

Monday, May 19, 1997 (morning)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury - Volume 101)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 9:00 a.m., on the 19th 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, JAMIE ORENSTEIN, AITAN
GOELMAN, 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

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

THE COURT: Please be seated.

Good morning.

Mr. Tritico, you have some more questions of

Mr. Kelly?

MR. TRITICO: Yes, your Honor.

THE COURT: Then we're ready for the jury.

MR. TRITICO: May I resume the podium?

THE COURT: Well, let's get the jury in first.
Bring in the jury.

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

THE COURT: Members of the jury, good morning. You will recall that when we recessed on last Thursday afternoon, Mr. Ronald Kelly, who is here resuming the stand, was answering questions from Mr. Tritico on cross-examination. You'll recall that Mr. Kelly is with the FBI laboratory.

(Ronald Kelly was recalled to the stand.)

THE COURT: Mr. Tritico, you may continue your questioning.

MR. TRITICO: Thank you, your Honor.

CROSS-EXAMINATION CONTINUED

BY MR. TRITICO:

Q. Good morning, Agent Kelly.

A. And that's Mr. Kelly, just for the record, please.

Q. I'm sorry.

A. Thank you.

Q. Mr. Kelly, how are you?

Now, we were talking Friday about your investigation at the scene in Oklahoma City; do you recall that?

A. Yes.

Ronald Kelly - Cross

THE COURT: That was Thursday.

MR. TRITICO: Yes, Thursday.

BY MR. TRITICO:

Q. What day did you arrive in Oklahoma City?

A. April 20, the day before.

Q. What is your normal place of operation?

A. I am assigned to the laboratory division at headquarters in Washington, D.C.

Q. Who was it that instructed you to go to Oklahoma City?

A. My supervisor of the Chemistry/Toxicology Unit.

Q. Who was that?

A. Roger Martz.

Q. I'm sorry?

A. Roger Martz.

Q. And how many people from the lab were assigned to go to Oklahoma City?

A. I'm not sure of the exact number. It was myself and Steve Burmeister from my unit that went to the lab (sic). I would guess there were at least a half a dozen or more.

Q. Total from the lab?

A. From the laboratory, yes, sir.

Q. From different divisions in the lab?

A. From different units within the laboratory; that's correct.

Q. And how many FBI agents were on the scene in Oklahoma City when you arrived; do you know?

Ronald Kelly - Cross

A. I don't have any idea.

Q. How many other law enforcement -- federal law enforcement agents were involved in Oklahoma City when you arrived; do you know?

A. The only other group that I spent any time with at all in discussions would be Alcohol, Tobacco and Firearms that I'm aware. But there were plenty others there.

Q. Do you know how many ATF agents were involved in the investigation at Oklahoma City?

A. No, I do not.

Q. Do you know if local law enforcement was involved in the investigation?

A. They were present.

Q. Did they assist in the investigation?

A. Again, I'm not exactly sure what their parts were in the investigation.

Q. When you arrived in Oklahoma City, which agency was in charge of the investigation?

A. Again, I distanced myself from the administrative end, just performed my duties and tasks as I was assigned, so I'm not quite sure of that answer.

Q. You don't know who was in charge?

A. Not at the time that I first arrived, no.

Q. Did you later find out who was in charge?

A. Yes, I did. Later the case came under the jurisdiction of

Ronald Kelly - Cross
the FBI.

Q. Who was -- who was giving assignments to the individuals on what to do with respect -- in other words, who gave you your assignments when you were in Oklahoma City?

A. Our assignment from the standpoint of the purpose of what I was there is pretty much a standard assignment that the chemists have when they arrive at the scene, and it's their responsibility for surveying the scene and collecting and preserving that evidence related to the residues. We were briefed each morning, and there were individuals from ATF and the FBI that were giving briefs, and they were different individuals every morning.

Q. And on the morning of the 21st, who gave you your briefing?

A. I don't recall that particular morning, sir.

Q. This is a morning that you said you found what's been now called as Q507; is that right?

A. That is right.

Q. How long do these briefings usually last?

A. Anywhere from 10 minutes to a half an hour, depending on what needs to be discussed.

Q. Now, is a briefing giving you what's happened thus far or telling you what to do that day?

A. A little bit of both.

Q. Okay. Now, who gave you -- when you left from Washington to come to Oklahoma City, you said it was Mr. Martz that told

Ronald Kelly - Cross

you to come, right?

you to come; right?

A. He was my supervisor. He informed me of my need to come here; that's correct.

Q. Sure. And did he give you any instructions as to what you were to do when you arrived in Oklahoma City?

A. Not specifically, no.

Q. Does the lab have -- strike that.

Was there any forensic testing done at the scene in Oklahoma City?

A. Depends on what you want to call "forensic testing," sir.

Q. Well, can you do screening forensically on the scene to determine the evidentiary value of items that you're finding?

A. We did have that capability, that's correct.

Q. And what is that called, what machine?

A. The particular machine that we had with us that day was an ion scan mobility spectrometer.

Q. Somebody was coughing. Ion scan?

A. Ion scan mobility spectrometer.

Q. Is that an IMS?

A. That's correct.

Q. This is a portable machine?

A. That is correct.

Q. And this is what you use as a screening device to determine when -- if you have something of evidentiary value in the items that you're locating and picking up for evidence; right?

Ronald Kelly - Cross

A. That is one of its uses among many, yes.

Q. Do you have other screening devices that you can bring to the scene at the FBI lab?

A. Yes, we do.

Q. What is that?

A. We have an instrument we refer to as an EGIS, and it's also

an explosive, screening explosive detector.

Q. Is the EGIS the same machine some people call a GC chem?

A. GC chemiluminescence.

Q. That's an EGIS machine?

A. That's correct.

Q. That's a machine that analyzes compounds through gas chromatography; right?

A. It's a screening instrument that utilizes that particular discipline, yes.

Q. Did you take the EGIS GC chem with you to Oklahoma City?

A. No, we did not.

Q. Do you have any other screening devices at the FBI lab, other than the IMS and the EGIS GC chem?

A. Those are the main two instrumental -- portable instrumental units that we utilize in the field.

Q. Now, when you use a screening device, that's a machine that will analyze it very quickly -- the substance very quickly to determine if there may be something there and then you take it and use a better machine or a better device to determine what

Ronald Kelly - Cross

the compounds may -- actually may be; is that fair?

A. That would be our procedure that we would employ in the laboratory, that's correct.

Q. Now, is a -- an EGIS uses the separation technique as the -- is the gas chromatography, that's what separates the compounds through the column; right?

A. That's correct.

Q. Column is a varying length of a column that you put the sample in and as it passes through the column, they separate, come out into the machine at different times, and that's how you know what you got on the printout; right?

A. That's a fair and accurate statement.

Q. It's a fairly simple statement; but it was accurate, I take it?

A. Yes.

Q. Okay. And all gas chromatography techniques separate the compounds in the same way; is that correct?

A. It's based on a similar principle. There are different varying principles within that discipline that would affect separation properties of chemicals, but basically it's the same principle, yes.

Q. Does the IMS separate the compounds in the same way as the EGIS gas chromatography?

A. No, it does not.

Q. Did not test what we've now been called Q507 on the scene;

Ronald Kelly - Cross

is that correct?

A. That is correct, we performed no chemical tests on that.

Q. You performed basically no chemical tests on the scene at all; is that correct?

A. We did not perform any tests on what we considered forensic-residue-type samples, because we did not want to risk the chance of any field contamination on those items.

Q. So there was a possibility on the scene in Oklahoma City that things could be contaminated; right?

A. No, sir, not necessarily, but we were taking all precautions to prevent any means of contamination that we can avoid.

Q. Were you wearing protective clothing?

A. I was wearing protective clothing, yes, sir.

Q. What do you call the protective clothing?

A. There's different levels of protective clothing; anything from clean street work clothes up through Tyvex suits up through self-contained breathing-apparatus-type protective clothing.

Q. Which of the three were you wearing?

A. I was wearing freshly washed and/or new street clothes or work clothes.

Q. So you were wearing the clothes you wear every day but they were washed?

A. No, that's incorrect. I was wearing a specific set of

Ronald Kelly - Cross

clothes that I keep strictly for scene investigation.

Q. I see. And how many other people on the scene were wearing protective clothing?

A. Depends again what you mean by "protective clothing."

Q. Well, let's take it with the one set of clothing that you keep clean and that you use only for your forensic examinations on the scene. How many people were doing that?

A. I can't exactly talk for them what they were wearing as far as how they arranged their clothing. I can only speak for myself, sir.

Q. Sure. Now the second level of clothing that you talked about -- I'm sorry, I've forgotten what you call that.

A. Tyvex suits.

Q. Tyvex suit. Do some people call that a "bunny suit"?

A. That's one synonym for that, yes, sir.

Q. You didn't wear that?

A. Not at the actual site of the Murrah Building, no, sir.

Q. Yes, sir. Now, how many people did you see on the scene wearing the bunny suit?

A. I don't recall any offhand. There may have been some individuals working inside, but most of the individuals outside had some type of street clothing or other type of clothing on that did not -- none of them had the Tyvex that I recall at this time.

Q. How many people did you see wearing the self-contained

Ronald Kelly - Cross

breathing apparatus?

A. Some of the firefighters were dressed up to that level.

Q. Now, the firefighters, when they wear the self-contained breathing apparatus, obviously that's for firefighting, right?

A. And other type of incidents relating to firefighting, yes, sir.

Q. Firefighters generally don't take the level of precaution that a forensic scientist would to ensure that the self-contained breathing apparatus is not itself contaminated with explosives residue; would you agree with that?

A. Not necessarily. If it is a well-run unit, there are deep contamination procedures that would involve hazardous materials, which that would be, so yes and no on that answer.

Q. They would not want to be themselves contaminated with something that might make them ill; is that what you're saying?

A. That's correct.

Q. But they won't take the time -- would you agree -- to ensure that their self-contained breathing apparatus is not contaminated with some trace amounts of explosive compounds?

A. Honestly, I can't answer that. It's going to depend on the particular fire department and unit supervisor.

Q. Did you make any effort to determine what the Oklahoma City Fire Department did with respect to their self-contained

Fire Department did with respect to their self-contained breathing apparatus and contamination?

A. No, sir.

Ronald Kelly - Cross

Q. How about any of the other fire departments that were present on the scene?

A. No, sir.

Q. Now, on the 21st you received a briefing and went out on your search; right?

A. That's correct.

Q. Who was your partner?

A. At the time I had Steve Burmeister with me that started the morning off.

Q. Was he with you all day?

A. No, he was not.

Q. Who was with you later in the day?

A. As I recall, Special Agent Alton Wilson was accompanying me on my rounds that morning.

Q. And did you have a photographer with you the entire time?

A. That was SA Wilson.

Q. Okay. So Special Agent Wilson was the photographer that you spent the day with. Part of the day you searched with Mr. Burmeister -- Agent Burmeister; right?

A. I did some -- a lot of work with Mr. Burmeister that day; correct.

Q. Is Mr. Burmeister a special agent?

A. Yes, he is.

Q. Were you with Mr. Burmeister -- strike that.

What time of day did you find what we now call Q507?

Ronald Kelly - Cross

A. I don't recall the exact time, but it was the a.m.

Q. And when you go out with Mr. Bur -- when you go out with Mr. Burmeister, do you search together or do you separate and look individually and then maybe call each other to look at things?

A. Most of the time we stay within the same general vicinity, within eyesight.

Q. But not necessarily beside each other. In other words, you're not walking around, saying, "Look at that"?

A. We do that as well may split up; we're always within voice distance of one another. Generally it's together.

Q. What is Special Agent Wilson doing while the two of you are looking for items together?

A. He's mainly the administrator to help us with photography, the evidence log, items of work such as that.

Q. So Agent Wilson is not physically searching, he's just logging things that you and Special Agent Burmeister locate and identify; is that correct?

A. That's correct.

Q. If you're separated, the two of you are not walking together. Looking at things. One of you may be tagging evidence

together, looking at things, one of you may be tagging evidence on this side of the parking lot -- you were in a parking lot, correct?

A. It's in the lot across from the Murrah Building; that's correct.

Ronald Kelly - Cross

Q. One of you may be on one side of the parking lot and the other may be a hundred feet or so away on the other side of the parking lot looking around, tagging items of evidence, right?

A. No, we weren't doing any tagging, but we'd be simply looking.

Q. You identify things that may be of a evidentiary value; is that fair?

A. That would be fair.

Q. How do you mark the item that you have identified that may be of some evidentiary value?

A. Again, we weren't doing any marking of that sort. We would

be simply getting an overview of the area; and then as we went back to a particular item, we'd recover that directly into a bag and seal the bag. We were doing no direct markings of any type on any of the forensic evidence.

Q. So if I understand correctly, you walk around the parking lot, just making a basic survey of the area; is that fair?

A. That's how I began that particular morning; that's correct.

Q. And you look at different things, and you don't mark anything, we're just looking right now, seeing what's in the parking lot that we may want to later seize and analyze in Washington; right?

A. That would be a fair statement.

Q. When do you bring the photographer, Special Agent Wilson, over to take a photograph?

Ronald Kelly - Cross

A. After we did our overview and we got the general impression of what was there that was particularly pertinent to what we wanted to collect. Agent Wilson stayed with me at the time; and as I recovered evidence, he would log it, so he was with me at the time I began recovering the items that morning and stayed with me for pretty much the entire collection process.

Q. Okay. So he wasn't with you when you were making the general survey, was he?

A. He was -- he was present there in the morning, yes. I don't recall exactly when he joined us, but we had requested a photographer for the purpose of -- actually an assistant for the purpose of photography and recording of the administrative items.

Q. Okay. But if I understand correctly, at the time you began when you make your general survey, you're not necessarily identifying things that you're going to keep, you're just looking over the general area; right?

A. When we first begin in the morning?

Q. Yes.

A. Yes; that's correct.

Q. Now, when -- how long does it take -- how long did it take you to make the general survey of the parking lot?

A. Probably 15 minutes, 20 minutes.

Q. And then did Agent Burmeister stay with you at that time, after you did the general survey?

Ronald Kelly - Cross

A. At one point he was called away. I'm not quite sure where he went. But somebody had contacted him, and he did leave the parking lot that morning.

Q. After you make the general survey, do you and Agent Burmeister congregate together and discuss what you've seen individually?

A. Again, like I said, we're pretty much always in contact, so we're always talking; so it's not a matter of discussing later, it's a continuing process.

Q. And what system do you use when you're surveying the parking lot to log the information that you see? In other words, you see something in the beginning that may be of some evidentiary value later; and as you're continuing the survey, how do you know where to go back?

