you did find the fingerprint of Vicki Beemer on the Ryder rental truck contract; is that correct?

A. Yes, ma'am.

MS. RAMSEY: No further questions, your Honor. We would request that he remain on call.

THE COURT: All right.

MR. MACKEY: May I just ask one follow-up question.

THE COURT: Yes. All right, Mr. Mackey.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q. Just for clarification, Mr. Hupp, after the items were taken out of Mr. Nichols' house on April 22, did it fall to you and other examiners to search in the laboratory for fingerprints?

Louis Hupp - Redirect

A. Yes, there were numerous documents and articles that were processed there.

Q. So you found the fingerprint of Tim McVeigh on the ammonium nitrate receipt removed from Terry Nichols house; is that correct?

A. Yes.

MR. MACKEY: Nothing else.

THE COURT: You may step down now, and you'll be notified when you're going to be back.

THE WITNESS: May I go back to D.C.?

THE COURT: Yes, but don't go on any long trips.

THE WITNESS: Thank you, your Honor.

THE COURT: We'll take our afternoon recess at this time, members of the jury, with the customary cautions regularly given to again please refrain from discussing anything about your -- what you see and hear in this trial and anything about the case and stay away from anything in the -- in connection with the case and any publications or communications of any kind. Don't talk about it.

You're excused. 20 minutes.

(Jury out at 3:15 p.m.)

THE COURT: All right. We'll be in recess.

(Recess at 3:16 p.m.)

(Reconvened at 3:35 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:35 p.m.)

THE COURT: All right. Next witness, please.

MR. HARTZLER: The Government recalls Brett Mills.

Ms. Wilkinson will question him.

THE COURT: Thank you.

You're being recalled to the stand under the oath

earlier taken. You'll resume the stand, please, Mr. Mills.

THE WITNESS: Yes, sir.

(Brett Mills was recalled.)

THE COURT: Ms. Wilkinson.

MS. WILKINSON: Thank you your Honor.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Mills, you've been here before, haven't you?

A. Yes, ma'am.

Q. And you told the jury that back in April of 1995, you were a physical science technician in the Explosives Unit. Is that correct?

A. Yes, ma'am.

Q. And one of your responsibilities after the Oklahoma City bombing -- excuse me -- was to receive evidence from the field. Is that right?

A. Yes, ma'am.

Q. You started your duties the day after the bombing. Is that what you told us?

Brett Mills - Direct

A. Yes, ma'am. The 20th, I was assigned or told I would be handling the case.

Q. April 20, 1995, was a Thursday; is that right?

A. Yes, ma'am.

Q. You were also working Saturday, April 22, 1995?

A. Yes, ma'am.

Q. And at that time, did you receive some evidence?

A. Yes, ma'am.

Q. Do you recall going up to the fingerprint section to receive a box of evidence?

A. Yes, ma'am.

Q. Tell us about that.

A. I received a call the night before saying that there would be some evidence coming in and to go up to latent fingerprint to receive it from whoever would be bringing it in.

I got in in the morning. I went upstairs and picked up a package from Eugene Mulholland.

Q. Is he a member of the fingerprint section?

A. Yes, ma'am.

Q. When you received that box, was it sealed?

A. Yes, ma'am.

Q. What did you do with it?

A. I signed over -- signed the custody, went back downstairs, proceeded to clean my area; and then after my area was clean, I laid out my butcher paper, I opened the box and I looked at the

Brett Mills - Direct

inventory list.

Q. Okay. Let's stop right there and go back.

A. Okay.

Q. And give the jury a little more detail.

First of all, was there anyone else in the Explosives Unit on April 22, 1995, with you when you were checking in this evidence?

A. My wife was.

Q. Why was your wife there?

A. We were going out to my parents' to celebrate my birthday the next day -- was my birthday, but we were going out that day to celebrate.

Q. Is your wife also an employee of the FBI?

A. Yes, ma'am.

Q. Does she also work in the laboratory?

A. Yes, ma'am.

Q. What are her duties?

A. She is an examiner in the documents section now.

Q. And was she also assisting you that day in checking in this evidence?

A. Yes, ma'am. She was writing on some of the bags, and she was typing up the chain -- not chain of custody but the worksheet.

Q. All right. Before you go into the details of what you did that day, can you just give the jury a brief summary of what

Brett Mills - Direct

you do, what documents you create when you would take in evidence from the field?

A. And I do not have an incoming letter, or --

Q. No, if you do have an incoming letter. Do you normally receive some kind of inventory or documentation about what evidence you're receiving from the field?

A. Yes, ma'am. And that winds up being what we refer to as an incoming letter. And it will be -- the original lab numbers is set upon it.

In this case I wound up -- yes, if I remember correctly, I used that inventory sheet as my original incoming.

Q. Okay. Let's start with that.

MS. WILKINSON: If I could use the ELMO, your Honor.

THE COURT: Yes.

MS. WILKINSON: I'm not sure I have it on.

THE COURTROOM DEPUTY: It's on.

BY MS. WILKINSON:

Q. I'm showing you the top half of Government's Exhibit 424, which has already been introduced into evidence, and then the bottom half. Do you recognize that?

A. Yes, ma'am.

Q. And is this the inventory sheet that you received in that box on April 22, 1995?

A. Yes, ma'am.

Q. And did you use this inventory sheet as you were checking

Brett Mills - Direct

in the evidence?

A. Yes, ma'am.

Q. Tell us how you used Government's Exhibit 424.

A. What I would do is I would -- I basically did a quick perusal of this piece of paper; and then as I started going through the box and pulling out the items, I made sure that the items that were listed were in the box and to make sure that everything was there.

Q. All right. Let's look down here at the far right-hand corner. Do you see that where it says "items" there with some dates?

A. Yes, ma'am.

Q. And down at the bottom, it says "Hupp, FBI." Do you recognize that?

A. Yes, ma'am.

Q. What do you understand that that indicated to you?

A. That Lou Hupp had received them, signed for them out --

Q. So it was your understanding that this was the same document that Lou Hupp had signed?

A. Yes, ma'am.

Q. Now, let's go back to exactly what you did on April 22. You told us you brought the box, the sealed box, down to your unit. Is that right?

A. Yes, ma'am.

Q. Do you have an area where you work in the Explosives Unit?

Brett Mills - Direct

A. I have a workbench, yes.

Q. And about how big is your workbench?

A. It's probably about 3, 4 feet deep and probably about 10-foot long.

Q. And what did you do with the box when you first came down to your work area?

A. I had set it on the floor by my work area.

Q. What preparations did you take to open the box?

A. Before I opened the box, I cleaned my area. I washed down my countertop and then went across the hall where we have a wrapping room when we ship back evidence and got a sheet of butcher paper or brown craft paper.

Q. Is that -- let me interrupt you. I'm sorry. Is that disposable paper?

A. Yes, ma'am.

Q. Now, you said you washed down your countertop. What did you use to wash down your countertop?

A. On this one, I was using a product called Simple Green.

Q. What is that?

A. It's just a cleaning product is all that I know.

Q. Have you talked to chemists in the laboratory about whether that cleaning product is appropriate for cleaning off your bench area?

MR. TRITICO: Excuse me. I'll object to the hearsay response.

Brett Mills - Direct

MS. WILKINSON: Not asking for the substance, just whether he's talked to them about it.

THE COURT: All right. You may answer.

THE WITNESS: Yes, ma'am.

BY MS. WILKINSON:

Q. After you cleaned your countertop and put down the butcher paper, then what did you do?

A. Then I picked the box up, set it on the counter, put on my latex gloves, and then I opened the box.

Q. Where was your wife at the time?

A. She was sitting -- it's kind of hard to describe, but there is a workstation where my computer and phone is which is behind me. She was sitting at that -- at the computer.