A. Again, we just do a general survey to get an idea of what's going on, and then we'll start at a particular point and start recovering items that we feel are of forensic value and just continue the search until we're comfortable that we've recovered and looked at the pertinent things that we'd like to collect.

Q. Yes, sir, and perhaps my question wasn't artful. Did you make notes while you're making the general survey?

A. No, sir. Steve and I generally don't. We allow the person who's keeping the evidence log to do the notes so we can stay as clean as possible.

Ronald Kelly - Cross

Q. How many pieces of evidence did you pick up in the parking lot when you finally completed your search?

A. That particular morning, I recall, I believe it was 15 items.

Q. Now, at what point do you instruct Special Agent Wilson to photograph different items?

A. Generally we try to photograph all the items in place before we recover them. Sometimes -- I'm aware that in some cases I thought a photograph might have been taken and it may have been photographed after it had been recovered, but we always try to do it before it's recovered.

Q. Who -- how long has Special Agent Wilson been photographing items of evidence?

A. I'm not aware of his background.

Q. Is that his general assignment with the Federal Bureau of Investigation, to be a photographer?

A. I do not know that, sir.

Q. Does the Federal Bureau of Investigation have a class or training session, if you will, with respect to photographing evidence at a scene this size?

A. We have forensic classes in photography that is available at our training facility at Quantico, Virginia.

Q. That's the main training facility for the FBI?

A. That is correct.

Q. Is that a separate training class sponsored by the lab or

Ronald Kelly - Cross

is that in the general training session that every FBI agent gets?

A. They have general classes for the new agent classes. There are also a number of specialized classes, also.

Q. On photography?

A. That's correct.

Q. And do the lab people attend and teach at the photography sessions?

A. That's right.

Q. How many times have you attended a class or taught a class wherein Special Agent Wilson was involved as a student?

A. I have not been at any that I'm aware of.

Q. Now, when the photographer photographs the items that you have identified, do you give any instruction as to what -- how you want the photograph taken?

A. Generally some, yes. But most of the time the photographer just takes a general shot a certain distance away from the item.

Q. Now, what you want -- for instance, if this cup that I'm holding is what you're interested in possibly forensically later, you would tell him, "Photograph that cup"; right?

A. Again, it depends on what we're photographing and what we're recovering. In the particular case, there may have been five or six items in a general area, and I may have instructed him just to take a general shot of all the items as opposed to

Ronald Kelly - Cross

just individual ones.

Q. I see. Did you look at any photographs this weekend?

A. I might have glanced at one or two in my notebook this weekend, but --

Q. Did you meet with Miss Wilkinson over the weekend?

A. No, I did not.

Q. So if I understand your testimony, you don't necessarily instruct him to photograph the particular item of evidence, just to make a general shot; right?

A. Some may be a particular item if it's of interest, some may be a general shot if there's a lot of particular type of debris in an area that would not be worthy of individual shots 'cause it just would not be recognizable as what they are, so sometimes general and sometimes specific.

Q. And you keep no log yourself of what you have instructed

Q. And you keep no log, yourself, of what you have instructed him to photograph?

A. Not specifically. Most of that goes on the evidence recovery or the photo logs.

Q. So it's up to Special Agent Wilson to keep an accurate log of what he's photographed; correct?

A. That's correct.

Q. You wouldn't know later if he took the pictures that you instructed him to take because you kept no notes; right?

A. That's correct.

Q. Now, when you looked at the photographs this weekend, did

Ronald Kelly - Cross

you look at Book No. 3?

A. I have individual photographs that I was reviewing.

Q. I see.

MR. TRITICO: May I approach, your Honor?

THE COURT: Yes.

BY MR. TRITICO:

Q. Now, I've handed you what's been marked as McVeigh Exhibit J478; do you see that?

A. Yes, sir.

Q. At the bottom. And this -- take a moment just to glance at that, please.

Those are photographs that were taken at the scene in Oklahoma City; is that correct?

A. That's correct.

Q. Some of those were taken from the parking lot that you searched on April the 21st; is that correct?

A. That's correct.

Q. Some of those photographs are the ones that you looked at this weekend?

A. One of them was, yes.

MR. TRITICO: At this time, your Honor, I'll offer the McVeigh Exhibit J478.

MS. WILKINSON: I'm going to object to the entire set of photographs. If there's one that's relevant --

THE COURT: Sustained.

Ronald Kelly - Cross

BY MR. TRITICO:

Q. Included at the beginning is the log that Special Agent Wilson kept; is that correct?

A. That's correct.

Q. And the log presumably identifies all of the photographs that were taken within this set; is that right?

A. Again, I did not keep that log, so I can't verify its accuracy.

Q. That's what you expect him to do, though; right?

A. That's correct.

Q. And you expect his logs to be accurate?

A. As best as he can keep, I would assume so, yes.

Q. So later on you know what you got a picture of; is that correct?

A. That's correct.

MR. TRITICO: I'll again offer Exhibit J478.

THE COURT: I don't understand the relevance. He's testified to Exhibits 664 and 737. This cross-examination should be limited to that testimony.

MR. TRITICO: Yes, sir.

BY MR. TRITICO:

Q. What number was the item that is now called Q507? What number was it given at the time; do you know?

A. What number are you referring to, sir?

Q. Well, there's a number that's given each item before they

Ronald Kelly - Cross

get their Q and K numbers like CT-4/21-01; is that right?

A. That's correct.

Q. Who gives those numbers?

A. Those particular numbers I assign to those items.

Q. When did you assign the items?

A. As I recovered the item.

Q. And that would be in the parking lot; right?

A. That is correct.

Q. And do you assign the number before Agent Wilson photographs the item or after?

A. I don't recall exactly what order. It was in the process. It may have been before, it may have been after, sometimes.

Q. What number did you assign to what we now call Q507?

A. Q507 was assigned the number of CT-4/21-06.

Q. Do you have a -- in the log -- take a look at the log attached to J478. Does it identify Item 06, if I can call it that, CT-4/21-06?

A. Yes, there is an item number like that.

Q. Is there a frame number on there?

A. Yes, there is.

Q. Frame No. 4?

A. That's correct.

Q. Look at the book that you have there that's marked J478 and see if you can find Frame No. 4.

Is the frame numbers identified on the photograph?

Ronald Kelly - Cross

A. No, they are not.

Q. Okay. Let me hand you the original.

I think they're on the back, if you look --

A. Yes, they are.

And would you repeat your question, please.

Q. Can you find Frame No. 4, please.

A. Yes, I can.

Q. Did you find it?

A. Yes, I have.

MR. TRITICO: Your Honor, may I retrieve that and

mark

that one as an exhibit?

THE COURT: Sure. Is it included in this other --

MR. TRITICO: Yes, sir, but I've got to figure out exactly --

THE COURT: You may approach.

MR. TRITICO: Thank you.

THE WITNESS: This is the one labeled Frame No. 4 on the photograph.

MR. TRITICO: If I could use the ELMO, just so the witness can see it, I can identify this --

MS. WILKINSON: Your Honor, may I just look at the exhibit?

MR. TRITICO: Oh, I apologize.

THE COURT: Yes.

BY MR. TRITICO:

Ronald Kelly - Cross

Q. Can you see that on your screen?

A. Yes, I did.

Q. Now, what I'm showing you has been marked as J478A; is that correct? Can you read the --

A. Yes, I can, that's correct.

Q. Is this the photograph that you identified as being marked as Frame No. 4 on the log sheet identifying CT-4/21-06?

MS. WILKINSON: Your Honor, I'm going to object again.

He didn't maintain this log. He's already told Mr. Tritico.

THE COURT: Well, he says he identifies the frame.

MS. WILKINSON: I'm not sure that's what his testimony

was. I think he read the frame off the print.

THE WITNESS: That's correct, I read the frame off the

back of the picture that he handed me.

THE COURT: Is that the picture?

THE WITNESS: That's the picture of Frame 4 identified

in your book.

THE COURT: Well, I assume he's relying on the accuracy of this log. Do you object to that?

MS. WILKINSON: I do, your Honor, because I don't believe he maintained the log. This is maintained by the photographer.

THE COURT: And he's not permitted to assume the accuracy of the log maintained by the agent who has this responsibility; is that you're saying?

Ronald Kelly - Cross

MS. WILKINSON: No, I believe the problem is he hasn't reviewed the negatives that go along with this log.

THE COURT: Overruled.

THE COURT: Overruled.

MR. TRITICO: I'll offer Defendant McVeigh Exhibit J478A, your Honor.

THE COURT: Yes, I've just admitted it.

MR. TRITICO: Now -- can I publish that to the jury, your Honor?

BY MR. TRITICO:

Q. This is not a picture of what you have -- what we now call Q507, is it?

A. No, it is not.

Q. And this is not a picture of CT-4/21-06; is that correct?

A. No, it is not.

Q. But what we do know by looking at this photograph is centered in the frame is whatever this yellow item is; right?

A. There is a yellow object in the center, yes, sir.

Q. And by looking at it, you can tell clearly that it's a picture of that item; right? That was what was intended to be photographed in that picture; right? You agree?

A. I would say that the photo accurately represents what it was photographing, yes.

Q. The photograph that you have introduced on Thursday wherein Q507 is shown does not center what we now call Q507 in the center of the frame, does it?

Ronald Kelly - Cross

A. The photograph Q507 is not the same frame as what's indicated on the log; that's correct.

Q. Perhaps my question was not artful. I apologize.

What's in evidence -- already in evidence as Government Exhibit 665, you see that?

A. Yes, I do.

MR. TRITICO: May I publish this to the jury, your Honor?

THE COURTROOM DEPUTY: It is.

BY MR. TRITICO:

Q. Now, this is what you have claimed is Q507 -- right -- what I'm pointing at, can you see that?

A. Yes, I can.

Q. Is that what you are saying is Q507 today?

A. Yes, I am.

Q. Now, that is not centered in the frame, is it?

A. No, it isn't, it's off left of center.

Q. This -- what's more prominent in the picture is this metal piece right here; is that correct?

A. That is correct.

Q. As a matter of fact, there was another picture taken of -- a closeup of this same piece of evidence; is that right?

A. That is right.

Q. Do you know what this evidence was marked?

A. No, I don't recall at this time.

Ronald Kelly - Cross

O. There is not a picture of Q507 with it centered in the

frame; is that right?

A. No, there is not.

Q. There's not a closeup taken of Q507; is that right?

A. No, there is not.

Q. And the reason for that is that you received Q507 from a citizen and you didn't find it in the parking lot, yourself; isn't that right?

A. That is absolutely incorrect.

Q. What really happened is you happened to find Government Exhibit 665 that had what appeared to be Q507 in it later; right?

A. No, sir.

MR. TRITICO: I'll pass the witness.

THE COURT: Any redirect?

MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Kelly, at some point in this investigation, you learned that Q507 was a very important piece of evidence, didn't you?

A. Yes, I did.

Q. And you were asked to go back and review photographs with other agents to determine whether you had caused a photograph to be taken of Q507 in place; is that right?

A. That is correct.

Ronald Kelly - Redirect

Q. And you reviewed a lot of photographs to do that, didn't you?

A. Oh, yes, I did.

Q. And did you look at Government's Exhibit 665, which is the one that Mr. Tritico just showed you, which I'm going to put up on the ELMO?

A. Yes, I did, I reviewed that.

Q. And did you determine that that was Q507 over in the left center of the photograph?

A. Yes, I did.

Q. Did you also take Q507 and compare it to this photograph?

A. Yes, I did.

Q. And did you make sure that you knew that that was the same piece of evidence that you had recovered on April 21, 1995?

A. Yes, I did.

MR. TRITICO: Objection, as leading.

THE COURT: Sustained as to leading.

BY MS. WILKINSON:

Q. What did you do? How did you compare Q507 to this photograph --

A. Again, there were several things that I had to do on reviewing the paperwork. I did notice a conflict between the original log, photo log, and the actual photos when received from the photo processing. I'm not sure what error had happened, but there were some frames in the film which I did

Ronald Kelly - Redirect

not get a chance to review the negatives in which it put the whole series of frame numbers off. As a result of that, I had to recorrelate the frames and photos from that date taken with a review of the items and photographs; and after I had done that, I compared my notes from what was taken on the evidence logs and photo logs and reviewed the items themselves to properly correlate the frames at that point.

Q. Regardless of the log, you're confident that this photograph is an -- are you confident that this photograph is an accurate depiction of Q507?

A. I'm absolutely sure.

Q. Let me show you Government's Exhibit 664.

Look at the bag in there that you marked originally when you seized Government's Exhibit 664, which is Q507, isn't it?

A. Yes, it is.

Q. Did you indicate the date you seized Q507?

A. Yes, I did.

Q. What did you write down?

A. April 21, 1995.

Q. What else did you indicate on the bag?

A. I also put my initials, RLK.

Q. Your initials, what? I'm sorry, I didn't hear.

A. My initials are RLK, and I also put an item number, CT-4/21-06.

Ronald Kelly - Redirect

Q. And when you were at the Oklahoma bombing scene, did you receive any evidence from citizens?

A. No, I did not.

Q. And once you seized Government's Exhibit 664 or Q507, did you show it to other agents and other people at the scene?

MR. TRITICO: Objection, leading.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. What did you do with Q507 or Government's Exhibit 664 after you bagged it and marked it?

A. After the item was bagged and marked, it was given to SA Wilson; and at that point it would have gone through our normal procedure to be transported down to our temporary evidence control center and logged in there and properly stored and secured.

Q. Tell the jury why you don't mark the piece of evidence directly when you seize it.

A. Again, particularly with forensic items, we're attempting to eliminate any unnecessary contact with the item. Direct contact is the primary means of introducing, if you would call it contamination, to an item. The reason we handle them carefully, bag them immediately, and seal them is to eliminate that unnecessary direct contact with the items, which we did in the gathering of the forensic evidence that particular morning in the parking lot.

Ronald Kelly - Redirect

MS. WILKINSON: No further questions, your Honor.

THE COURT: Recross.

MR. TRITICO: Yes, your Honor.

RECROSS-EXAMINATION

BY MR. TRITICO:

Q. Now, let me see if I understand exactly what you're telling the jury now. You noticed a problem with the photo log when?

A. Upon review of the photographs when I looked at them in the laboratory some weeks later.

Q. This would have been back in 1995?

A. That is correct.

Q. You didn't testify last Thursday in front of this jury that there was a problem with the photo log, did you?

A. I don't believe --

MS. WILKINSON: Objection, your Honor.

THE COURT: Sustained.

BY MR. TRITICO:

Q. Your notes and files from the FBI lab do not indicate a problem with the photo log, do they?

MS. WILKINSON: Objection.

THE COURT: Overruled.