Q. Was she typing in the computer for you?

A. Yes, ma'am.

Q. What was she typing?

A. She was typing up the worksheet.

Q. Tell the jury what a worksheet is.

A. A worksheet is when we get in a case, we wind up putting on

who it came from, the date it was received, the laboratory number; and then we assign our identifier numbers, which is the Q and K number. And beside the Q number or the K number, we'll

write out a description, just a short description of what the evidence is.

Q. Now, you mentioned Q and K numbers. Can you tell the jury

Brett Mills - Direct

what a Q number is?

A. A Q number is what we refer to as a questioned item, and a K number is what we refer to as a known item.

Q. And in this case, as you were taking the materials out of the box, did you assign each item a Q number?

A. Yes, ma'am.

Q. And did you have your wife record that in the computer?

A. Yes, ma'am.

Q. And did you provide a description of each item?

A. Yes, ma'am.

Q. And did you then in the end prepare a laboratory worksheet?

A. Yes, ma'am.

Q. Was that laboratory worksheet used to accompany the evidence or used in part as an evidence log as it went around the laboratory -- excuse me -- went around the laboratory for testing?

A. Yes, ma'am. I had a copy, and then a copy of the worksheet with the incoming would go to each examiner who would be working it.

Q. And in fact, do you note on that laboratory worksheet at certain times who receives the evidence from you and when you receive it back?

A. Yes, ma'am.

Q. Now, did you also use Government's Exhibit 424, the Noble

County inventory, to check the evidence as it was coming -- as

Brett Mills - Direct

you were opening the box and checking the items?

A. Yes, ma'am.

Q. All right. Let's go back to when you put your latex gloves on. You unsealed the box?

A. Yes, ma'am.

Q. What did you do next?

A. I pulled out the inventory sheet and I perused it, looked to see how many items I roughly had, and then I pulled out my first bag and I opened it and then I started comparing the inventory list that I was given with the items that were in the bag.

Q. All right. When you were pulling out those items, you said they were in a bag. Do you recall these items being in some kind of bag?

A. I remember them in a brown paper bag, yes.

Q. Do you remember all the items were in one bag or whether they were in several bags?

A. I believe they were in at least two bags.

Q. Okay. And if we were to look at your laboratory worksheet,

would you have taken those items out in the order that you numbered the Q numbers?

A. Yes, ma'am. That's how I normally do it.

Q. So in other words, if you had Q16 as the magazine, that would have been the first item that you pulled out of the bag or the box?

Brett Mills - Direct

A. That was pulled out of a manila envelope.

Q. Now, do you remember pulling out a jacket which you marked as Q19?

A. Yes, ma'am.

Q. And what did you do with that jacket when you pulled it out of the box?

A. After I -- actually, I pulled it out of a brown -- out of the bag itself. I have really large Ziploc bags, and I had written the laboratory number, the Q number. After I did this and identified the thing and called out the description to my wife, I placed the jacket into the bag and then I sealed it.

Q. And you were writing the Q numbers and the laboratory number on the outside of the bag?

A. Yes, ma'am.

Q. And you did that why? Why did you put it on the bag and not on the item?

A. Oh, with the items that we receive, especially if there is residues or anything that's going to be done, we don't like to add any additional product to a piece of evidence. We like to just go ahead and mark and identify it on the outside of the bag itself.

Q. So was it your procedure on April 22, 1995, to avoid touching the items or touching the items as little as possible?

A. As little as possible, yes.

Q. And after you bagged the item in the plastic bag and marked

Brett Mills - Direct

it, what did you do with it?

A. After I sealed up the bag?

Q. Yes.

A. I set it aside and pulled out the next item.

Q. Now, were you wearing the same gloves as you were handling all of these items?

A. Yes, ma'am.

MS. WILKINSON: Your Honor, may we approach with the exhibit?

THE COURT: Yes.

MS. WILKINSON: May Agent Hersley go up there so we don't have to go back and forth?

THE COURT: Sure. Save time.

MS. WILKINSON: Agent Hersley, if you could take out Government's Exhibit 431 and hand it to Mr. Mills.

BY MS. WILKINSON:

Q. Mr. Mills, take a look at that. Have you seen that before?

A. Yes, ma'am.

Q. You can open the bag and look at the other bags that are in there. Do you recognize that bag?

A. Yes, ma'am.

Q. How do you recognize that bag?

A. I recognize the writing on it.

Q. Whose handwriting is it?

A. That's my wife's.

Brett Mills - Direct

Q. And she was assisting you that day?

A. Yes, ma'am.

Q. And what did she write on that bag?

A. She wrote what we referred to as a lab number, the Q number.

Q. And I take it because you're married, you can recognize your wife's handwriting. Is that right?

A. Yes, ma'am.

Q. Okay. And can you look at the item itself. Take it out but turn towards the Judge, would you, so you don't show the jury.

A. Oh.

Q. Thank you. Do you recognize that item?

A. Yes, ma'am.

Q. Is it the same item that you received on April 22, 1995?

A. Yes, ma'am.

MS. WILKINSON: Government offers 431.

MR. TRITICO: Your Honor I'm going to object to the improper in-court identification by this witness. Furthermore, the identification from the very beginning of the chain on this

the identification from the very beginning of the chain on this exhibit has been improper. There has been no proper identification. I object to it.

THE COURT: Overruled. 431 is received.

But I want to mention something to the jury with respect to what this chain of custody means and when we talk

Brett Mills - Direct

about "chain." It essentially is is this the same thing that was in a different place and was testified to about by other witnesses; and my ruling is it was. That does not mean that it's in exactly the same condition, you understand. Chain of custody refers to is it the same thing, not whether it is in exactly the same condition. That's a matter that can be disputed and for you to decide.

BY MS. WILKINSON:

Q. Could you display Government's Exhibit 431 to the jury, Mr. Mills. Just hold it up.

Okay. You can give that back to Agent Hersley.

Mr. Mills, is Government's Exhibit 431, the jacket, also known as Q19?

A. Yes, ma'am.

Q. Now, in the box, did you also find a pair of jeans?

A. Yes, ma'am.

Q. Did you mark that as Q20?

A. I marked the bag, yes.

Q. Okay.

MS. WILKINSON: Agent Hersley, could you hand Mr. Mills Government's Exhibit 428.

THE WITNESS: May I open it?

BY MS. WILKINSON:

Q. Yes. Do you see another bag inside the bag that's marked with the exhibit sticker?

Brett Mills - Direct

A. Yes, ma'am.

Q. Do you recognize that bag?

A. Yes, ma'am.

Q. Is that the bag that you had that you put the jeans into on April 22, 1995?

A. Yes, ma'am.

Q. How do you recognize it?

A. My wife's writing.

Q. And what does it have on it?

A. The lab number and the Q number.

Q. What is the Q number?

A. Q20.

Q. And do you recognize the jeans themselves? Take a look at them, please.

A. Yes, ma'am.

Q. Now, are they in slightly different condition than when you received them? Take a look at the pockets.

A. Yes, ma'am.

Q. Other than that, are those the jeans that you received on April 22, 1995?

A. Yes, ma'am.

Q. Do the pockets appear to be -- to have been cut out?

A. Yes, ma'am.

Q. But are the portions of the pockets that have been cut out still in that exhibit?

Brett Mills - Direct

A. Yes, ma'am.

MS. WILKINSON: Government offers 428.

THE COURT: Same objection, I take it.

MR. TRITICO: Yes, your Honor.

THE COURT: All right. Same ruling. 428 is received.

BY MS. WILKINSON:

Q. And setting aside the pockets, could you display the jeans to the jury, Government's Exhibit 428.

Thank you. You can hand them to Agent Hersley with the bags and the pockets.

Did you also receive a pair of boots that day,

Mr. Mills?