BY MR. TRITICO:

Q. Do they?

A. Again, I was not aware firsthand what the problem was --

THE COURT: That isn't the question.

Ronald Kelly - Recross

THE WITNESS: And I didn't make any notes thereof concerning that problem, that's correct.

BY MR. TRITICO:

Q. Now, who was it that first found Q507?

A. I was.

Q. And how long after you found it did you call Special Agent Wilson over to make the photograph?

A. Again, I probably recognized it on the initial survey of the area, and then it may have been one of first half a dozen or so items I picked up; but again, once I started recovering evidence, Mr. Wilson -- Agent Wilson was with me at that time. And at the moment I recovered it and bagged it, he was with me at that time.

Q. My question to you, sir -- and I apologize if it was inartful -- how long after you found it did you call him over to photograph it?

A. He was standing next to me in the general area photographing it prior to me recovering it, I believe.

Q. This is not on the general search, but later when you went back through to pick up items, right?

A. I can't recall exactly when he photographed that, I'm sorry, sir.

MR. TRITICO: May I see the bag that's in evidence, your Honor?

THE COURT: Yes, you may approach

THE COURT: Yes, you may approach.

Ronald Kelly - Recross

BY MR. TRITICO:

Q. Now, the bag is what's in evidence as Government Exhibit 664; is that right?

A. I believe so.

MR. TRITICO: May I publish this, your Honor?

THE COURT: Yes.

BY MR. TRITICO:

Q. Now, can you see the 664 on the bottom there?

A. Yes, I can.

Q. This is the bag that you were talking about that you placed Q507 in at the scene; right?

A. Not necessarily. There's two bags there. I'd have to see them both to determine which of the two you may have under the display right now.

Q. Can you tell by looking at this one whether this is the bag that you put Q507 at the scene?

A. Again, I can't tell by looking on the monitor, sir. I don't have the whole bag in front of me.

Q. Okay. I see.

MR. TRITICO: May I approach, your Honor?

THE COURT: Yes.

THE WITNESS: This was the bag that I put the item in.

This was probably a bag that was later double-bagged in that.

THE COURT: Well, it's not clear on the record what "this" is. We've got two "thises." I don't know what he's

Ronald Kelly - Recross

talking about.

MR. TRITICO: I'm going to try to clear it up, your Honor.

MS. WILKINSON: Your Honor, perhaps we can mark the bags A and B, and that would assist him.

MR. TRITICO: I was going to suggest --

THE COURT: Something of that nature should be done.

MS. WILKINSON: Your Honor, we can mark it as Government exhibits so Mr. Tritico doesn't have to worry about it.

THE COURT: Yes.

You really have three pieces to this exhibit, don't we, two bags and the piece?

MS. WILKINSON: Yes, the piece should be 664, and the bags will be 664A and B.

THE COURT: All right.

MS. WILKINSON: This is A.

THE COURT: And are we in some way differentiating which is A and which is B? Or I guess the witness should do that.

MR. TRITICO: If I may approach him again?

THE COURT: Yes.

BY MR. TRITICO:

Q. Now, the bag that you placed Q507 in at the scene is now marked Government Exhibit 664A; is that correct?

Ronald Kelly - Recross

A. That is correct.

Q. And the other bag is marked 664B; is that correct?

A. That is correct.

THE COURT: Thank you.

BY MR. TRITICO:

Q. It rained pretty heavily on the 19th, April 19th, did it not, in Oklahoma City?

A. From the weather reports I saw, yes, that's correct.

Q. Do you know how much rain?

A. No, I did not. I wasn't present.

Q. Let me show you what's in evidence as Government Exhibit 664A now. Can you see the 664A on there?

A. Yes, I can.

Q. Okay. On this bag, this is the bag that you said you marked with your initials and the number CT-4/21-06; is that right?

A. That is right.

Q. And these are your initials right here; right?

A. That is right.

Q. Show me on here where it says where you found it.

A. The location of the item was not marked on the bag.

Q. Do you have a note, record, memo, memoranda, anything detailing where you found it?

A. Again, the recovery log would have indicated the locations, approximately, where the items were found.

Ronald Kelly - Recross

Q. On here, Government Exhibit 664A, we're still looking at. Show me on here where it says what time you found it.

A. Again, that was not noted on the bag.

Q. And you have no note, record, memo, memoranda, anything detailing the time that you found -- that you claim you found Q507; right?

A. Again, that was SA Wilson who was in charge of recording the administrative details of my recovery.

Q. And would he have been required to note the time and the location somewhere?

A. That would be a general rule of what we do, yes, sir.

Q. Is this a written rule?

A. No, it's just a guideline that we follow.

Q. Is the guideline written?

A. We have some written guidelines, yes, sir.

Q. My question to you, sir, is this rule written, this guideline written?

A. Noting the time that a item of evidence was recovered?

Q. And the place.

A. Yes, sir.

Q. Where would I find that?

A. Again, you'll find that on -- should be located on the evidence log and photo log that SA Wilson was recording.

Q. I'm sorry, my question was inartful. Where would I find the written guideline?

Ronald Kelly - Recross

A. Again, the written guidelines for evidence and recovery are in different locations. The evidence recovery teams have their guidelines, we have our guidelines located in the laboratory, so you'd have to determine which guidelines you're talking about.

Q. Where would I find the written guideline which says you shall note the time and place of a item of evidence, where it's found?

A. Again, our administrative manual, the general administrative manual for the FBI contains that. The ERT manual for collection of evidence also contains those type of items.

Q. Do you have those with you?

A. No, sir, I don't.

Q. When was the last time you looked at the ERT manual?

A. Maybe about six, seven weeks ago.

Q. In preparation for your testimony in this case?

A. No. It was in preparation for instructing in a class.

Q. I see. Now, looking at Government Exhibit 664B, can you see that on the screen?

A. Yes, I can.

Q. When was this bag created -- or not created. When was this bag first utilized with respect to what we now call Q507? Do you know?

A. No, I do not.

Ronald Kelly - Recross

Q. There's no date on here to indicate when we began using this bag at the FBI; is that correct?

A. That's correct. There's no date.

Q. Whose are these initials right here? Do you know? Can you read them?

A. I can't make it out exactly, no, sir. Looks possibly like a P and an M or an R and an M.

Q. Roger Martz, possibly?

A. Again, I have no idea. Those are not my initials.

Q. So if I understand your testimony correctly -- strike that.

Now, you testified on redirect that you called Agent Wilson -- I believe that's the photographer; right?

A. That's the photographer's name, yes.

Q. Yes. I'd forgotten his name. Apologize.

You called Agent Wilson over to photograph it at the time that you bagged it and seized it; right?

A. I can't recall exactly when he photographed it; but he was with me next to me when I started recovering the evidence

with me, next to me, when I started recovering the evidence.

Q. It's been your practice to have a photograph taken of the items on the scene after you bag them and seize them -- right -- in the place that you originally found them?

A. Some items we did; some items we did not.

Q. Let me show you, sir . . .

MR. TRITICO: May I approach, your Honor?

THE COURT: Yes.

Ronald Kelly - Recross

BY MR. TRITICO:

Q. I'm showing you what's been marked as McVeigh Exhibit J417; is that correct?

A. That is correct.

Q. This is another item that you found on the scene; is that correct?

A. That is correct.

MR. TRITICO: I'll offer McVeigh Exhibit J417.

MS. WILKINSON: Your Honor, I'm going to object again.

It is not the two pieces that have been part of Mr. Kelly's testimony. Relevance.

THE COURT: Well, we need a further showing of relevance.

BY MR. TRITICO:

Q. Does this photograph fairly and accurately depict how you instructed your photographs to be made to Agent Wilson?

A. That particular photograph, which I thought was photographed in place, when I checked with him at the time of the recovery, was determined to not have been photographed in place. After recovering the item, I placed it as closely back to the original location and he photographed it after the recovery, though, sir. So it accurately depicts where it was found, but that's not the photograph of it in place before recovery.

Q. If I understand what you're telling me, this photograph is

Ronald Kelly - Recross

a -- the item was removed without being photographed, and you took it back and put it back and took a photograph?

A. It was recovered and bagged, after what I thought was photographed in place. Upon checking with Agent Wilson, found out that he had not photographed it, that's correct. So to at least document where it was found, we took this photograph after it had already been recovered.

Q. So you picked it up, moved it, and then put it back where you thought you found it; right?

A. We were still in that location as I was recovering it, and I checked with him; but, yes, that accurately depicts what I did.

Q. How many times did that happen?

A. As I recall, just this one instant.

Q. Do you have a note, record, memo, memoranda, anything

detailing that at least this item of evidence was moved, placed back, and then photographed?

A. Again, not a formal note, unless it appears on the evidence log or his notes. I'd have to review those notes that he took.

Q. Well, you reviewed the evidence log, didn't you?

A. Yes. On this particular item, I do recall again -- I had checked with him to see if it was photographed in place, and it had not. And we again just documented its location.

Q. Perhaps my question was inartful, and I apologize. Did you review the evidence log?

Ronald Kelly - Recross

A. I have reviewed it on several occasions.

Q. Nowhere on the evidence log does it detail that this item of evidence was removed and placed back where you thought you found it and photographed; right?

A. No, sir, there was not; and likewise, we did not make a note that we recovered it as we did. That's correct.

MR. TRITICO: I'll reoffer Defendant's Exhibit J417 at this time.

MS. WILKINSON: Your Honor, I won't object. I misspoke. This is the other piece that he talked about, Q502, so we have no objection.

THE COURT: J417 is now received. You may publish it, if you wish.

BY MR. TRITICO:

Q. Can you see it on your screen?

A. Yes, I can.

Q. Is that the photograph that we've been talking about?

A. Yes, it is.

Q. Now, this photograph shows the item of evidence in a bag; right?

A. Yes, it does.

Q. Of course, this is the one that you removed and placed back where you thought you found it; right?

A. That's right, I put it back as close to the location I found it, yes.

Ronald Kelly - Recross

Q. So the answer to my question is yes?

A. Yes.

Q. Is this the only item of evidence that you photographed in the bag?

A. I'd have to review all the photographs to determine that. At some times, as I recall, this was the only one from the initial photographs I reviewed, but I can't say absolutely that's true, no.

Q. Do you still have Defendant's Exhibit J478 there in front of you?

A. Yes, I do.

Q. Take a moment to review that.

A. Again, there appears to be several items that were bagged before they were recovered -- I'm sorry, they were bagged and recovered before they were photographed, which may have indicated Mr. Wilson wasn't present at the time of recovering.

Q. Oh, so he wasn't always there when you found the item?

A. Not all the items. Again, he was in the vicinity; and I may have been bagging items before they were photographed. He was again in the area, though.

Q. How many of the photographs in Government -- I mean in McVeigh Exhibit J478 are bagged?

MS. WILKINSON: Your Honor, I'm going to object.

Again, he's talking about a document that's not in evidence.

THE COURT: He's talking about the methodology here.

Ronald Kelly - Recross

The objection is overruled.

THE WITNESS: Initially, I count three going through.

MR. TRITICO: That's fair enough. I'll reoffer McVeigh Exhibit J478 to show the photographs of the bagged and unbagged items.

MS. WILKINSON: No objection.

THE COURT: Without regard to the items, this goes to the, as I said, the methodology.

MR. TRITICO: Yes, sir.

MS. WILKINSON: No objection.

THE COURT: We'll receive it for that purpose.

Are the individual pages marked?

MR. TRITICO: They aren't, your Honor; but I'll be happy to do that. If the Court would like me to do that on the break, I'd be happy to do that.

THE COURT: The copy I have, some are marked with a different number and some aren't. We could make the record by simply reciting how many pages there are.

MR. TRITICO: That's fine.

THE COURT: But I'm concerned about these other markings here.

MR. TRITICO: Some of them were taken out for other purposes before this issue came up, and that's why some of them are marked with other numbers.

THE COURT: At the break, why don't you or someone

Ronald Kelly - Recross

take J478 and number the pages, 1, 2, 3, 4

MR. TRITICO: I'll be happy to, your Honor.

THE COURT: All right.

BY MR. TRITICO:

Q. Now, you see how many items? I'm sorry. You said three or four?

A. Yeah. The first few photographs, the items appear to be all in bags while they were photographed.

Q. Now, you know that J478 was marked and bagged by the witness

Q. Now, we know that J417 was moved and placed back; right? That's the one on the screen right now.

A. That's correct.

Q. Okay. Let's talk about this photograph, included within Defendant McVeigh Exhibit J478. Do you see that?

A. Yes, I do.

Q. Was this item of evidence removed and placed back?

A. That item of evidence was recovered in that location in a bag and then placed back to the location it was recovered, yes, sir.

Q. And you put it back kind of where you thought you found it; right?

A. Again, I was recovering the evidence and locating it back where I found it.

THE COURT: Now we need that page identified.

MR. TRITICO: Perhaps I should take a moment to number these now.

Ronald Kelly - Recross

THE COURT: Yeah, I think you better, if you're going to go through them.

MR. TRITICO: May I recover the original?

THE COURT: Yes.

What numbers have you placed on Defendant's J478?

MR. TRITICO: I've placed on them, beginning at the first page, 1 through 16, your Honor.

THE COURT: And what is the page number of the one that was just published?

MR. TRITICO: That would be No. 2. Page No. 2.

THE COURT: Thank you.

BY MR. TRITICO:

Q. I'm showing you page No. 2. That's what we were talking about a minute ago; is that right?

A. On my copy, I have page No. 3.

MR. TRITICO: I can't count. It is page No. 3.

THE COURT: Okay.

BY MR. TRITICO:

Q. Okay. That page No. 3 is what we are talking about; is that right?

A. Yes, sir.

Q. Okay. You have no note, record, memo, or memoranda detailing how long or where this item of evidence was taken before it was replaced and photographed; is that right?

A. No, sir. I was not keeping notes. That was SA Wilson.

Ronald Kelly - Recross

Q. You have no notes regarding any of the items of evidence included within J478 regarding how long they were removed and where they were removed to before they were photographed, do you?

A. There's no written notes on that. Again, Mr. Wilson would have been keeping track of that. I can only state what I

have been keeping track of that. I can only recall what I recall from the incident.

Q. As a member of the lab, are you concerned with items -- with information -- with knowing information about the history of the items that you're testing?

A. Generally there is some information that is pertinent, but normally just the location and date of seizure is all that's pertinent for our examinations in a lab.

Q. You would agree with me that when you conduct forensic testing on items of evidence, it's important to know where it went and what happened to it before you got it; wouldn't you?

A. That's accurate to say, yes.

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

THE COURT: Anything else of this witness?