A. Yes, ma'am.

Q. And did you mark each of those boots separately?

A. Yes, ma'am.

Q. Did you mark the left boot as Q21?

A. Can I --

Q. You want to look at the bag first? Why don't we just hand you the bag. It's Government's Exhibit 432. And take out the bag that's inside.

A. 432?

Q. Yes, sir.

A. Yes, ma'am.

Q. And what Q number was marked on that bag?

A. Q21.

Brett Mills - Direct

Q. Was that the left boot that you received on April 22, 1995?

A. May I open this?

Q. Yes.

A. This is the bag here, ma'am.

Q. And do you recognize the handwriting? Is it faded a bit?

A. It's very faded, but yes, ma'am.

Q. And what's marked on there from what you can see?

A. I can see part of the lab number, and I can see just the

Q.

I can't see the number.

Q. And do you recognize that lab number as the lab number you assigned to these items on April 22, 1995?

A. Yes, ma'am.

MS. WILKINSON: Government offers 432.

MR. TRITICO: Same objection.

THE COURT: Same objection, same ruling. Received.

BY MS. WILKINSON:

Q. Hold up the bag with the boot in it, would you, for the jury, Government's Exhibit 432.

Thank you. You can just hand all that bag to Agent Hersley.

Hold on. That's the other boot, isn't it?

A. Yes, ma'am.

Q. Take that back, would you?

Can you see the Q number that you marked on that, Government's Exhibit 433?

Brett Mills - Direct

A. On the outer bag here?

Q. Either place, where you see a mark. Do you recall what Q number was marked?

A. Yes. It would be Q22.

Q. Last on the bag there?

A. It's been rewritten over here, yes.

Q. Do you recognize original markings on that bag?

A. Yes, ma'am. Same as the last.

Q. Pardon?

A. It's the same as the last. Both of these boots were in this one bag.

MS. WILKINSON: Government offers 433.

MR. TRITICO: Same objection.

THE COURT: Same ruling. Received.

BY MS. WILKINSON:

Q. You can hand that back to Agent Hersley.

A. All right.

Q. Now, I want you to look at Government's Exhibit 430. Would you take that out of the bag.

Do you recognize that?

A. Yes, ma'am.

Q. How do you recognize it?

A. It's my wife's writing.

Q. On the bag?

A. Yes, ma'am.

Brett Mills - Direct

Q. Do you also recognize the item inside?

A. May I pull it out?

Q. Yes, you may.

A. Yes, ma'am.

Q. Did you assign that a Q number?

A. Yes, ma'am.

Q. What Q number did you assign Government's Exhibit 430?

A. Q23.

MS. WILKINSON: Government offers 430, your Honor.

MR. TRITICO: Same objection.

THE COURT: Same ruling. It's received. 430, was that?

MS. WILKINSON: Yes, your Honor.

MS. WILKINSON: Yes, your Honor.

THE COURT: All right.

BY MS. WILKINSON:

Q. Could you publish that to the jury, Mr. Mills.

Thank you.

Now I'd like you to examine Government's Exhibit 429.

Do you recognize that?

A. Yes, ma'am.

Q. Do you recognize the bag?

A. Yes, ma'am.

Q. How do you recognize it?

A. My wife's handwriting is on it.

Q. Take the item out of the bag, would you, please. Take a

Brett Mills - Direct

look at Government's Exhibit 429 and tell me if you recognize anything about that item.

A. Yes, I recognize it.

Q. All right. And how do you recognize it?

A. I remember the Lincoln logo with the Latin phrase underneath of it.

MS. WILKINSON: Government offers 429.

MR. TRITICO: Same objection, your Honor.

THE COURT: All right. It's received.

BY MS. WILKINSON:

Q. Mr. Mills, hold up the front of the shirt to the jury, please.

And now turn it around and show them the back.

Thank you.

Agent Mills, can you read the back of the T-shirt, please.

A. "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. T. Jefferson."

Q. You can give that back to Agent Hersley.

Did you assign that a Q number, also?

A. Yes, ma'am. Q24.

Q. We just have three more items. Q26, which is marked Government's Exhibit 434.

Take a look at that and tell me if you recognize it.

A. Yes, ma'am.

Brett Mills - Direct

Q. Do you recognize the bag?

A. Yes, ma'am.

Q. Is that your wife's handwriting?

A. Yes, ma'am.

Q. You made her do most of the work?

A. I guess.

Q. Do you recognize the item that's inside there?

A. Yes, ma'am.

Q. Is that a blanket?

A. Yes, ma'am.

Q. Did you receive that on April 22, 1995?

Q. Did you receive this on April 22, 1998?

A. Yes, ma'am.

Q. How did you mark it with the Q number?

A. Q26.

MS. WILKINSON: Government offers 434.

MR. TRITICO: Your Honor, I'd offer the same objection and the additional argument that the only person who has looked at this --

THE COURT: Yes, the objection to this one is sustained.

MS. WILKINSON: Can I go back --

THE COURT: Not with this witness. It wasn't properly identified at the Noble County Jail.

BY MS. WILKINSON:

Q. Can you hand that back to Agent Hersley, then, please.

Brett Mills - Direct

MS. WILKINSON: Government's Exhibit 436, Agent Hersley.

Could I have a moment, your Honor?

THE COURT: Yes.

MS. WILKINSON: You don't have to look at 436. You can give it back to Agent Hersley.

Government's 426, please, Agent Hersley.

BY MS. WILKINSON:

Q. Mr. Mills, before you take a look at that item, let me ask you a few questions.

You said you received that day the personal effects of Mr. McVeigh in the box; is that right?

A. Yes, ma'am.

Q. These items you've already described?

A. Yes, ma'am.

Q. Did you receive additional items in the box?

A. Yes, ma'am.

Q. Were there some valuables?

A. Yes, ma'am.

Q. Do you recall how they were packaged?

A. They were in like a brown grocery sack.

Q. What did you do with them when you took them out of the box?

A. I inventoried, counted the money, and basically gave them what we refer to as an "also-submitted items." There was no Q

Brett Mills - Direct

or K. Once I made up my worksheet, I put the items back into the bag and then I locked them up into the unit safe.

Q. All right. You just said that you give them an "also submitted," which I don't think we're familiar with; so tell the jury what you mean by "also submitted."

A. "Also submitted" was a system that we were using at the

time for any -- there were not supposed to be any exams in either the scientific analysis section or the documents section. Normally, "also submitted" items would go to latent fingerprints, which had a different reporting format than we did; so we never assigned it an actual Q or K number.

Q. On your laboratory worksheet, did you designate those items as "also submitted"?

A. Yes, ma'am.

Q. Did you provide a description of those items?

A. Yes, ma'am.

Q. Before we get to those items, what did you do with those items after you inventoried them, the "also submitted" items?

A. I put them back into the brown paper bag and then I locked them up in our unit safe.

Q. So you kept those separately from Mr. McVeigh's personal clothing; is that right?

A. Yes, ma'am.

Q. Included in those "also submitted" items was there Government's Exhibit 426 in front of you?

Brett Mills - Direct

A. Yes, ma'am.

Q. How do you recognize those items?

A. A pair of green earplugs that were in the bottom of the bag.

Q. Do you recognize the bag?

A. No. These are the bags that it came in.
I need the brown paper bag.

Q. How do you recognize the earplugs themselves, then?

A. I just remember the color of them. There was only one pair in the bottom of them (sic); and I've used earplugs before, so it's something I recognize.

Q. Do you recall getting those earplugs with the other items that you've marked "also submitted" on April 22, 1995?

A. Yes, ma'am.

Q. Agent Hersley, I believe, has the paper bag for you. Can you take a look at that?

A. Yes, ma'am. This is the bag.

Q. How do you recognize it?

A. It has my writing on it.

Q. And what did you write on the paper bag?

A. I wrote the lab number and then I put the "also submitted" on there.

Q. Just the words "also submitted"?

A. "A/S."

MS. WILKINSON: Government offers 426.

Brett Mills - Direct

MR. TRITICO: Your Honor, I have several objections to introduction of this exhibit. This is the first witness that has ever looked at these and offered an identification of them

in this trial; and he has no independent recollection of receiving them, other than the bag. But there has been no identification that this exhibit came from the Noble County Jail yet in this trial, and I object to it.

THE COURT: I don't recall it being shown, either.

MS. WILKINSON: There was testimony by one witness of seeing Mr. McVeigh take out his earplugs --

THE COURT: Yeah, but there isn't any evidence about putting them in the bag.

MS. WILKINSON: Excuse me for one moment.

Your Honor, may I use an exhibit to ask Mr. Mills

several questions that may clarify this?

THE COURT: You can try, yes.

MS. WILKINSON: Okay.

BY MS. WILKINSON:

Q. Let me show you Government's Exhibit 424, Mr. Mills.

Now, No. 20: Do you see that in Government's Exhibit 424?

A. Yes, ma'am.

Q. And this is the document that you received from Lou Hupp, the inventory?

A. Yes, ma'am.

Brett Mills - Direct

Q. Does it indicate there that there are a set of earplugs that were received in the box and taken from Noble County?

A. Yes, ma'am.

MS. WILKINSON: Your Honor, we'd offer -- reoffer.

THE COURT: Well, we're going to have to look at the transcripts on this. I don't recall anybody testifying to handling those.

MS. WILKINSON: All right.

THE COURT: And all we have Mr. Hupp doing is rummaging around in there.

MS. WILKINSON: Your Honor, it was Trooper Hanger who testified originally.

THE COURT: I'll check his transcript before ruling. I don't recall it.

MS. WILKINSON: All right. Excuse me again, your Honor.

BY MS. WILKINSON:

Q. Mr. Mills, look at that paper bag. Is there something that says "20" on there?

A. "1B771, Item No. 20"?

Q. Yes. Is that right? Is there any other markings on that paper bag -- no, on the paper bag.

A. Can I open to look at it?

Q. Yes.

A. Okay.

Brett Mills - Direct

No, ma'am. It has two lab numbers, the one that I

NO, ma'am. It has two lab numbers, the one that I generated and then another one; and then it has a "1B771, Item No. 20."

Q. Thank you. Now, after you were done inventorying all of these items or all the items that were in the box and packaging them in individual plastic bags, what did you do with the box and the items?

A. The "also submitted" items went into the safe. There was a gun and I believe a knife that were in a manila envelope. I took those out of the box and set them in another box, and then all the other items went back into the one original box and I took it over to chemistry.

Q. Do you recall whether Mr. McVeigh's personal property included any keys?

A. Yes, ma'am.

Q. How many keys?

A. I remember two.

Q. Did you ever use those keys for any purpose?

A. Yes, ma'am.

Q. For what purpose?

A. When his car came in to be examined in the laboratory, we needed it to move it down into the second basement -- I believe it was the second basement; and so we needed to crank the car and to get into the glove box and the trunk.

Q. Did those two keys fit Mr. McVeigh's car?

Brett Mills - Direct

A. Yes, ma'am.

Q. Were they identical keys?

A. Yes, ma'am.

Q. Did Mr. McVeigh have any other keys?

A. I didn't see any.

Q. Did he have any house keys?

A. I didn't receive any, no, ma'am.

Q. No truck keys?

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

MS. WILKINSON: No further questions, your Honor.

THE COURT: All right. Mr. Tritico?

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good afternoon.

A. Good afternoon.

Q. Mr. Mills, you work in the lab; is that correct?

A. Yes, sir.

Q. How long have you been employed in the lab?

A. Since December of '89. Be about seven, seven and a half years.

Q. Now, your title is lab technician. Is that correct?

A. No, sir. I'm now an examiner in training.

Q. Okay. In 1995, you were a lab technician; is that correct?

A. Physical science technician.

Q. Is that the same thing, or are we saying two different

Brett Mills - Cross

things?

A. My official title is physical science technician.

Q. And as a physical science technician, are you also a special agent?

A. No, sir.

Q. Okay. So you didn't go through the regular FBI school, you went through whatever training the lab gave you. Is that correct?

A. That's correct.

Q. How long is the training process for the lab to do the job you were doing in 1995?

A. Basically, my training consisted of -- I was trained by two senior technicians who had been in the unit a while, plus an agent.

Q. Who were the two senior technicians?

A. William Davitch and Keith Rogers.

Q. And who was the senior technician?

A. The senior technician was Bill Davitch.

Q. Who was the third person, then?

A. Oh, Dave Williams.

Q. Okay.

THE COURT: Excuse me. Do we need Mr. Hersley up here?

MR. TRITICO: I don't, your Honor.

THE COURT: You can sit down, Mr. Hersley.

Brett Mills - Cross

MR. TRITICO: He was so quiet, I didn't realize he was still there.

BY MR. TRITICO:

Q. Dave Williams was the senior person who trained you?

A. Yes, sir. He was my agent.

Q. And is he still in the lab?

A. As of now, no, sir.

Q. Where is he now?

A. He's been reassigned.

Q. To where? Do you know?

A. No, sir, I do not know.

Q. When was he reassigned?

A. Within the last, I believe, six months.

Q. This was not a reassignment that he asked for, was it?

A. To my knowledge, no, sir.

Q. He got reassigned as a result of the investigation into the lab --

MS. WILKINSON: Objection, your Honor.

THE COURT: Sustained.

BY MR. TRITICO:

Q. Now, in 1995 you were assigned to check in the evidence that came in from Oklahoma City; is that right?

A. Yes, sir.

Q. Had you checked in evidence before? Was that one of your major job functions is what I'm trying to ask you.

Brett Mills - Cross

A. Yes, sir.

Q. And at the time in 1995, the FBI lab had no written protocol for directing you on how to check in the evidence.

Is that right?

A. Can you be more specific, please.

Q. You know what a protocol is?

A. I realize what protocols are, yes, sir.

Q. Did they have a written protocol directing you in the operation of getting the evidence from whoever delivered it, checking in, and putting it in the appropriate place?

A. Not written, no, sir.

Q. You just kind of learned from Dave Williams and then followed through and did your job based on what he told you; right?

A. And the other technicians, yes, sir.

Q. Sure. And you didn't -- if you had a question, you didn't have a document that you could go to to look at that would direct you to the answer to that question; right?

A. To my knowledge, no, sir.

Q. Now, since you've been training to -- what are you in training for now?

A. Firearms/Tool Marks Unit.

Q. Since you've been training in the Firearms/Tool Marks Unit, you've learned that they have written protocols, do they not now?

Brett Mills - Cross

A. Yes, sir, they do.

Q. And a protocol in the Firearms/Tool -- is it the Firearms/Tool Mark Unit?

A. It's a unit, yes, sir.

Q. When you go to the Firearms/Tool Marks Unit, whatever tests you're going to conduct in the Firearms/Tool Marks Unit today, they have a written protocol that tells you from beginning to end how to do that particular function. Right?

A. Yes, sir.

Q. Now, you were -- you were directed to -- or one of the jobs

you had was to put Q and K numbers onto the specific items as they came in. Right?

A. Yes, sir.

Q. Now, we're not talking about just a few things that came in. We're talking about over 7,000 pounds of stuff that came to the FBI lab; right?

A. For this one case?

Q. Yes.

A. Yes, sir.

Q. And you were primarily responsible for checking all that

Q. And you were primarily responsible for checking all that in?

A. That and the technicians who helped me, yes, sir.

Q. Certainly you had some help. You didn't do it all by yourself, but you were the one in charge of the operation of the collection of the over 7,000 pounds of items that came to

Brett Mills - Cross

the lab. Right?