MS. WILKINSON: Yes, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Kelly, you recovered these portions of the Ryder truck panel on the 21st of April; correct?

Ronald Kelly - Redirect

A. That is correct.

MR. TRITICO: Objection, leading.

THE COURT: Sustained as to leading.

BY MS. WILKINSON:

Q. What did you recover on April 21, 1995, in the parking lot?

A. I recovered several items of debris associated with the scene that morning.

Q. And Mr. Tritico showed you what he's marked and introduced as J417; correct? You recognize that?

A. Yes, I do.

Q. What is that?

A. Having reviewed it in the other photograph, I do recognize on the bag my initials, a date, and an item number as one of the items I recovered that morning.

Q. Was that item later assigned a Q number?

A. Yes.

Q. What Q number?

A. Q502.

Q. And that's the piece that you talked about earlier during your direct examination that you recovered on April 21?

A. That is correct.

Q. And that's also known as Government's Exhibit 737; is that correct?

A. As I recall, yes.

Q. There's another photograph of that piece, isn't there?

Ronald Kelly - Redirect

A. Yes, there is.

MS. WILKINSON: Your Honor, may I approach?

THE COURT: Yes.

MS. WILKINSON: Your Honor, may I have a moment with

the agent? These are not marked.

MR. TRITICO: May I?

MS. WILKINSON: This hasn't yet been introduced into evidence, yet, your Honor.

THE COURT: All right.

BY MS. WILKINSON:

Q. Mr. Kelly, I'm going to show you Government's Exhibit 738. Do you recognize that photo? It should be on your screen.

A. Yeah, I'm just checking. Yes, I do.

Q. Would it help if I showed you the photograph up close?

A. That would be easier, yes.

MS. WILKINSON: Your Honor, may I?

THE COURT: You may, yes.

THE WITNESS: Thank you.

BY MS. WILKINSON:

Q. Do you recognize Government's Exhibit 738?

A. Yes, I do.

Q. Did you review that photograph before starting your direct examination last Thursday?

A. Yes, I did.

Q. And did you determine whether it depicted Government's

Ronald Kelly - Redirect

Exhibit 737, Q502?

MR. TRITICO: Objection, leading.

THE COURT: Overruled.

THE WITNESS: The photograph accurately represents

the area where that item was seized, that's correct.

MS. WILKINSON: Government would offer 738, your Honor.

MR. TRITICO: No objection.

THE COURT: 738's received.

Do you want to publish it?

MS. WILKINSON: Yes, I do.

THE COURT: All right.

BY MS. WILKINSON:

Q. Now, Mr. Kelly, tell the jury first what they're seeing here; what is this an overview of?

A. Again, this is an overview of the parking lot area across from the Murrah Building, close -- fairly close to the street.

Q. And did you with other agents examine this photograph with a magnifying glass? Or some other means?

A. I carefully looked at the photograph. I don't recall using a magnifying glass or what.

Q. Okay. And did you determine the location of Q502 or Government's Exhibit 737?

A. Again, I located the general area, but I could not exactly identify the item per se, from this photograph, due to the wide

Ronald Kelly - Redirect

angle; but the general vicinity and my notes that I took later,

did identify the area where the item was recovered.

Q. Let me zoom in a little bit. Can you circle with that pen up there the area where you believe 502 was recovered?

A. I must honestly say, from this photograph, I can't recognize the piece off the photograph. The wide angle is just too large to identify the objects.

Q. Can you recognize the area where it was recovered?

A. I do recognize the area. And according to my recovery, there's two cars that match my scene -- my scene sketch that I used, and the marking of the recovery of that particular item Q502 would be on or near the vehicle which was labeled Vehicle No. 3 on my sketch, which is the vehicle to the left of the two

at the top left-hand corner.

Q. Can you use that pen up there to mark the screen, please.

A. Again, my --

Q. Circle the area.

A. On the screen itself?

Q. On the screen itself.

A. I represent having recovered the item in this area right here.

MS. WILKINSON: Your Honor, could we print that, please?

THE COURT: All right.

BY MS. WILKINSON:

Ronald Kelly - Redirect

Q. And, Mr. Kelly, look down in the right-hand corner of that photograph. Do you see where I'm pointing right there, in that area?

A. Yes, I do.

Q. Does there appear to be other items that are part of the Ryder truck box panel?

A. Again, the resolution on this screen, it's very difficult to tell.

Q. Would it help if I showed you the exhibit itself?

A. It may help, yes.

MS. WILKINSON: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Look down here in the bottom right-hand corner, Government -- the Government exhibit sticker. Do you see other portions of the Morgan -- I mean the Ryder truck box panel?

A. There are yellow objects that could possibly be, but I can't positively identify those. But that's very typical of the same color and the size of piece that we recovered.

Q. Is that how the scene looked before you started seizing items of evidence on April 21st, 1995?

A. That is correct.

Q. And due to the volume of material that was seized in the Oklahoma City bombing investigation, did you and other agents ensure that every single piece of evidence was photographed in

Ronald Kelly - Redirect

place prior to seizure?

A. No, we did not. Due to the fact that a lot of the items were similar in nature and a closeup photo wouldn't necessarily indicate where the item was recovered, we made just a simple note in our evidence log where the item was recovered and if it was or was not photographed.

MS. WILKINSON: No further questions, your Honor.

MR. TRITICO: I have just a couple.

THE COURT: All right.

REXCROSS-EXAMINATION

BY MR. TRITICO:

Q. Now, when you were examining the photograph that Miss Wilkinson just offered, you pulled something out of your pocket and were looking at it; right?

A. Yes, I did.

Q. What is that?

A. These are notes that I have obtained in reference to the items that were seized that day.

Q. May I see them?

A. Yes, you may.

MR. TRITICO: May I approach, your Honor?

THE COURT: Yes.

BY MR. TRITICO:

Q. Just give me all of them.

A. These are the ones I've referred to so far.

Ronald Kelly - Recross

Q. Have you looked at that?

A. I haven't referred to these yet.

Q. Now, the ones that you didn't give me, you put back in your pocket, you said you haven't looked at yet, what are they?

A. Again, that's a personal diary, notes that I keep from where I go, where I'm at.

Q. Is this a personal diary relating to your activities in April of 1995 in Oklahoma City?

A. Yes, it is.

Q. May I see them, please?

MS. WILKINSON: Your Honor, all his materials were turned over to Mr. Tritico prior to --

THE COURT: Well, he can look at them now.

BY MR. TRITICO:

Q. Earlier, when you testified that you didn't keep notes, were you distinguishing this diary from notes?

A. No, sir, I was not keeping any notes specifically related to the recovery of any items. Again, I do that in all my travels, just so I can tell my boss where I've been and what I've done that day.

Q. This is a contemporaneous documentation of the things that you did in Oklahoma City, is it not?

A. Yes, it is.

Q. And you refer back to this so that you can at least verbally give a report to your supervisor when you return to

Ronald Kelly - Recross

Washington?

A. No, sir, that's just for purposes of recollection of where I've been and what I've done for my own personal knowledge.

Q. Did you not tell me 30 seconds ago that you refer back to this so you can tell your boss what you did?

A. I'm sorry, I occasionally do that; but in those particular notes, I did not have to refer to those notes at any time to discuss the case with my supervisor.

Q. 'Cause you had such a vivid recollection of all the things that you did?

A. No, we never happened to discuss what I did with my supervisor.

Q. Your supervisor didn't ask you the things that you did and how you came across the evidence that you found?

A. Not my supervisor, no, sir.

Q. Now, the other items that you were looking at, one is the recovery log; is that right?

A. That is correct.

Q. And that's the thing that you testified -- the document that you testified that Mr. Wilson is in charge of, of maintaining and creating; right?

A. That is correct.

Q. You took no part in the creation of this document; is that right?

A. I may have made some notations on there or initials at

Ronald Kelly - Recross

points; yes, I did. So I did contribute some to that document, but he was maintaining the document.

Q. Now, over on the right-hand side, there's a column called "Packing Method"; is that right?

A. That's correct.

Q. There are some numbers in circles on it; is that right?

Do

you recall -- do you want to look at it?

A. I'd have to refer to what you're talking about.

Q. See that?

A. Uh-huh.

Q. Now, you've seen the numbers with the circles around them; right?

A. Yes, sir.

Q. And that's under the column "Packing Method"; right?

A. Yes. Yes, sir.

Q. When were these numbers placed on this document?

A. Those numbers were placed on the document in the laboratory, as I recall.

Q. Did you place them on there?

A. I believe so, yes.

Q. And what were you doing at the time that you had the recovery log out that you placed these numbers on there?

A. As I recall -- and I'd have to check the sequence of the

numbers -- that may have been my correction to the photo log frame numbers. Again, I'd have to do a comparison to verify

Ronald Kelly - Recross

that, but I believe that's what those numbers are.

Q. So when Miss Wilkinson -- strike that.

Now, the other document that you gave me, sir, is a map, if you will, that was not to scale, obviously, of the parking lot; is that right?

A. That's correct.

Q. And that's what you were referring to when you were trying to determine where you found Q502; right?

A. That is correct.

Q. When was -- did you create this document?

A. No, sir. That was a Xerox copy that was given to us initially by one of the search teams, and then we utilized that document in noting the recovery of items.

Q. When -- when did you take this document out for use in preparation of your testimony in this case?

A. Well, I've referred to that document several times between the crime-scene dates and today. Last, though, I reviewed it again this weekend.

Q. I'm sorry?

A. I reviewed it again this weekend.

Q. In determination to -- preparation to testify as to where you found which pieces of evidence; right?

A. Again, to review what I may be asked during testimony; that's correct.

Q. When did -- who placed the numbers on this with the circles

Ronald Kelly - Recross

around them?

A. Most --

Q. I'm sorry, I'm not talking about the cars with the numbers; I'm talking about the circles with the numbers.

A. As I recall, that would have been SA Wilson for most of them. I may have -- again, I may have put some on there, too. I don't recall at this time.

Q. And he did that from his recovery log sheet?

A. Again, I'm not sure what methods he used for noting that, but it was -- he was doing the administration on that, yes.

Q. There's nowhere on here that indicates the Q numbers of the items that you found in the parking lot, is there?

A. No, sir. Again, that -- those numbers were generated the day of the recovery, for the most part.

Q. There's no number -- I'm sorry, I didn't mean to cut you off.

A. I'm sorry, except for the exception of one.

Q. And there's no numbers on here that indicate the item number, is there?

A. Again, that is translated onto another evidence log, I believe.

Q. On this document that I'm looking at, the Q numbers and the

Q. On this document that I'm looking at, the Q numbers and the item numbers are not listed on it, are they?

A. I'd have to -- the Q items are not, no, sir. I'd have to review it to determine if the other items are.

Ronald Kelly - Recross

MR. TRITICO: May I approach?

THE COURT: Yes.

THE WITNESS: That's correct, the item numbers are

not

on this particular page. I believe they were recorded elsewhere.

BY MR. TRITICO:

Q. You didn't bring the form with you that shows where in the parking lot the items were found, did you?

A. I offered that one diagram to indicate that.

Q. The one that doesn't list where they were found?

A. Again, I don't have the correlating list of the description of the items that correlates to the map. I did not need that for my notes.

Q. You didn't need it for what?

A. I didn't need it to recall that for my testimony. I, again for 502 -- Q502 and 507, I was quite aware where they were.

Q. I thought I understood you to say "I didn't need it for my notes"?

A. I didn't need to use my notes for the testimony purposes to recall where those items were.

Q. What notes?

A. The items that you have in front of you right now.

Q. Now, finally, I want to show you what's been introduced into evidence as Government Exhibit 738. If you'd take that pen and push the button on it, the circle will go away, please.

Ronald Kelly - Recross

Do you see that?

A. Yes, I do.

Q. This is the photograph that Miss Wilkinson asked you about; right?

A. That is correct.

Q. You see these individuals?

A. Yes, I do.

Q. They're not wearing any protective clothing, are they?

A. No, they are not.

MR. TRITICO: I'll pass the witness.

MS. WILKINSON: Your Honor, we'd like to offer 738A, which was the drawing that Mr. Kelly made on the photograph.

THE COURT: All right.

MR. TRITICO: No objection.

THE COURT: 738A is received.

MR. TRITICO: No objection.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Kelly, you just brought some of your notes to court today; is that correct?

A. That's correct.

Q. You brought this drawing that you've given Mr. Tritico of the parking lot?

A. That is correct.

Q. And do you have your other notes available?

Ronald Kelly - Redirect

A. They are available for review if necessary.

Q. And during the break, could you get them and bring them back into the courtroom?

A. That would be possible.

MS. WILKINSON: Your Honor, we'd like to keep Mr. Kelly on the stand until he's able to get the rest of his notes.

THE COURT: We'll take the break, then.

MS. WILKINSON: Great.

THE COURT: We'll be taking a 20-minute recess at this time.

Members of the jury, you will --

Mr. Kelly, you may step down.

THE WITNESS: Thank you.

THE COURT: Members of the jury, we will, just like always, take our rest stop with, just like always, the cautions regularly given which are, of course, still important, that you not talk about what's going on in the trial or what has happened in the trial in the past or what you may expect to happen in the future. So please be careful about that. Keep open minds and avoid anything outside of our evidence that could influence you in the decisions to be made.

You're excused now, 20 minutes.

(Jury out at 10:19 a.m.)

THE COURT: We'll recess. 20 minutes.

(Recess at 10:19 a.m.)

(Reconvened at 10:37 a.m.)

THE COURT: Be seated, please.

MR. TRITICO: Your Honor, excuse me. Before the jury comes back, I would request that I be provided -- I didn't want to take the time to read all that. I request that I be provided a copy of what he brought with him to court today so that I can read it and keep him on call for my case in chief.

THE COURT: Is this something you didn't have before?

MR. TRITICO: I have never seen it. It is not in my notebook. I don't know if I've gotten it or not, but I've never seen it.

MS. WILKINSON: Your Honor, we provided both the 302, which is marked 16097, which means it was in the 16,000 series, which has the log that Mr. Kelly referred to, including the diagram. And that was provided to the defense over a year ago.

And we have Mr. Kelly's field notes, which were also provided to the defense.

THE COURT: How about his personal diary?

MS. WILKINSON: That's what this is. It includes the typed notes that he brought.

THE COURT: Well, I don't understand what it is. He talks about it as a personal diary, and then he talks about notes, and then he says he doesn't have them. Everything that he had on the stand, provide it now at the noon hour.

MS. WILKINSON: Yes, your Honor.

THE COURT: Then they don't have to sort through trying to find these things.

Do you want him back on the stand?

MS. WILKINSON: Yes. Just briefly, please.

THE COURT: All right. Bring in the jury.

(Jury in at 10:39 a.m.)