A. I received them, yes, sir.

Q. I'm sorry?

A. I received them, yes, sir.

Q. Okay. And you are the one that told the people who assisted you where to go and what to do; right?

A. I'm not following you on this.

Q. Were you in charge of the operation of collecting and assigning Q and K numbers to the over 7,000 pounds of stuff that came to the lab?

A. I didn't collect anything. All I did -- I received the item. I took my list that came in, and then I assigned a Q number.

Q. Okay. And you had help in that?

A. Yes, sir.

Q. And you told other people what to do with other debris that came in, take the list, assign Q and K numbers, or did you do it all by yourself?

A. No, sir. I had help.

Q. All right. There was no written protocol or no written directive on how to assign Q and K numbers in 1995, was there?

A. There were -- there was -- there was paper out there to -- like if we had a case that came in where there were hair and fiber items, they showed a listing of how they would like it written up. There were items for that, yes, sir.

Brett Mills - Cross

Q. How they would like the list written up?

A. Yes, sir.

Q. That's not telling you under what circumstances to assign a Q number and under what circumstances to assign a K number, right?

A. No, sir. There was actually a Q and K. If it was a Q, your statement would read like this. If it was a K, your statement would read like this.

Q. And what told you -- there was nothing in writing to tell you when to assign a Q and when to assign a K. Right?

A. That piece of paper had it, yes, sir.

Q. Okay. And do you have that piece of paper with you?

A. No, sir.

Q. Is that piece of paper still in existence?

A. It should be.

Q. Okay. Now, you made contemporaneous notes at the time that you were assigning the Q and K numbers. Is that right?

A. I just gave a general description.

Q. There was no written protocol telling you what to write, what the general description was. Right?

A. That list that I was telling you about, yes, sir. If it was for hair and fibers or for firearms/tool marks, they had specific ways of writing stuff up. Yes, sir.

Q. I see. The lab -- the Materials Analysis Unit didn't have such a list, did they?

Brett Mills - Cross

A. Not that I'm aware of.

Q. Okay. And the Explosives Unit didn't have such a list, did they?

A. The list that we got were the ones that were supplied to us from the other units.

Q. And -- so that would not include the Materials Analysis Unit; right?

A. Yes. I don't remember one for Materials.

Q. And the CTU unit -- what's the "CTU unit" stand for?

A. Chemistry Toxicology Unit.

Q. They didn't have such a list, either, did they?

A. Not that I can remember.

Q. So when you had things that were going to those three units, it was left to your discretion to decide whether it was a Q or a K and what the description was; right?

A. Yes, sir. Normally, if there were Q -- if there was something that was confusing or anything, we would call up the unit.

Q. Now, with respect to contamination of evidence that you were receiving, there was no written protocols in the lab directing you how to keep evidence from getting contaminated; right?

A. I never saw one, no, sir.

Q. And so it was left to your discretion to decide how best to keep evidence from getting contaminated; right?

Brett Mills - Cross

A. No, sir. I was trained. There was verbal training.

Q. Trained by Dave Williams?

A. Dave Williams, Steve Burmeister, people from other units.

Q. Dave Williams was your primary person that trained you; right?

A. No, sir. The technicians were Bill Davitch and Keith Rogers.

Q. Was Dave Williams the senior person that trained you?

A. No, sir. Dave was my supervisor as an agent; but the senior technicians, Bill Davitch and Keith Rogers, were the ones who really trained me.

Q. Sure. Now, when the evidence came in in large masses like it did in this case, the over 7,000 pounds, you had to make a decision as to where you were going to put this stuff. Right?

A. You mean --
Q. It didn't all go in the same area, did it?
A. Oh, no, sir.
Q. And you were the one that made the decision as to where to put it?
A. That, and the help of my unit chief.
Q. Let me see if I understand what happens. You receive the evidence. Somebody looks at it, fills out the list and assigns Q and K numbers first. That's the first thing that happens; right?
A. Yes, sir.

Brett Mills - Cross

Q. And then you decide where you're going to put the evidence so you know where it is later; right?
A. Well, if it was going to an auxiliary examiner, we would parcel it out first.
Q. Well, you didn't send this whole 7,000 pounds out at once; right? You had a storage facility, or more than one storage area where you kept the evidence after it was assigned a Q and K number; right?
A. Are we talking one major submission, or are we talking about all the evidence, or are we talking about individual submissions?
Q. All.
A. All of it? Some of it was put into storage. Some of it was checked in immediately and sent out to auxiliary examiners.
Q. How many storage areas did you have?
A. I had a total of three rooms.
Q. Where were they?
A. They were down in the 1B basement.
Q. All three in the 1B basement?
A. Yes, sir.
Q. Did you store any of the evidence at the FBI bomb range?
A. Not to my knowledge, no, sir.
Q. Now, in the 1B area, that's not a totally secure area, is it?
A. No, sir, it isn't.

Brett Mills - Cross

MS. WILKINSON: Your Honor.

THE COURT: Yes.

MS. WILKINSON: I'm going to object because he's asking about the 1B area. This evidence was never stored in that area. It's beyond the scope.

THE COURT: Sustained as beyond the scope.

BY MR. TRITICO:

Q. Now, you testified that you put on rubber gloves at the time that you received this evidence that you testified about today. Right?
A. Yes, sir.
Q. Let me see if I understand what happened. You get it, you

bring it down to your workstation; right?

A. Yes, sir.

Q. And I think I've understood you: You washed it down.

A. Washed down my countertop.

Q. And you put some butcher paper down?

A. Yes, sir.

Q. And then you began to examine the evidence; right?

A. Yes, sir.

Q. Not examine it, but check it in.

A. Check in.

Q. Did you take control swabs of your area before you washed it down?

A. No, sir.

Brett Mills - Cross

Q. Did you take control swabs of your hands before you put the gloves on?

A. No, sir.

Q. Did you take control swabs of your wife's hands before she began to work with you?

A. No, sir.

Q. Were you wearing a lab coat?

A. I don't believe so on that day, no, sir.

Q. Was your wife wearing a lab coat?

A. No, sir.

Q. Did you take control swabs of your workstation after you finished with the area?

A. No, sir.

Q. With the evidence collection?

A. No, sir.

Q. The butcher paper that you used is not waxed on either side, is it? It's just plain old butcher paper that your kids draw on. Right?

A. I don't -- it's just -- it's like a grocery-sack material.

Q. Okay. Okay. Now, you had no written protocol for you to use at the time in 1995 when you were checking in this evidence to keep from contamination in the area; right?

MS. WILKINSON: Objection. Asked and answered, your Honor.

THE COURT: Sustained.

Brett Mills - Cross

BY MR. TRITICO:

Q. Do you have one now?

A. I don't know. I'm not in that unit anymore.

Q. Do you know if a lab-wide protocol exists today to prevent contamination of evidence in the lab?

A. I do not know.

Q. Have you seen one in your training?

A. For lab-wide?

Q. Yes.

A. No, sir.

Q. Now, did you take control swabs of the box that you had

Q. Now, did you take control swabs of the box that you had the -- got the evidence out of?

A. No, sir.

Q. When you -- in 1995, when you were checking this evidence in, the FBI did not utilize any central controls, central document control system, to keep track of this evidence, did they?

A. I'm not following this.

Q. Did you put it on a computer? You didn't log it into some computer tracking system so they would know where the evidence is, did you?

A. I have one, yes.

THE COURT: Excuse me. Are you talking about what he's talked about in direct examination?

MR. TRITICO: Yes, sir.

Brett Mills - Cross

BY MR. TRITICO:

Q. I was only referring to those facts. I'm only referring now to the items that you've already talked about.

A. I did have a computer system, yes, sir.

Q. Oh. And the FBI in 1995 used a central computer system to log in and track this evidence throughout the lab?

A. What do you mean? I had a PC.

Q. Sure. And it wasn't -- it wasn't attached to a network, was it?

A. No, sir.

Q. Okay. So you couldn't -- you could log it on your computer

but nobody else in the lab could look at your computer unless they came to it to see what you had done with any given item?