THE COURT: All right. Ms. Wilkinson.

MS. WILKINSON: Thank you, your Honor.

BY MS. WILKINSON:

Q. Mr. Kelly, when you were on the stand earlier, you referred to two different types of notes that you keep. Do you recall that -- or kept?

A. Yes.

Q. Now, the first notes that you showed Mr. Tritico was an evidence recovery log. Is that right?

A. That's correct.

Q. And a diagram?

A. That is correct.

Q. And that's maintained by the FBI to determine where evidence was recovered; is that correct?

A. That's correct.

MR. TRITICO: Objection. Leading.

THE COURT: Sustained as to leading.

BY MS. WILKINSON:

Ronald Kelly - Redirect

Q. Mr. Kelly, are those the notes that you brought to court today? Some of the notes?

A. Some of the notes. That's correct.

Q. Did you also bring what you refer to as a personal diary?

A. Yes. I brought a typewritten copy of those notes, also.

Q. Now, when you prepared that, did you prepare it as you're doing the search?

A. No. Those notes were done quite a long time afterward. Could have been several days. Again it's simply a personal diary to keep track of where I've been and what I've done. It does not accurately represent what I've done on the scene -- excuse me -- particularly.

Q. Does it have details of what evidence you recovered and where you recovered it?

MR. TRITICO: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No. I do not keep those detailed notes.

Again, it's strictly a personal diary for travel purposes.

BY MS. WILKINSON:

Q. Now, earlier I asked you to look at a photograph and I

didn't have the blowup. I'm now going to show you Government's Exhibit 738B. Before you take a look at that --

MS. WILKINSON: Your Honor, I'd like to republish Defense Exhibit 7 -- J417.

THE COURT: I'm confused about what you have. I

Ronald Kelly - Redirect

thought you said 738.

MS. WILKINSON: I'm going to show the witness 738B; but before he looks at that, I want him to look again at the defense exhibit. I'm sorry. I didn't speak clearly. I'd like to republish J417.

BY MS. WILKINSON:

Q. Mr. Kelly, what piece is depicted in Exhibit J417?

A. Again, that's the item number I labeled CT-4/21-01.

Q. You gave it that number at the scene. Correct?

A. That is correct.

Q. When did it receive its Q designation?

A. It doesn't receive a Q designation until it is returned -- or not returned --

THE COURT: Well, Mr. Kelly, when did this receive a Q

designation? That's the question.

THE WITNESS: I'm sorry. I don't have the exact date.

I did not Q that item. I'm sorry.

BY MS. WILKINSON:

Q. It was back in the laboratory; correct?

A. The laboratory, yes.

Q. And what do you know the Q number to be for this piece?

A. The Q number should be Q502.

Q. Now, you picked up this piece and put it in the bag before it was photographed. Correct?

A. That is correct.

Ronald Kelly - Redirect

Q. And you placed this back where you thought you had found it?

MR. TRITICO: Objection. Leading.

BY MS. WILKINSON:

Q. Did you place it back where you thought you had found it?

A. Yes.

Q. And what is that behind -- right up here behind Q502?

A. As I recall from reviewing the larger wide angle, that's a piece of the building that that particular vehicle is sitting next to that fell on the vehicle. And that item is sitting next to the -- that brick -- appears to be a brick structure.

Q. Would that help orient you where that piece was found?

A. Yes. And during the course of the break, I did get a chance to review those photographs in more detail, also.

Q. Let me show you an enlargement of 738, which is now marked 738B. Do you recognize this?

A Yes

44. 105.

Q. Just do you recognize it?

A. Yes, I do.

Q. Is it the same photograph but just enlarged as 738?

A. Yes.

MS. WILKINSON: Your Honor, we'd ask to admit Government's Exhibit 738B.

MR. TRITICO: No objection.

THE COURT: Received. It may be displayed.

Ronald Kelly - Redirect

BY MS. WILKINSON:

Q. Mr. Kelly, please step down from the witness stand and see if you can determine exactly where you recovered Government's Exhibit 738 -- 737, which is Q502.

MR. TRITICO: Excuse me. Your Honor, may I go over here?

THE COURT: Yes, you may.

BY MS. WILKINSON:

Q. Take a look at the photograph, Mr. Kelly, before you point it out. And turn the other way so you don't have your back to the jury.

A. Okay. The particular item was recovered right here. If you compare this enlargement to the particular item there, you can see the similarities; and that is where my notes recall and that I recall having recovered that item.

Q. Mr. Kelly, look at this. What is this that I'm pointing to?

A. Again, that appears to be a piece of a brick structure that had fallen off of this building right there.

Q. Is that the same piece you were looking at in J417?

MR. TRITICO: Objection. Leading.

THE COURT: Overruled.

BY MS. WILKINSON:

Q. Was it?

A. Yes, it was.

Ronald Kelly - Redirect

Q. What do you see right in front of the piece of brick?

A. In front of the piece of brick is an object which is -- looks -- appears to be half yellow and half red.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Mr. Tritico, do you have some more?

MR. TRITICO: Just a couple.

THE COURT: All right.

RE-CROSS-EXAMINATION

BY MR. TRITICO:

Q. You looked at which photographs on the break?

A. I had a chance to review this particular photograph to refresh my memory a little bit more.

Q. What is that particular photograph? What's it marked?

A. J417.

Q. What else did you look at?

A. I briefly went through my notes to see what other pertinent notes might pertain to the recovery of the evidence.

Q. Are you talking about the evidence -- the evidence recovery log that you call notes, the map that you call notes, or your personal diary?

A. The evidence recovery log and the map.

Q. Now, what else did you look at on the break?

A. I also looked at what we call the green sheets, which is additional paperwork that's attached to the evidence once it's received or as it's received in the ECC.

Ronald Kelly - Recross

Q. Where is the green sheets?

A. I have a copy of those.

Q. May I see them?

MR. TRITICO: May I approach?

THE COURT: Yes.

THE WITNESS: And those also -- I'm not sure what this form number was. That was also attached with the green sheets.
BY MR. TRITICO:

Q. I'm assuming that this is green in the beginning?

A. Yes, sir. I believe the Xerox doesn't do too well on that particular color background.

Q. You had these with you when you came today?

A. They were in my briefcase.

Q. What else do you have in your briefcase?

A. Miscellaneous --

THE COURT: You mean that may have some relevance to this case?

MR. TRITICO: Yes, sir.

BY MR. TRITICO:

Q. Only with respect to this case.

A. As far as documentation, some of the photographs that you've seen in front of me, another copy of the map evidence log, miscellaneous reports that I have not testified to, items like that, pertaining to the case.

Q. And you looked at that all before you testified today?

Ronald Kelly - Recross

A. No, sir. I was simply trying to recover those items that would have cleared up your previous question concerning the evidence log and the numbers as it relates to the particular items of evidence that I recovered.

Q. Sure. Now, that photograph -- I'm sorry -- I've forgotten the number on that one. What is the number on that one?

THE COURT: 738B, I think.

BY MR. TRITICO:

Q. 738B. Did you look at that on the break?

A. I may have. I had six or eight photographs. I believe that was one of the photographs I looked at. That is correct.

Q. Who was with you when you examined this stuff on the break?

A. Just myself.

Q. Okay.

A. And -- I'm sorry. There were other witnesses that were preparing -- that would be following me in the witness room, but I spoke with nobody concerning my testimony during the break.

Q. I see. Now, this -- the green sheet doesn't detail on it any -- on it anywhere -- it doesn't detail where you found any particular piece of evidence. Right?

A. Not the green sheets, no. The recovery log does.

Q. Well, the recovery log doesn't say where you found it and what time you found it, does it?

A. The combination of the recovery log, the map, the green

Ronald Kelly - Recross

sheets and the back paper put together as a document accurately represents the total package of the recovery effort.

Q. And nowhere on any of those three pieces of paper does it say where you found any particular item or what time you found it, does it?

A. Doesn't say the time. It does say where I did -- if you look --

Q. On the green sheet.

A. Not on the green sheet. On the evidence recovery and the map. You can correlate the items and the recovery log with exactly where they were found.

Q. Okay. Now, I get it. That's the numbers with the circles around them. Right?

A. That is correct.

Q. And those are the numbers with the circle around them that correlate to the frame number of the photographs that Mr. Wilson took; right?

A. No, that is incorrect.

Q. Where did you get the numbers from?

A. The numbers on the evidence log, the CT-4/21-01 -- the 01 on that particular number correlates on the 01 found on that diagram sketch, and those numbers accurately depict exactly where the items were recovered at.

Q. This is the sketch that you didn't make at the time that you found the documents -- items; right?

Ronald Kelly - Recross

A. No, that sketch was pre-produced and those numbers were placed on that map at the time of the recovery.

Q. When was that sketch drawn?

A. I was not the author of that sketch. I'm not sure when it was done.

MR. TRITICO: At this time, your Honor, I'll pass the witness subject to our earlier --

THE COURT: All right.

MS. WILKINSON: No further questions, your Honor.

THE COURT: You may step down, but you may be

recalled

recalled.

MR. TRITICO: Your Honor, these are his. May I give them back?

THE COURT: Yes. You ought to take back what --

THE WITNESS: And my other notes, also.

MS. WILKINSON: I have the other notes.

THE COURT: Copies are going to be made and will be returned.

THE WITNESS: Thank you very much.

THE COURT: Next witness.

MR. HARTZLER: Government calls Marsha Moritz.

Mr. Mendeloff will question.

THE COURT: All right.

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

Marsha Moritz - Direct

(Marsha Moritz affirmed.)

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

Please state your full name for the record and spell your last name.

THE WITNESS: Marsha Gail Moritz, M-O-R-I-T-Z.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Ms. Moritz, you have a fairly little voice, so I'm going to need you to lean up a little bit so we can hear you.

Where do you live?

A. Noble County, Perry.

Q. Are you employed in Noble County?

A. Yes, I am.

Q. What is your occupation?

A. I'm the jailer.

Q. How long have you been jailer in Noble County?

A. Since '88.

Q. And as a jailer, are you employed by any larger organization?

A. Noble County sheriff's office.

Q. Where do you work?

A. Noble County sheriff's office.

Q. Where physically do you work?

A. Noble County Jail.

Marsha Moritz - Direct

Q. Where is that?

A. At the courthouse.

Q. Okay. How long have you been a jailer at the courthouse?

A. Going on nine years.

Q. What are your responsibilities there?

A. Take care of the inmates, make sure they're fed and clothed, make sure the jail is secure, and booking in inmates.

Q. Now, on April 19, 1995, did you take part in booking in a

particular inmate?

A. Yes, I did.

Q. What inmate was that?

A. Timothy McVeigh.

Q. Look around the courtroom and see if you see the person you booked in. See him?

A. He's right there.

Q. Describe an article of his clothing.

A. With the kind of like a maroon shirt.

MR. MENDELOFF: May the record reflect the identification of defendant, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. What time did you book in Mr. McVeigh?

A. 11:05.

Q. Now, who was the arresting officer?

A. Charlie Hanger.

Marsha Moritz - Direct

Q. When Mr. Hanger brought Mr. McVeigh to your lockup, you started the booking process?

A. Yes.

Q. How did that process begin?

A. I take out a booking card.

Q. And did you fill out that booking card?

A. Yes.

Q. Where do you get the information for the booking card?

A. His driver's license and asking him questions.

Q. After you completed the booking card for Mr. McVeigh -- pardon me -- what happened next? After you completed the booking card, what happened next?

A. Oh, either Charlie or I asked him to take his valuables off or everything out of his pockets and onto the counter.

Q. All right. Did he do that?

A. Yes, he did.

Q. Were you watching as that happened?

A. Yes.

Q. And as -- after he did that, did you fill out another form?

A. Yes.

Q. What form was that?

A. The Personal Property Information Sheet.

Q. Look in the sheaf of papers in front of you, the little folder there, and see if you can find the sheet you filled in.

A. Okay.

Marsha Moritz - Direct

Q. It should be right on top.

A. Yes.

Q. And it's Government's Exhibit 423.

A. Yes.

Q. Tell the jury what you did when you filled in that form.

A. I put his name down, his address.
Q. Just tell us what you did in terms of --
A. Oh, okay. Each item I picked up off the counter, I wrote it down on the sheet.
Q. Items that Mr. McVeigh had taken out of his pockets?
A. Yes.
Q. And once you wrote the item down on the sheet, what did you do with the item?
A. I put them in this rectangle bag.
Q. A bank bag?
A. Yes.
Q. As you put them in the bank bag, you were writing them down; is that right?
A. Yes.
Q. Which bank bag number did you use?
A. No. 2.
Q. At the end of the process, did you ask Mr. McVeigh to do anything?
A. I asked him to sign it.
Q. Did he sign it?

Marsha Moritz - Direct

A. Yes, he did.
Q. Government's Exhibit 423.
A. Yes.
Q. Did you make this record just like you do all the personal property information sheets that you fill out for other prisoners?
A. Yes.
Q. And you save it in your files the same way you did all those other records?
A. Yes.

MR. MENDELOFF: Move the admission of Government's Exhibit 423, your Honor.

MS. RAMSEY: No objection, your Honor.

THE COURT: 423 is received.

MR. MENDELOFF: May we publish it, Judge?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. At the top of this form, there is the -- the name Timothy James McVeigh is listed. Who put that name on the form?
A. I did.
Q. And there is an address. Where did you get that address?
A. I got that address from his driver's license.
Q. Did you confirm that address in some way with Mr. McVeigh?
A. Yes.
Q. How did you do that?

Marsha Moritz - Direct

A. I asked him, "Is that your present address?"

Q. What did he say?

A. He said yes.

Q. Just to confirm, the Court is satisfied that that is the correct information.

Q. After that, the form is completed -- is that right -- below that?

A. Yes.

Q. And what do you put in the form as you complete it? What's listed there?

A. \$255.

Q. As a general matter, what's listed on the form?

A. Oh, all of his valuables, property out of his -- property out of his pockets.

Q. I ask you to focus your attention under the heading "Other Items." The second item listed: Can you tell us what that says?

A. Two yellow coins, two earplugs.

Q. The two earplugs is the second item listed. Is that right?

A. Yes.

Q. Did you see Defendant McVeigh remove these earplugs from his pockets?

A. Yes, I did.

Q. Now, when he removed the earplugs, can you tell us what they looked like?

A. Yes. They were like foam rubber.

Q. Was there a string attaching the earplugs or were they

Marsha Moritz - Direct

separate?

A. They were separate.

Q. Were they free-formed, or were they formed in some particular way?

A. Free-formed. They weren't -- they weren't molded.

Q. And what were they made out of from what you can recall?

A. Foam rubber.

Q. Let me show you Government's Exhibit 426.

MS. RAMSEY: Could I see that?