A. That's correct.

Q. The only way you had to track the evidence was the piece of

paper that you made up that your wife filled out for you, and that was what you tracked the evidence with in the FBI lab; right?

A. Me personally?

Q. Or whoever. That's what went with it. Right?

A. I had a worksheet which I actually handwrote out, you know, this number went to here and this number went to there; but I also had a computer system that had a field that said this item went to this examiner on this date.

Q. And when you fill out the sheet or the one your wife made

Brett Mills - Cross

up, you would leave one in your file and one would go with the evidence. Right?

A. It would go to an examiner itself.

Q. I'm talking about the piece of paper would go with the evidence; right? The log?

A. Not the log, just the worksheet.

Q. Okay. Then the worksheet is what they fill out when they

get it so that they know they got it. When they give it to somebody else, that person signs it. Right?

A. Right.

Q. Okay. That was the system that they used in 1995 to keep control and track of the evidence as it went through the lab being processed in different units; right?

A. Yes, sir.

Q. They had no other -- other system. Right?

A. No, sir.

Q. Okay. Once it left you, once you checked it in and passed it on, you didn't necessarily know what happened to it again until it came back to you and it was completely through with the testing process; right?

A. The examiner that I gave it to, if he gave it back to me, I would make a note on it.

Q. Exactly. But they didn't always give it back to you was my question. It may have gone from you to the CTU and then gone to hair and fiber and then somewhere else and then eventually

Brett Mills - Cross

make it's way back to be put in the storage facility; right?

A. You mean -- I want to follow you. Are you saying if like another examiner wanted a different exam done?

Q. Right.

A. Okay. Yeah. That would be on his worksheet.

Q. And you wouldn't necessarily know what happened to it as it went through the lab; right?

A. No, sir.

Q. You wouldn't know where it went?

A. No, sir.

Q. You didn't change gloves at all when you were checking in this evidence that you talked about here today; right?

A. No, sir.

Q. You put the one pair on and left them on?

A. Yes, sir.

Q. Did your wife wear gloves?

A. No, sir. She wasn't in on the evidence.

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

THE COURT: Yes.

MR. TRITICO: Your Honor, that's all I have.

THE COURT: Do you have any redirect?

MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Mills, Mr. Tritico asked you about whether you had a

Brett Mills - Redirect

written protocol for assigning Q numbers. Do you recall that?

A. Yes, ma'am.

Q. Within your own unit.

Now, I don't mean to insult you, but how hard is it

to
assign a Q number to an item?
A. It's just a general description of the item.
Q. And do you assign those numbers in the order that the
evidence comes into your unit?
A. Yes, ma'am.
Q. So on these items that you've described for the jury with
those low Q numbers, Q18 through Q27, would those have been
some of the first items that came into your laboratory in
connection with this case?
A. Yes, ma'am.
Q. And would the other items that came in get those sequential
Q numbers as you received them?
A. As I received them, yes.
Q. Now, explain to the jury: In this case, you didn't
receive
all the evidence at once, did you?
A. No, ma'am.
Q. Did you receive it in batches?
A. Yes, ma'am.
Q. Did you receive any other evidence on April 22, 1995,
other
than the box that you've already described?
A. Yes, ma'am.

Brett Mills - Redirect

Q. What else did you receive?
A. I believe they were videotapes.
Q. Other than that, did you receive any other items?
A. Not on the 22d, I don't think so.
Q. And throughout this investigation, have you received
various of -- submissions of evidence at different times?
A. Oh, yes.
Q. Now, you were also asked about anticontamination
procedures. Did you specifically discuss with agents in the
Chemistry Toxicology Unit procedures you should follow to
ensure that you did not contaminate evidence?
A. Yes, ma'am.
Q. And with whom did you have those discussions?
A. Agent Burmeister and Agent Whitehurst.
Q. Are they both qualified, or were they both qualified
chemists in the Chemistry Toxicology Unit?
A. Yes, ma'am.
Q. And are they both experts in explosive residue?
A. At the time, yes.

MS. WILKINSON: No further questions.

MR. TRITICO: Just a couple.

THE COURT: All right.

RE-CROSS-EXAMINATION

BY MR. TRITICO:

Q. Now, when you opened the box to begin to start assigning

BRETT MILLS - RECROSS

the Q and K numbers, you found that the clothes were in a brown paper bag, or the items that you talked about were in a brown paper bag, or just in the box. Right?

A. Yes, sir, they were in a bag.

Q. And there was nothing -- they were in the brown paper bag; right? They weren't in a plastic bag is what I'm trying to ask you.

A. No, sir.

Q. They weren't sealed individually in bags?

A. No, sir.

Q. They were all strewn in there together.

A. Yes.

Q. They weren't folded nice and neat like they were like you looked at them today, were they?

A. I don't remember if they were folded.

Q. Now, Latent Fingerprints Section, as you -- that's where you got them from; right?

A. Yes.

Q. Are you familiar with the protocols that the Latent Fingerprint Section has for contamination of evidence?

A. No, sir. I'm not familiar with --

Q. Are you familiar enough with the lab to know that they're the last people to get any evidence to examine?

A. That's not true.

Q. It's not?

Brett Mills - Recross

A. To my knowledge, no, sir.

Q. Okay.

MR. TRITICO: That's all I have at this time, your Honor; but I would like the witness available on call.

THE COURT: All right.

MS. WILKINSON: I do have one other question.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Mills, when you received the box, or when you picked it up in the fingerprint section, was it sealed?

A. Yes, ma'am.

MS. WILKINSON: No other questions, your Honor.

And the witness -- I would like to have him on call, but he can return to Washington.

MR. TRITICO: We're in agreement on that.

THE COURT: All right.

You're excused, but you'll be available on call.

THE WITNESS: Thank you, sir.

THE COURT: Next, please.

MR. HARTZLER: Ron Kelly. Ms. Wilkinson will question.

MS. WILKINSON: Your Honor, may Agent Hersley retrieve the clothing?

THE COURT: Yes.

Ron Kelly - Direct

THE COURTROOM DEPUTY: Would you raise your right hand.

(Ronald Kelly affirmed.)

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

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

THE WITNESS: Ronald L. Kelly, K-E-L-L-Y.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Mr. Kelly.

A. Good afternoon.

Q. Can you tell the jury where you work.

A. With the Federal Bureau of Investigation.

Q. How long have you worked for the FBI?

A. For over 18 years.

Q. What have you done for the FBI?

A. I'm a chemist.

Q. How long have you been a chemist?

A. 18 -- over 18 years.

Q. What type of education have you had?

A. I have a B.S. degree in chemistry from the University of Maryland.

Q. And are you currently assigned in the Chemistry Toxicology Unit in the FBI laboratory?

A. That's correct.

Ron Kelly - Direct

Q. Did you have that assignment in April of 1995?

A. Yes, I did.

Q. At that time, did you work with Supervisory Special Agent Steven Burmeister?

A. Yes, I did.

Q. Do you recall where you were on April 19, 1995, early that morning?

A. Yes. I was -- I was in my unit at Washington, D.C.

Q. Your unit in the Chemistry Toxicology Unit?

A. That's right.

Q. And after you heard about the bombing, were you assigned to travel to Oklahoma City?

A. Yes, I was.

Q. Did you travel with Agent Burmeister?

A. Yes, I did.

Q. When did you all arrive in Oklahoma City?

A. We arrived on April 20.

Q. When did you leave Washington?

A. April 19.

Q. What took you so long?

A. We were delayed because of a thunderstorm that occurred en route.

Q. Did you land elsewhere?

A. Yes. We spent the night at Little Rock, Arkansas, and continued to Oklahoma City the next morning.

Ron Kelly - Direct

Q. Now, when you traveled to Oklahoma City, did you bring certain equipment and materials with you in preparation for your participation in the crime-scene search?