BY MR. MENDELOFF:

Q. Let me direct your attention to 426. Are those earplugs depicted in that exhibit?

A. Yes.

Q. Are they contained in something?

A. Yes.

Q. What is that?

A. A tube.

Q. Was that test tube there when you retrieved the earplugs that day?

A. No.

Q. But focusing your attention on the earplugs within the tube, do they appear -- how do they compare to the earplugs you saw that day at Noble County Jail?

A. The same.

Q. After you saw these earplugs and you wrote them down on the

Marsha Moritz - Direct

form, what did you do with them?

A. I put them in the bank bag.

... I put them in the bank bag.

Q. That's Bag No. 2?

A. Yes.

Q. When you completed the whole personal property information form process, what did you do with that bank bag?

A. I lock it up.

Q. Did you ever remove it from the place that you locked it up once you put it in there?

A. No, I didn't.

Q. Once you put the earplugs into the bank bag, did you record that bank bag number anywhere?

A. Yes, I did.

Q. Where is that?

A. On the back of the card.

Q. And do you record it anywhere else?

A. Yes. On the paper sack.

Q. That ended up holding Defendant McVeigh's clothing. Is that right?

A. Yes.

Q. Let me just hold up Government's Exhibit 435 that is already admitted. Is that paper bag -- is that number listed on this paper bag?

A. Yes.

Q. Tell us where that is.

Marsha Moritz - Direct

A. No. 2 at the top.

MR. MENDELOFF: Move the admission of Government's Exhibit 426, your Honor.

MS. RAMSEY: Your Honor, may I voir dire the witness?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MS. RAMSEY:

Q. Good morning.

A. Good morning.

Q. In looking at that Government's Exhibit 426, I believe you testified that that was in a test tube now.

A. Yes.

Q. That was not in a test tube when you saw it last -- is it?

A. No.

Q. You did not place those in a test tube, did you?

A. No.

Q. When you received earplugs from Mr. McVeigh, did you mark those in any way with your initials?

A. No.

Q. Did you mark them with any number?

A. No.

Q. Did you mark them with any type of identification whatsoever either to yourself or to Mr. McVeigh?

A. No.

Q. Are those the color -- or is that the color now that the

Marsha Moritz - Voir Dire

earplugs were when you saw them on April 19?

A. I wasn't sure of the color.

Q. Okay. So you -- and you made no notation on any of your notes, including the jail booking card, as to any color of earplugs; isn't that correct?

A. Correct.

Q. You only noted that there were two earplugs. Correct?

A. Yes.

Q. At this time, when you took those from Mr. McVeigh, there was no evidentiary value to them; isn't that correct?

A. No, there wasn't.

Q. That was just part of his personal property. Isn't that correct?

A. Yes.

Q. So you were not sure until today, until you saw those just a few moments ago, as to the color; is that correct?

A. That's correct.

Q. So you cannot positively testify that those are the earplugs that you took from Mr. McVeigh, can you?

A. No. They look like them, though.

Q. But you don't know if they are, do you?

A. No.

Q. Because you didn't make any notation as to what color they were or make any notation on the earplugs themselves, did you?

A. No.

Marsha Moritz - Voir Dire

MS. RAMSEY: Your Honor, we would object to the admission of the earplugs because she cannot positively identify those even to the color.

THE COURT: What do you say to that?

MR. MENDELOFF: Well, Judge --

DIRECT EXAMINATION CONTINUED

BY MR. MENDELOFF:

Q. Can you remember what color the earplugs were that you saw that day?

A. No.

Q. You're not saying that these earplugs are not the earplugs you saw based on color?

A. No.

Q. Do you have a recollection of what color it was?

A. I don't have a recollection.

Q. What you know is that they match in terms of consistency?

A. Yes.

Q. Construction?

A. Yes.

Q. And form?

A. Yes.

Q. And you put those earplugs into the bank bag --

MS. RAMSEY: Your Honor, we object as leading.

THE COURT: Overruled.

BY MR. MENDELOFF:

Marsha Moritz - Direct

Q. Where did you put those earplugs?

A. I put them in a zippered bag, and we lock it up with a padlock.

Q. And that was which bag?

A. No. 2.

Q. The one listed on Mr. McVeigh's form?

A. That's correct.

MR. MENDELOFF: Your Honor, at this time we believe that the chain is set; and when you consider the testimony of Ms. Thompson and Mr. Hupp --

MS. RAMSEY: Your Honor, we would object. She does not know the color --

THE COURT: Well, one witness doesn't do the chain. The objection is overruled, but I want to emphasize again to the jury that that simply means that this was a step in putting earplugs into packages which were later received. The condition of the plugs is another issue.

MR. MENDELOFF: Thank you, your Honor.

BY MR. MENDELOFF:

Q. After you completed the process of filling out the personal property information form, did you continue with the booking process?

A. Yes.

Q. Did that involve, among other things, the placement of Mr. McVeigh's clothing in a placement bag?

Marsha Moritz - Direct

A. Yes.

Q. Were you present for that?

A. Yes.

Q. Were you present for that?

A. For putting his clothes in his bag? I didn't put his clothes in the bag.

Q. Were you the jailer at the time throughout that day and the next day?

A. I was the jailer for two days here.

Q. And during that time period, April 19 and April 20, did you ever observe anybody tampering with Mr. McVeigh's clothing?

A. No.

Q. During the entire time you've been working as a jailer in the jail facilities, have you ever heard of an inmate tampering with another inmate's clothing in the paper bags?

A. No.

MR. MENDELOFF: Nothing further, your Honor.

THE COURT: Ms. Ramsey.

CROSS-EXAMINATION

BY MR. MENDELOFF:

Q. I believe you testified a few moments ago that you've been the jailer for approximately eight years?

A. Yes.

Q. What shifts do you routinely work?

A. I work from 6 to 6. 6 a.m. to 6 p.m.

Marsha Moritz - Cross

Q. All right. Now, you were just asked by Mr. Mendeloff if you were present during the two days that Mr. McVeigh was in custody in Noble County. Isn't that correct?

A. Yes.

Q. You worked your normal 6 a.m. to 6 p.m. shift, didn't you?

A. Yes.

Q. You didn't work the 24-hour shift or a 48-hour shift, did you?

A. No.

Q. So you were not on duty during all of the time that Mr. McVeigh was incarcerated in Noble County Jail in Perry, Oklahoma, were you?

A. No.

Q. So you don't know what happened while you were not there, do you?

A. No.

Q. When you first -- when were you first notified that Mr. McVeigh was being brought to the Noble County Jail?

A. I'm not sure without looking at the booking card.

Q. Did you receive a transmission from either Trooper Hanger or from Ms. Warnock, the dispatcher in Pawnee, that he was bringing someone to jail?

A. I believe I heard transmission on the state net that Charlie was going to be 1015 with a prisoner.

Q. And does he typically bring prisoners to the Noble County

Marsha Moritz - Cross

Jail?

A. If they're stopped in Noble County.

Q. Right. And did you normally receive notification so you could begin preparing for a prisoner to be brought in by Trooper Hanger or by other law enforcement officers?

A. No, I don't believe I received notification.

Q. Okay. And I believe you said he was brought in at approximately 11 a.m.

A. 11:05.

Q. 11:05 a.m.

A. Yes.

Q. And what were you doing prior to the time that Mr. McVeigh was brought to the Noble County Jail?

A. Making cookies.

Q. And was that in the kitchen, which is on the west side of the courthouse, on the 4th floor in the jail?

A. Yes.

Q. And I believe there is a freezer in that jail; isn't that correct?

A. Yes.

Q. And what is that freezer typically used for?

A. We use it a lot for cabinet space because we're so short of cabinet space in that room.

Q. Do you typically use it when you fix the meals or make cookies or do whatever you do for the other prisoners? Is that

Marsha Moritz - Cross

correct?

A. Yes.

Q. And is that cleaned each and every time that you use it?

A. Yes.

Q. And what do you typically clean that with?

A. Dishwater soap.

Q. Like Ivory Liquid?

A. Yes.

Q. Or something like that?

And do you personally do the dishes, or do you have a trustee that does that?

A. Well, we've had trustees before. We have a dishwasher now. I don't remember if we had a dishwasher back then or not.

Q. Do you recall if there was a trustee on April 19, 1995?

A. Yes.

Q. And do you recall who that was?

A. Yes.

Q. Who was that?

A. Carl Hite.

Q. And did Mr. Hite help you in any way in making these cookies and cleaning up afterwards?

A. Yeah. He helps me in the kitchen.

Q. All right. And he did that all the time, didn't he?

A. Yes.

Q. That was the usual duty of a trustee; isn't that correct?

Marsha Moritz - Cross

A. Yes.

Q. Did you oversee him in his work in the kitchen?

A. Yes.

Q. Were you with him at all times while he was in the kitchen?

A. No.

Q. Now, did anyone else come on the floor that morning in the Noble County sheriff's office prior to Trooper Hanger bringing in Mr. McVeigh, if you recall?

A. I can't remember.

Q. And what is the normal court time in Noble County for prisoners to be taken down to the courtroom before Judge Allen?

A. We don't have a normal court time. The judge just calls us and tells us when to bring them down.

Q. Do you recall if there were any prisoners that were taken to Judge Allen's courtroom prior to 11:00 on April 19?

A. I don't remember.

Q. Do you recall if there were any taken after 11:05 when Mr. McVeigh was brought in on April 19?

A. I don't remember that.

Q. All right. Now, when Mr. McVeigh came onto the floor, was he with Trooper Hanger?

- A. Yes, he was.
Q. And were -- was it just the two of them?
A. Yes.
Q. Was Mr. McVeigh handcuffed at that point?

Marsha Moritz - Cross

- A. Yes.
Q. And was he handcuffed in front, or in back?
A. I don't remember.
Q. Okay. Did you have to unlock the gate in order to let Trooper Hanger into the 4th floor area of the jail?
A. I didn't that time.
Q. How did he get on the floor then?
A. He came -- he has a key.
Q. And what happened next?
A. Trooper Hanger brought him around to the booking office.
Q. Did you go from the kitchen to the booking office?
A. No. I was in the office at that time. I believe I was getting ready for the inmate at that time, because I did hear over state net that he was 1015.
Q. And when Mr. McVeigh and Trooper Hanger came onto the floor and into the booking room, what did you do first, or what did Trooper Hanger do first?
A. He took his handcuffs off.
Q. All right. And where did the handcuffs go?
A. He -- I don't know.
Q. Trooper Hanger kept them?
A. He probably kept them.
Q. He didn't give them to you, did he?
A. No, he didn't give me the handcuffs.
Q. So Mr. McVeigh is uncuffed. And then what happens next?

Marsha Moritz - Cross

- A. I start the booking procedure immediately.
Q. And is that where you begin the booking card?
A. Yes.
Q. That you were questioned about earlier?
A. Yes.
Q. All right. And in that booking card, do you begin asking questions of the individual prisoner that's brought in?
A. I asked him his name, and that's when Charlie -- he said his name, and Charlie Hanger handed me his driver's license.
Q. All right. This has previously been admitted, I believe, as Government's Exhibit 420?
MS. RAMSEY: Is that correct, Kathi?
MR. MENDELOFF: It's not in evidence.
MS. RAMSEY: We would move the admission of Government's Exhibit 420.
MR. MENDELOFF: No objection.
THE COURT: 420 is received.
You want to display it?
MS. RAMSEY: Yes, please, your Honor.

BY MS. RAMSEY:

BY MS. RAMSEY:

Q. Is this the jail booking card that you began on premises on April 19, 1995, that has been marked as Government's Exhibit 420?

A. Yes, it is.

Q. And is that your handwriting where his name is?

Marsha Moritz - Cross

A. Yes.

Q. And the address?

A. Yes.

Q. And the Social Security number and all the other information? Is that all your handwriting?

A. It is.

Q. Does Trooper Hanger write on this jail booking card in any way?

A. No, he doesn't.

Q. All the handwriting on this except for -- well, all of the handwriting is yours on this form; is that correct?

A. Yes.

Q. All right. And where do you get all of this information?

A. By his driver's license and asking him the questions.

Q. Do you take the information from the driver's license unless there is an omission of some type, or do you ask him if that's correct on his driver's license?

A. Yes.

Q. Or how do you do that?

A. I'll ask him.

Q. And do you ask him if the -- his age is -- his height, his weight, his date of birth and all of that is correct on his driver's license?

THE COURT: Let me just ask: Are you asking for her present recollection, or what her practice was?

Marsha Moritz - Cross

MS. RAMSEY: Her present recollection.

THE COURT: All right. If you have a recollection.

BY MS. RAMSEY:

Q. If you recall.

A. On McVeigh, I don't recall. You mean, like --

Q. When you take the information off the driver's license, do you ask him if that's correct?

A. Yes.

Q. All right. And unless there is something unusual in regard to his weight or something like that, you just leave it at that. Is that correct?

A. Yes.

Q. Okay. Now, when you fill out the Noble County personal property information, which I believe has been admitted as Government's Government's 423 --

THE COURT: Yes.

BY MS. RAMSEY:

O. I want you to look at that. I believe you stated

previously that you filled out all of this information. Is that correct?

A. Except at the bottom it says, "All items released to --" but all the rest I did.

Q. You have filled out everything except for all items released to FBI?

A. And then his signature.

Marsha Moritz - Cross

Q. And then his signature. Is that correct?

A. That's correct.

Q. Now, when I asked you earlier on voir dire about the earplugs, you only have on this form two earplugs. Is that correct?

A. Right.

Q. Can you read that on there?

A. Yes.

Q. And you don't note any color. Is that correct?

A. No, I don't.

Q. Have you ever told anyone what color the earplugs were?

A. No.

Q. Have you ever testified with regard to what color the earplugs are?

A. No.

Q. Now, I want you to look at the earplugs -- I believe you still have those up there.

A. Uh-huh.

Q. Were those in -- those that you have in your hand now: Was that the shape of the earplugs when you took them in April, 1995, if those are -- or what is your opinion of their shape?

A. They didn't have a shape.

Q. So those are not in the same form, even, as when the earplugs were taken from Mr. McVeigh?

MR. MENDELOFF: Objection, your Honor. It

Marsha Moritz - Cross

mischaracterizes her last answer.

THE COURT: Well, ask her whether they have a shape now.