A. Yes, I did. I brought clean work clothes, some evidence-recovery supplies, and some instrumental equipment, also.

Q. Did you and Agent Burmeister discuss the procedures you would follow to collect certain types of evidence at the crime scene?

A. Yes, we did.

Q. Specifically, what types of evidence were you and Agent Burmeister looking for?

A. We were going to be responsible for the collection and preservation of evidence that would be concerning explosive residues.

Q. Would that include taking samples from items at the crime scene?

A. Yes, it would.

Q. Would that also include retrieving actual pieces of evidence that you thought could be likely sources of explosive residue evidence?

A. That's also correct.

Q. All right. Did you begin your work at the crime scene on April 20?

A. Yes, we did.

Ron Kelly - Direct

Q. Tell us generally what you did on that day.

A. The first day we did a walk-around of the crime scene to get a general impression of the evidentiary material, the location, and pertinent facts that would help us in making a decision as to how we'd go through our course of collection.

Q. Now, I know you and Agent Burmeister were working together. But was he directing the collection of the explosive residue samples and the other evidence?

A. That's correct. He was basically the team leader.

Q. Okay. Did you continue to work on April 21, 1995?

A. Yes, I did.

Q. Did you, yourself, collect evidence on that day?

A. Yes, I did.

Q. Do you recall where you were that morning?

A. I was working in the parking lot directly across from the Murrah Building.

Q. And did you recover certain pieces of evidence that morning?

A. Yes, I did.

Q. Now, if you can look your bag there and look for

Continuation of Exhibit 664 - Document 11-11-1995

Government's Exhibit 664. Do you see it there?

A. Yes, I do.

Q. Did there come a time when you found that piece of evidence in the parking lot across from the Murrah Building?

A. Yes, there was.

Ron Kelly - Direct

Q. Tell us what you saw when you first came across that piece.

A. This particular piece, I saw in a location in the northwest quadrant of the parking lot. I noticed the colors. That first

caught my attention.

Q. What did you notice about the colors?

A. The colors were red and yellow, which were what was indicated as colors on the Ryder truck that we were told --

Q. And when you noticed those colors, were you interested in that piece of evidence?

A. Yes, definitely it was the colors that struck my attention, because again those were particular parts that we were interested in collecting.

Q. Did you also notice how the evidence was situated in the parking lot?

A. Yes, it was. It was definitely situated with the red and yellow side up; and it was situated mostly flat, maybe a little bit elevated.

Q. And did you ask someone, or was there a picture taken of that piece of evidence before you retrieved it?

A. Yes, there was a photograph taken of the item in place.

Q. Now, look at the item itself, Government's Exhibit 664, and the packaging. Do you recognize that?

A. Yes, I do.

Q. Now, tell us before we talk about the piece of evidence itself what you did after you noticed the yellow and red paint.

Ron Kelly - Direct

A. Knowing it was one of the types of material that we wanted to collect for the possibility of residue analysis, I was wearing disposable latex gloves, prepared a bag, and very carefully lifted the item of evidence by the edges and placed it in the bag and sealed it.

Q. And did you examine the piece of evidence in any other way?

A. No, I did not.

Q. Why not?

A. Because due to the fact that we were going to be looking for residues on the material, I did not want to expose it to any unnecessary touching or anything along that line.

Q. Do you recognize that bag as the bag that you used to secure Government's Exhibit 664 at the crime scene on April 22, 1995?

A. Yes, I do. I recognize it --

Q. Or first -- excuse me.

A. By my initials on the bag, the item number, and also the

... by my initials on the bag, the room number, and also the date I collected it.

Q. Do you recognize the item itself?

A. Yes, I do.

Q. How do you recognize the item itself?

A. The item itself was a peculiar shape, which I recall very vividly, plus I have reviewed the photographs and compared it to that also as indicative of the same item.

MS. WILKINSON: Government offers 664.

Ron Kelly - Direct

MR. TRITICO: May I have a few minutes of voir dire, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. TRITICO:

Q. Good afternoon, Mr. Kelly.

A. Good afternoon.

Q. Now, you were assigned to search what area?

A. I was not assigned to search any particular area.

Q. So you were -- what was your purpose in being where you were when you found this piece of evidence?

A. Again, having discussed our plan of collection with Special Agent Burmeister, we had decided to start in that general area to start recovering and preserving evidence.

Q. Now, you said you photographed -- you didn't photograph but you caused the photograph to be taken of this piece of evidence?

A. There was a photographer who took the photograph.

Q. The photographer wasn't with you at the time; is that correct?

A. No, the photographer was with me at the time.

Q. Now, the way this works is you go around and you identify pieces of items that you want to collect for evidence. Is that right?

MS. WILKINSON: Your Honor, I'm going to object. I

Ronald Kelly - Voir Dire

think this is beyond the scope of voir dire.

THE COURT: Yes, sustained.

MR. TRITICO: That's all I have, your Honor.

I'll object to the identification of the exhibit, and I object to relevance at this time.

THE COURT: Both objections are overruled. 664 is received.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Did you -- are you familiar with the Q number for Government's Exhibit 664, Mr. Kelly?

A. Yes, I am.

Q. What is the Q number?

A. Q507.

Q. Could you take that item, Government's Exhibit 664, out of

the bag and display it to the jury.

Are you showing them the red and yellow side that you saw that day?

A. Yes, I am.

Q. That was the side that was facing up to you as you were participating in the search?

A. That is correct.

Q. And the back side was facing down?

A. That's correct.

Q. Okay. Place that back in the bag, please.

Ronald Kelly - Direct

MS. WILKINSON: Your Honor, may I approach to show a photo?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Agent Kelly, I'm going to show you Government's Exhibit 665. Do you recognize that?

A. Yes, I do.

Q. Is that the photograph you were discussing earlier?

A. Yes, it was.

MS. WILKINSON: Government offers 665, your Honor.

MR. TRITICO: No objection.

THE COURT: 665 is received, may be displayed.

BY MS. WILKINSON:

Q. Mr. Kelly, is there a light pen up there, a silver light pen? It's right here.

I don't know if you can, but if you can, can you use that light pen.

MS. WILKINSON: Your Honor, may he step down? I think it will be easier.

THE COURT: Yes.

BY MS. WILKINSON:

Q. Show the jury what's exhibited in this photograph.

A. Shown right here is the exhibit which we refer to as Q507, the piece I held up on the stand just a few minutes ago.

Q. Can you see in that photograph that the paint, the yellow

Ronald Kelly - Direct

and red side, is facing up?

A. Yes, sir.

Q. Can you also determine that the piece is on a slight angle and therefore not touching the ground in all areas?

A. That's correct.

Q. You can take your seat.

Did you recover another piece of evidence that day that also had red and yellow paint on it?

A. Yes, I did.

Q. Do you see that in front of you? It should be Government's Exhibit 737.

A. Yes, I do.

Q. And where did you recover Government's Exhibit 737?

A. Again, this was an item recovered in the parking lot across from the Murrah Building. This one was recovered a bit closer to 5th Street.

Q. And do you recognize that piece?

A. Yes, I do.

Q. Recognize the bag?

A. I recognize the bag by initials and item number and again the date that I recovered it on.

Q. Are those your initials?

A. Yes, they are.

Q. When you recovered Government's Exhibit 737, did you follow the same procedures that you followed with Government's Exhibit

Ronald Kelly - Direct

664?

A. Yes, I did.

Q. And do you recognize the item itself, Government's Exhibit 737?

A. Yes, I do.

MS. WILKINSON: Government offers 737.

MR. TRITICO: Same objection, your Honor.

THE COURT: Objection is overruled. 737 received.

BY MS. WILKINSON:

Q. Are you familiar with the Q number for Government's Exhibit 737?

A. That's correct. It's Q502.

Q. Could you take that out of the bag and show the jury Government's Exhibit 737.

Are you showing them the painted side with the red and yellow paint?

A. That's correct.

Q. Can you turn it around, please.

You can put that back in the bag, please.

THE COURT: Actually, two pieces.

THE WITNESS: Yes, it was.

BY MS. WILKINSON:

Q. Was that one piece when you found it?

A. I believe it was one piece. It's probably gone through a little traffic since I first picked it up.

Ronald Kelly - Direct

Q. Do you know, Mr. Kelly, were those pieces sent back to the FBI laboratory?

A. Yes, they were.

Q. Did Agent Burmeister examine them?

MR. TRITICO: Excuse me. I'm going to object to this unless he has personal knowledge of it.

THE COURT: Yes, he'd have to testify to that from personal observation.

BY MS. WILKINSON.

BY MS. WILKINSON.

Q. Did you see Agent Burmeister testing Government's Exhibit 664?

A. The best I can say is I did see it in his possession. I did not see any tests that he conducted on it.

MS. WILKINSON: No further questions.

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

MR. TRITICO: Yes, your Honor.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good afternoon, Mr. Kelly.

A. Good afternoon.

Q. You're a scientist; right?

A. I'm a chemist. That's correct.

Q. And do you work -- you work in the lab?

A. That is correct.

Ronald Kelly - Cross

Q. Did you perform any tests on Q507?

A. I did not perform any tests on this particular item that I recall at this time.

Q. Is that Q507 in the same form today as it was the day you found it?

A. Again, from my visual appearance (sic), it appears to be the same, yes.

Q. Now, in --

MR. TRITICO: Your Honor, may I approach and look at the exhibit for a moment?

THE COURT: Yes.

BY MR. TRITICO:

Q. In examining the back side of Q507, it appears that it may have -- has some dark areas on it; right? You see those dots and the dark areas on it?

MS. WILKINSON: Your Honor, may I approach so I can see what Mr. Tritico is pointing to?

THE COURT: Yes, you may.

BY MR. TRITICO:

Q. Do you see the dark splotches and areas on it?

A. Yes, I do.

Q. That could be scorching, couldn't it?

A. I have no idea.

Q. Did you do any tests on the scene to determine if that was the case?

Ronald Kelly - Cross

A. No, I did not.

Q. Did you do any tests on Q507 at the scene to determine what, if any, evidentiary value it had?

A. No, I did not.

Q. Now, you did testify that you caused the photograph to be taken of Q507? Is that right? That's what's up on the board right now.

A. Yes.

Q. Let me see if I understand the way this works. You go out when you find something, typically you spray like a pink or orange or yellow circle around it. Right?

A. Not typically, no.

Q. That happened in this case, didn't it?

A. That could have happened.

Q. And you bag it; right?

A. Are you asking me what I actually did with it, or in general?

Q. In general. You bag the evidence?

A. Again, it's going to depend on the type of evidence.

MS. WILKINSON: Your Honor, I'm going to object. If we can stick to the specific evidence for these two pieces --

THE COURT: Yes. He's not on the search team.

BY MR. TRITICO:

Q. Did you pick up other items of evidence when you were out there when you found Q507?

Ronald Kelly - Cross

A. Yes, I did.

MR. TRITICO: May I approach, your Honor?

THE COURT: Well, we're out of time. You'll have to be back Monday. You may step down.

Members of the jury, as promised, you're going to get the day off tomorrow, so you've got a long weekend. Now, I'm taking a chance with you by doing that, because there is a lot of time before we get together again. It won't seem like much to you, I'm sure, because soon it will be Monday and you'll be back; but I do have to emphasize very strongly the importance of your being very careful during all this time.

With respect to the trial, you obviously have some curiosity about where we are in connection with the case, I'm sure. Well, we're running in good time here, and you've heard a lot of the evidence from the Government. There will still be more to go, however, from the Government's side, although we're getting there in terms of the witnesses offered by the prosecution.

But, of course, that doesn't end the trial. You'll have evidence offered by the defense as well, and there will be witnesses called. So keep that in mind -- and keep that in open mind; because as I've repeatedly said, it isn't, even in your own thinking about the case, appropriate for you under your oath to, during this or any other recess, think about, well, what has really been proved here or what has not been proved, what does this mean, or what it doesn't mean. You know, as we said in the very beginning here, the evidence necessarily comes in in bits and pieces, and you have to wait until you've heard it all, including evidence that is offered in contradiction of some of the evidence that you've already heard, because that will undoubtedly occur as well.

All I'm telling you is that we can't put it on all at once, and you have to be patient and wait and really not think

about, as I've just said -- you've heard a lot of witnesses testify. You have seen a lot of exhibits; but the case has not been given to you for decision by any means. There is a ways to go yet. So I particularly emphasize the need for you to keep open minds and realize that the trial is certainly not completed.

And of course, in addition to more evidence, you'll hear arguments from the lawyers about what this or that means or doesn't mean. And you'll hear from me about the law that applies, because you remember when several weeks ago you were being selected as jurors, I explained to you the importance of following the Court's instructions on the law. And that's, in fact, the last thing that you'll hear in the trial, the instructions on the law. And that's a very important part of the case as well.

So I don't mean to have you sit there and listen to a lecture from me about it, but it is extremely important. And I emphasize it again that you, having accepted this responsibility to serve on this jury and decide these issues, must also accept the responsibility of being very careful, avoiding discussion among yourselves and with all others and being very careful about all of the things that you may read, see, and hear during this and all other recesses to be sure that ultimately, when the day comes that I turn the case over for you to -- to you to decide, you'll be able to do that, as the law requires, based on the law and the evidence.

So with your continuing cooperation, we'll excuse you now until next Monday at 9:00; and we hope you enjoy this intervening period. You're excused.

(Jury out at 4:45 p.m.)

MS. WILKINSON: Your Honor --

THE COURT: Yes.

MS. WILKINSON: Regarding the testimony on Monday, can

I ask Mr. Tritico to show me the exhibits he was about to show the witness? I have not been provided them.

THE COURT: Well, yes, of course.

I'm not going to wait here while he does it. I'm sure that can be done during recess.

We'll -- trial will be in recess till 9 a.m. Monday morning.

(Recess at 4:45 p.m.)

* * * * *

INDEX

Item

Page

WITNESSES

Deborah Thompson

Cross-examination by Ms. Ramsey

Redirect Examination by Mr. Mendeloff

Recross-examination by Ms. Ramsey

Redirect Examination by Mr. Mendeloff

Louis Hupp

Direct Examination by Mr. Mackey

Cross-examination by Ms. Ramsey

Redirect Examination by Mr. Mackey

Redirect Examination by Mr. Mackey
Recross-examination by Ms. Ramsey
Redirect Examination by Mr. Mackey

Brett Mills

Direct Examination by Ms. Wilkinson
Cross-examination by Mr. Tritico
Redirect Examination by Ms. Wilkinson
Recross-examination by Mr. Tritico
Redirect Examination by Ms. Wilkinson

Ronald Kelly

Direct Examination by Ms. Wilkinson
Voir Dire Examination by Mr. Tritico
Direct Examination Continued by Ms. Wilkinson 9365
Cross-examination by Mr. Tritico

PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
107	9279	9280			
107A	9279	9280			
108	9279	9280			
109	9279	9280			
111	9279	9280			
111A	9279	9280			
112	9279	9280			
142	9280	9281			
426	9334				
428	9326	9326			
429	9330	9330			
430	9329	9329			
431	9323	9323			
432	9327	9327			
433	9328	9328			
434	9331				
664	9363	9365			
665	9366	9366			
737	9368	9368			

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
J409A	9263	9263			

* * * * *

REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 15th day of May, 1997.

Paul Zuckerman

Kara Spitler