BY MS. RAMSEY:

Q. Do they have a shape now?

A. No.

Q. They don't?

A. Well, they're -- well, a blobby shape. They're just like -- I guess.

Q. All right.

A. I don't know what you call it.

MS. RAMSEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. RAMSEY:

Q. Can you identify what those are, please, Ms. Moritz.

A. They're probably earplugs.

Q. Do they have a shape or form?

A. Yes, they do.

Q. And those in the -- those in the tube do not have a shape or form like normal earplugs, do they?

A. No.

Q. That was not the shape or form that you received them in on April 19 -- is it?

A. They were separated, but like that. They're not like this.

Q. The ones in the tube that are scrunched down in the bottom

Marsha Moritz - Cross

of the tube: Is that the shape that they were in when you received them on April 19?

MR. MENDELOFF: Objection, your Honor. I'm not clear.

Do we have two sets of earplugs here now?

THE COURT: She's asking about the ones in the tube.

BY MS. RAMSEY:

Q. The ones in the tube.

A. They're like that but separated, they're -- together like that.

Q. Can you take those out of the tube?

A. I guess. Do you want me to?

Q. Do they have a shape to them when you take them out of the tube?

Go ahead and take them out of the tube.

MR. MENDELOFF: Your Honor, because of the residue on these, we need to have gloves to handle them, your Honor.

THE COURT: Well, why do you want her to take them out of the tube?

MS. RAMSEY: I'll ask her another question, your Honor.

THE COURT: All right.

BY MS. RAMSEY:

Q. Can you shake those earplugs down from the bottom of the tube, leaving them in the tube?

A. I don't think so.

Marsha Moritz - Cross

Q. They're stuck in there, aren't they?

So you didn't stick them in a tube, did you?

A. No.

Q. And can you positively testify today that that was the shape of those earplugs when you supposedly took them from Mr. McVeigh on April 19?

A. No. They didn't have any particular shape.

Q. Okay. And they have a particular shape now, don't they?

A. Right.

Q. In the form of a test tube sort of, don't they?

A. Right.

Q. And they're scrunched up there together; correct?

A. Right.

Q. So you cannot tell whether those earplugs are the ones that you took from Timothy James McVeigh on April 19 of 1995, can you?

A. No.

MS. RAMSEY: Your Honor, we would move to have them -

-

have you reconsider your ruling --

THE COURT: Motion is denied. I'm relying on other evidence that's been presented in the case.

MS. RAMSEY: Okay.

BY MS. RAMSEY:

Q. Now, what other property did you take from Mr. McVeigh at that time, you personally?

Marsha Moritz - Cross

A. Can't think of anything else besides this property.

Q. On the booking form, you've also got Roloids and a black belt. Is that correct?

A. Oh, yes. All the items on the booking -- on this property inventory sheet. I took that.

Q. And that's all you took from him; is that correct?

A. Yes.

Q. Now, the clothing that was taken from Mr. McVeigh you had nothing to do with. Is that correct?

A. No, I didn't.

Q. And Trooper Hanger did that, because he's a male and he needs to see him undress, or whatever. Isn't that correct?

A. That's correct.

Q. Now, that property, which I believe Mr. Mendeloff showed you the bag, was kept in the trustee storage area. Isn't that correct?

A. That's correct.

Q. All right. And is that secured in any way?

A. It's secured through the jail by being in the jail.

Q. But you testified about the canvas bag or bank bag being placed in a locked cabinet of some kind.

A. Yes.

Q. That's a file cabinet. Correct?

A. Yes.

Q. The area that is used for storage of the clothing of the

Marsha Moritz - Cross

inmates is not in a locked area; correct?

A. Not in a locked area besides the jail.

Q. I understand that, but the door is not locked.

A. No.

Q. It's not placed in a locked cabinet?

A. No.

Q. And the trustee, whoever that might be, has the right to go in and out or has the access to go in and out of that room at any time he wants to, doesn't he?

A. Right

.. right.

Q. Because that's part of his duties; right?

A. Right.

Q. What else is stored in there?

A. File cabinets. We have a copy machine, mattresses.

Q. Does the trustee sleep there now?

A. Now? No.

Q. Did they in '95?

A. Yes.

Q. And it's also where the attorneys go in to take their clients to discuss different court matters, or things of that nature. Is that correct?

A. Yes.

Q. So there is access to that room by not only the trustees, by the jailers who are on duty, but by attorneys and other inmates. Isn't that correct?

Marsha Moritz - Cross

A. Yes.

Q. Inmates who are not trustees; isn't that correct?

A. Yes.

Q. All right.

A. With their attorneys.

Q. Right. With their attorneys. And that is not a locked area. Correct?

A. No.

Q. All right. Now, when you finished or when Trooper Hanger finished with the removal of clothing from Mr. McVeigh, did you check in any way to see what was in the bag or make any list of items that was in the bag?

A. No. I have a list of what he had on the back of the booking card.

Q. Did you write that down after his clothing was removed?

A. No.

Q. Did you write that down as you looked at him?

A. Yes.

Q. And you made a notation that it was a white T-shirt, a blue, long-sleeved shirt, black jeans, black military boots, and a dark blue jacket. Is that correct?

A. That's correct.

Q. And that's also where you put the number "2," which was to correspond with this other bag; isn't that correct?

A. Yes.

Marsha Moritz - Cross

Q. All right. Now, did Mr. McVeigh change clothes prior to or after you took his photograph?

A. I took his -- he was fully dressed when I took his photograph.

Q. And in what sequence did you take his photograph of him coming into the jail?

A. After I did the -- after I finished booking him in. That's when I did the prints and the photos.

Q. Did you do the fingerprints prior to doing the photograph, if you recall?
A. I don't recall.
Q. Okay. Usual procedure?
A. Prints or photo. It doesn't matter.
Q. And were there any other inmates in the booking area at the time that you were booking Mr. McVeigh?
A. No, there wasn't.
Q. All right. Were there any other law enforcement personnel there other than you and Trooper Hanger?
A. That's right.
Q. I want to call your attention to what's been admitted as Government's 420, to the height that is listed on the jail booking card, where my pen is. Can you see that?
A. Yes.
Q. And what is that?
A. 6' 2".

Marsha Moritz - Cross

Q. And is that what appeared on his driver's license as you recall?
A. Yes.
Q. All right. Now, can you please describe to the jury what -- where the area is where you take the photographs and fingerprint prisoners?
A. It's in the booking office.
Q. Is it right adjacent to the desk area?
A. Right by the desk.
Q. Okay. And just describe how it looks.
A. There is a wall with a height and --
Q. All right. And is there a place to do the fingerprints?
A. Yes.
Q. And how is that accomplished? How do you take somebody's fingerprints?
A. I have them step behind me and then I do the prints.
Q. Do you do all five fingers and palm print?
A. Not the palm print. All five fingers are done. I don't do palm prints.
Q. Do you do both hands?
A. Yes.
Q. And after you take the photograph and do the fingerprints, then what happens to the individual?
A. He's taken back by the officer to the storage room to change out.

Marsha Moritz - Cross

Q. All right. And I want to now turn your attention to Government's Exhibit 421; and I'm not sure that this has been introduced into evidence.

MR. MENDELOFF: It has not been.

MS. RAMSEY: Your Honor, we would move for the admission of Government's 421.

MR. MENDELOFF: No objection.

THE COURT: 421 is received.

MS. RAMSEY: Would you please publish that.

BY MS. RAMSEY:

Q. Now, is this the photograph -- this is the photograph that you took of Mr. McVeigh on April 19, 1995?

A. Yes, it is.

Q. All right. I want to direct your attention to the upper portion of the photograph -- and I'll move this down a little bit. Can you see markings as for the height of Mr. McVeigh, please.

A. Yes.

Q. What is his height?

MR. MENDELOFF: Objection, your Honor, as to the statement of what his height is. The photograph speaks for itself.

THE COURT: Overruled.

BY MS. RAMSEY:

Q. Go ahead and answer the question, Ms. Moritz.

Marsha Moritz - Cross

A. A little under 6' 4".

Q. A little under 6' 4"?

A. Uh-huh.

Q. All right. And is this kept in the regular course of your business in the Noble County sheriff's office?

A. Yes.

Q. And did you provide this to the Federal Bureau of Investigation with all of the other items that you had listed on your booking form as being provided to the FBI?

A. Yes.

Q. Did you actually provide these, or did Debbie Thompson provide those?

A. It wasn't me.

Q. Okay. You don't know who it was?

A. I don't know who.

Q. All right. During the time that you were on duty, I believe two shifts while Mr. McVeigh was there -- is that correct?

A. Two days.

Q. Two days. So would that have been two of your shifts, from 6 a.m. to 6 p.m.?

A. A shift is a week for me, but two days is what I was there, so --

Q. Right. You worked two separate times, though, while Mr. McVeigh was there; is that correct?

Marsha Moritz - Cross

A. Yes.

Q. When you were there from 6 a.m. to 6 p.m. on those two days, did you have any further contact with the property of Mr. McVeigh that was in the canvas bag?

A. No, I didn't.

A. No, I didn't.

Q. Did you have any further contact with the property of Mr. McVeigh that was in the paper sack that was in the storage area across the hallway?

A. No.

Q. Did you ever -- were those ever called to your attention for any reason?

A. No.

Q. Have any reason to look at them whatsoever?

A. No.

Q. And is that because at that point they had no evidentiary value -- did they?

A. No.

MR. MENDELOFF: Objection as to that conclusion.

THE COURT: Sustained.

BY MS. RAMSEY:

Q. Is evidence kept in that storage area?

A. No.

Q. Is evidence kept in that file cabinet that you're talking about?

A. No.

Marsha Moritz - Cross

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

A. The sheriff takes it and puts it in his vault.

Q. All right. And that is on the 1st floor of the Noble County Courthouse; isn't that correct?

A. Yes.

Q. There is nothing of evidentiary value that is to be kept on the 4th floor of the Noble County Courthouse; isn't that correct?

MR. MENDELOFF: Objection, your Honor, as to "evidentiary value."

THE COURT: Overruled. You're asking what the practice is with respect to matters that are thought to be of evidence -- evidentiary value; right?

MS. RAMSEY: Yes.

BY MS. RAMSEY:

Q. You can answer the question.

A. I'm sorry.

Q. There is no property -- there is no evidence that is kept on the 4th floor in the jail in the Noble County Courthouse; isn't that correct?

A. No.

Q. Okay. No, there isn't?

A. There isn't.

Q. Right. The only items that are kept up there are personal

Marsha Moritz - Cross

property; correct?

A. Right.

Q. And do you know what personal property other than the canvas bag and the paper sack were taken from the Noble County Jail that belonged to Mr. McVeigh?

A. Do I what? I'm sorry.

Q. Do you know if there was anything other than those items that were taken that belonged to Mr. McVeigh?

MR. MENDELOFF: Objection, your Honor. Are we talking about her own personal knowledge?

THE COURT: Yes. It's not clear what you're asking.

BY MS. RAMSEY:

Q. Do you know of any personal property that was given to the FBI on behalf of Mr. McVeigh?

MR. MENDELOFF: Objection. Vague --

THE COURT: Overruled.

MR. MENDELOFF: -- own personal knowledge.

BY MS. RAMSEY:

Q. Of your own personal knowledge, do you know if anything was taken by the FBI?

A. No.

Q. All right. Do you know if there were any blankets or sheets or cups or anything like that taken from the Noble County Jail and given to the FBI?

A. Yes, I do know that.

Marsha Moritz - Cross

Q. All right. And do you know what those were?

A. Blankets, yes.

Q. Was there a mattress cover taken?

A. Yes.

Q. Some cups?

MR. MENDELOFF: Objection, your Honor. We haven't even established that she was present.

THE COURT: Well, she just answered that she knows it and was asked to her personal knowledge. Your objection is overruled.

BY MS. RAMSEY:

Q. Was there a sheet taken, or sheets?

A. No.

Q. And is that property that was owned by the Noble County Jail that Mr. McVeigh had used and was given to the FBI? Isn't that correct?

A. Yes.

Q. Did you ever have any personal contact with Mr. McVeigh during the remainder of the shift that you were working when he was brought in on April 19, or on April 20?

A. Personal contact? I fed him.

Q. All right. Did you talk to him?

A. I don't remember talking to him.

Q. All right. When you feed someone who is a prisoner, is there a space in the cell where you pass the food through, or

Marsha Moritz - Cross

is the door opened, or how is that accomplished?

A. A space in the door.

Q. And do you recall which cell Mr. McVeigh was in when you worked on April 19?

A. Yes. He was on the south side.

Q. On the south side? And was he on the south side when you also worked on April 20?

A. Yes.

Q. Did he remain in the same cell during the entire time that he was in the Noble County Jail?

MR. MENDELOFF: Objection. She's testified that she was there on the 19th and the 20th, your Honor, not the 21st and --

THE COURT: Rephrase the question.

BY MS. RAMSEY:

Q. When you went -- when he was placed in a cell on April 19, he was on the south side. Is that correct?

A. Yes.

Q. When you went to work on April 20, was he in the same cell that he was in on the 19th?

A. Yes.

Q. And were the same prisoners in that area on the 19th as on the 20th, besides Mr. McVeigh?

A. Probably.

Q. Okay. Was he in a single cell?

Marsha Moritz - Cross

A. No.

Q. Was he in a bullpen area?

A. He is with other inmates.

Q. Right. Okay. Was there access to a telephone?

A. Yes.

Q. And do you know if he made any phone calls?

A. I don't know.

Q. Did you ask him if he wanted to make any phone calls when you booked him in?

A. Yes, I did.

Q. And did he make any?

A. No.

Q. All right. Did you go through his billfold at any time when you took his personal property?

A. I searched for money and valuables.

Q. And that's where you came up with the figure of \$255, I think, that was in his billfold?

A. Yes.

Q. And I believe there were also two gold coins in that billfold, or were those in his pocket?

A. All these -- let's see.

Q. It says two yellow coins. I'm sorry.

A. They came out of his pockets.

Q. All right. So when you look at that, the two yellow coins, the earplugs, Roloids and the -- those came out of his pockets;

Marsha Moritz - Cross

is that correct?

A. Yes. Yes.

Q. And the black belt came off of his person. Is that correct?

A. Yes.

Q. So would that mean that there was nothing else in his pockets of any value? Is that correct?

A. He had -- in his pockets?

Q. Right.

A. (Witness nods head.)

Q. Now, when you book someone in, do you make notice of any medical conditions that they might have?

A. Yes, I do.

Q. And where is that on the form?

MR. MENDELOFF: Objection to "the form," your Honor. There are several here.

THE COURT: Yes. You'll have to specify the form.

BY MS. RAMSEY:

Q. That is on the -- what form do you note that there are any medical conditions?

A. Medical screening.

Q. Medical screening form?

A. Yes.

Q. And did you note any items of medical conditions or things that needed to be looked at as far as Mr. McVeigh was concerned

Marsha Moritz - Cross

with regard to medical?

A. No.

Q. All right. When you -- when someone is booked in, do you typically look at them to see if they look well or sick?

A. Yes.

Q. All right. And do you also, when a person is signing their name, look at their hands or their face to see if there looks to be anything wrong with them?

A. Yes.

Q. Did you notice any rash of any kind on Mr. McVeigh at the time that he was booked into the Noble County Jail?

A. No. He looked normal.

Q. If he had had a rash, you would have noted it; isn't that correct?

A. I look more for sores. I wouldn't -- I don't know -- I didn't notice a rash.

Q. Okay. That's fine. Now, I believe you stated in your report that Mr. McVeigh was very cooperative.

A. Yes.

Q. Easy to book?

A. Yes.

Q. And he didn't refuse to answer any questions you asked. Isn't that correct?

A. Yes.

MS. RAMSEY: If I might have just a moment. your

Marsha Moritz - Cross

Honor.

THE COURT: Yes.

BY MS. RAMSEY:

Q. I want you to look at Government's 467. I don't believe this has been admitted into evidence at this point --

MS. RAMSEY: If you would publish that to her.

BY MS. RAMSEY:

Q. Would you please describe for the jury what that is.

A. It's a medical-screening form.

Q. And that is the medical-screening form that you filled out for Mr. McVeigh on April 19, 1995?

A. Yes.

Q. I believe you note the time as 11:05. Isn't that correct?

A. Yes.

Q. Now, on Question No. 5 --

THE COURT: Well, we don't have this in evidence.

MS. RAMSEY: Your Honor, I would move to admit Government's Exhibit 467.

MR. MENDELOFF: No objection.

THE COURT: Received.

BY MS. RAMSEY:

Q. Zoom in on Question No. 5, "Is the skin in good condition and free of vermin?"

A. Yes.

Q. And you have put yes. Is that correct?

Marsha Moritz - Cross

A. That's correct.

Q. I assume that means lice. Is that correct?

A. Yeah, or --

MS. RAMSEY: Your Honor, I don't believe I have any further questions of Ms. Moritz at this time.

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

MR. MENDELOFF: Yes, your Honor.

Could I see the other set of earplugs? Can I see the second set of earplugs?

THE COURT: What is it? I can't hear you.

MR. MENDELOFF: I'm sorry, Judge. The second set of earplugs.

MR. HARTZLER: Could we have a moment, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. You were asked questions on cross-examination regarding the trustee, Carl Hite. Remember that?

A. Yes.

Q. What was he in jail for?

A. DUI. I believe it was DUI.

Q. As a matter of policy, does the sheriff's office or the jail permit trustees to be felons?

A. No.

Q. Let me ask you to look at --

Marsha Moritz - Redirect

THE COURT: You mean trustees to be felons, or felons to be trustees?

MR. MENDELOFF: That would be a very good law enforcement technique, I guess. Could I repeat that?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. As Judge Matsch has noted, do you permit felons to be trustees?

A. No.

MR. MENDELOFF: I apologize, your Honor.

BY MR. MENDELOFF:

Q. Let me direct your attention to page 2, or the back of Government's Exhibit 420. There is a number "2" listed there. What is that?

A. That's the number that was on the property -- personal property bag.

Q. And then the other things listed there are clothing. Is that right?

A. Yes.

MR. MENDELOFF: Pardon me, your Honor.

Can I have the photograph?

BY MR. MENDELOFF:

Q. One of the articles of clothing listed is a white T-shirt. Do you see that?

A. Yes.

Marsha Moritz - Redirect

Q. And then another blue, long-sleeved T-shirt?

A. Yes.

Q. How was Mr. McVeigh wearing those clothes that day?

A. He had the white T-shirt on on top with the President Lincoln's head on it with some words underneath; and then he had the blue, long-sleeved T-shirt underneath with a white body.

Q. Let me show you Government's Exhibit 421. I ask you to look at that and tell us whether or not that accurately reflects exactly what he looked like that day.

A. Yes. That's what he looked like.

Q. Now, you were asked on cross-examination about the height chart behind Mr. McVeigh.

A. Yes.

Q. When you took this photograph -- first of all, did you take this photograph?

A. Yes, I did.

Q. When you took the photograph, was Mr. McVeigh fully clothed?

A. Yes, he was.

Q. What was he wearing on his feet?

A. He was wearing military boots.
Q. And where was he standing in relation to the wall?
A. He is standing just a --
Q. How far away from the wall was he standing, roughly?

Marsha Moritz - Redirect

A. I'd say about an inch.
Q. And where were you standing in relation to him?
A. 2 or 3 feet.
Q. 2 or 3 feet in front of him? 2 or 3 feet in front of him?
A. Maybe 2 1/2 to 3.
Q. What kind of camera did you use to take this photograph with, a camera you hold in your hands, or one that sits on a platform?
A. I hold in my hand.
Q. And you place it in front of your face?
A. Yes.
Q. How tall are you?
A. I'm 5' 5".
Q. And what direction was the camera, on an angle upward, or straight angle across to Mr. McVeigh?
A. Probably be upwards, since he's taller than me.
Q. Now, you were asked questions on cross-examination regarding where the clothing was kept. Do you remember those questions?
A. Yes.
Q. And you were asked whether the clothing was kept in a locked area.
A. Yes.
Q. All right. Now, the clothing is kept in the storage room, which is part of the jail?

Marsha Moritz - Redirect

A. Yes.
Q. And how is the jail secured?
A. It's secured -- you have to have a special key to come up on the floor of the jail, and there is a gate at the door of the jail.
Q. Is that locked?
A. Yes.
Q. Is there always a jailer on duty?
A. Yes. There is always a jailer on duty.
Q. Now, you were asked questions about whether attorneys could take clients into the storage area to meet with their -- or take clients in the storage area to meet.
A. Yes.
Q. Have you reviewed the jail log for the period of time during which Mr. McVeigh was there?
A. Yes, I have.
Q. How many attorneys took clients into that room during the time Mr. McVeigh was there?
A. Only one.
Q. And whose attorney was that?

Q. And whose attorney was that?

A. It was Royce Hobbs, McVeigh's attorney.

Q. For the state charges; is that right?

A. Yes.

Q. You were also asked whether or not inmates from the general population get access to that storage area. I believe you

Marsha Moritz - Redirect

testified the only way they do is with their attorneys.

A. Yes.

Q. Do inmates in the storage -- throughout the jail, trustees and not -- are they familiar with what is stored in terms of other inmates' clothing in that storage area?

A. Yes.

Q. Are they clean clothes, or dirty clothes of the other inmates?

A. They're usually dirty.

Q. Are there any valuables stored in that area?

A. No.

Q. Are all the inmates aware of that?

A. Yes.

Q. Finally, on Government's Exhibit 467, you were asked questions about the Question No. 5 regarding the skin being in good condition and free of vermin. Do you see that?

A. Yes.

Q. Do you do a close dermatological examination of these inmates, or is this sort of a general look to see whether or not they have lice?

A. Just a general look.

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

THE COURT: Yes, Ms. Ramsey.

RE-CROSS-EXAMINATION

Marsha Moritz - Recross

BY MS. RAMSEY:

Q. Directing your attention to Government's Exhibit 421 one more time, when you take the photograph of a prisoner, why are you doing that?

A. We keep mug shots in the office.

Q. And why do you do that?

A. They're just on file in case we need to go back and look them up.

Q. Are you trying to accurately depict how a person looks on the day of their arrest?

A. Yes.

Q. Not only visually how they look but also their weight and height by viewing them with the photograph; isn't that correct?

A. Yes.

Q. Now, there is the height chart behind Mr. McVeigh in this photograph; isn't that correct?

A. Yes.

Q. And isn't that the normal place where you photograph

someone?

A. Yes.

Q. And isn't that height chart there to indicate what a person's height is regardless of where the camera is when you take the picture?

A. Yes.

Q. And isn't this something that you do as a jailer in order

Marsha Moritz - Recross

to further document and be able to help law enforcement in identifying someone?

A. Yes.

Q. Isn't that correct?

A. That's correct.

Q. Now, did you talk with Mr. Mendeloff this weekend?

A. This weekend? Yes.

Q. And how many times did you talk with him?

A. Okay. This weekend? I'm trying to think. When was I last here? I was just here Thursday.

Q. You were here Thursday?

A. Thursday, I talked to him. I haven't talked to him over the weekend.

Q. How many times did you talk to him last week?

A. Last week? I believe once.

Q. All right. Isn't it a correct statement that what may be of value to you or me is different as to what may be of value to a prisoner in the Noble County Jail?

MR. MENDELOFF: Objection, your Honor.

Argumentative.

THE COURT: Overruled.

BY MS. RAMSEY:

Q. Answer the question.

A. I'm not understanding.

Q. Wouldn't some prisoners consider a pair of Army boots to be of value?

Marsha Moritz - Recross

A. Might.

Q. Jeans without holes in them?

A. They might.

Q. Shirts that they could wear outside if it's cold?

A. They might.

MS. RAMSEY: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. This height chart on the back of Government's Exhibit 421: Is that a regular height chart on a scale, or is it a drawing on a wall?

A. It's a drawing on a wall.

Q. Do you attempt to double-check the height that's on somebody's driver's license through this if you want to determine height, or do you actually measure them?

A. We go by the driver's license.
Q. Is this an attempt to corroborate anything regarding that driver's license or anything regarding that height -- as to height, Government's Exhibit 421.
A. I'm sorry. I didn't understand.
Q. The purpose of the mug shot is to record what the person looks like; is that right?
A. Yes.
Q. And the height on the back chart -- is that tested and calibrated in an effort to determine exactly what somebody's

Marsha Moritz - Redirect

height is, or is that a rough estimate?

A. It's an estimate.

Q. Now, you were just asked some questions about the clothing in the jail. If an inmate went in another inmate's bag and took their boots, is there any way the inmate could get out of jail with those boots?

A. No.

Q. They're checked out when they leave. Isn't that correct?

A. Right.

MR. MENDELOFF: Nothing further, your Honor.

MS. RAMSEY: Nothing further, your Honor.

If I might retrieve my exhibit.

THE COURT: All right. Is Ms. Moritz to be excused?

MR. MENDELOFF: Yes, your Honor.

MS. RAMSEY: No objection, your Honor.

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

THE WITNESS: Okay.

THE COURT: Next witness, please.

MR. HARTZLER: Government calls Vivian DeWyse, and Ms. Wilkinson will question her.

THE COURTROOM DEPUTY: Would you raise your right hand.

(Vivian DeWyse affirmed.)

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

Vivian DeWyse - Direct

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

THE WITNESS: Vivian DeWyse, D-E-W-Y-S-E.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Ms. DeWyse. How are you?

A. Fine, thank you.

Q. Are you a little nervous about testifying?

A. It's okay.

Q. Is this your first time that you've ever testified in court?

A. Yes.

Q. Let's start with your background. Could you tell the jury

Q. Let's start with your background. Could you tell the jury where you live?

A. Lacolle, Quebec, Montreal -- I mean Montreal, Quebec.

Q. You have to keep your voice up, so if you can lean in a little closer to that microphone and project your voice as much as possible.

A. Okay.

Q. You live in Quebec, Canada; is that right?

A. Yes.

Q. And how long have you lived in Quebec?

A. Since '74.

Q. Where were you born?

Vivian DeWyse - Direct

A. Zaire.

Q. And how old are you currently?

A. 33 -- just had my birthday. Let me think here. 38.

Q. Tell the jury a little bit about your educational background. Where did you go to school?

A. University of the Montreal. B.S. in chemistry.

Q. When did you graduate with your degree in chemistry?

A. '84.

Q. Did you work in various jobs after you graduated from University of Montreal that related to the field of chemistry?

A. Yes. Roughly two years teaching high school chemistry; after that, two years in research, rheumatology; after that, two years in toxicology; and since that, '89, in ICI Explosives, Canada.

Q. Let's talk about ICI. You said you started working there in '89?

A. Yes.

Q. What is ICI?

A. Industrial Chemical Industry.

Q. And that's a corporation?

A. Yes.

Q. What do they manufacture and sell?

A. They're in various domains like in forest products and explosives, chemicals, polymers.

Q. What type of explosive products do they sell?

Vivian DeWyse - Direct

A. Prills, bulk explosives, packaged explosives.

Q. When you say "prills," do you mean ammonium nitrate prills?

A. Yes.

Q. Where is the headquarters for ICI located?

A. England.

Q. And obviously it has an office in Canada. Correct?

A. Yes.

Q. That's where you work?

A. In North York is the main office for Canada, yes.

Q. Do they also have manufacturing plants here in the United States?

A. For ammonium nitrate?

--- ---
Q. Yes.

A. Yes, one.

Q. Where is that manufacturing plant for ammonium nitrate located?

A. Joplin, Missouri.

Q. And what was manufactured at the ICI Joplin, Missouri, plant in 1994?

A. Just porous prill.

Q. When you say "porous," are you referring to low-density ammonium nitrate prills?

MR. TRITICO: Objection, leading.

THE COURT: Sustained.

BY MS. WILKINSON:

Vivian DeWyse - Direct

Q. What are you referring to when you say "porous prills"?

A. Just prills of grade low-density prill.

Q. Were any high-density prills manufactured in Joplin in 1994?

A. No.

Q. Tell us what you did at ICI when you first joined the company back in 1989.

A. I was hired to develop analytical methods for polymer and energetic binder roughly two years; after that, half a year about in analytical chemistry, and then -- since that roughly five -- four years on ammonium nitrate itself, yes, on the low-density ammonium nitrate.

Q. Was there a time when you spent your employment analyzing the physical characteristics of an ammonium nitrate manufactured by ICI?

A. Yes.

Q. And how long did you do that for?

A. As in the group of analytical chemistry, six months; but on

occasion since that, if the analytical group does not have the time, then I'll do it myself.

Q. And were you analyzing the low-density or the high-density ammonium nitrate?

A. Always the low-density.

Q. Now, tell us about your next assignment where you started working with ammonium nitrate.

Vivian DeWyse - Direct

A. You mean five years ago?

Q. Yes.

A. We had a specific project where we wanted to evaluate the coating agents that were available in North America, so we coated -- uncoated prill with those coating agents, and then we submitted to them storage tests; and we evaluated from there, which was the best available in the market.

Q. So you were looking at the outside coating that you put on a low-density prill in your manufacturing process. Is that

right?

A. Yes.

Q. And you were trying to determine which low -- which coating was most appropriate?

A. Yes. If there was any better one than the ones we were currently using.

Q. Did there come a time when you also conducted a study about the coating agents used by your competitors?

A. Yes. The following year -- actually for two years after that in '94 and '95, we did evaluate the whole North American porous producers' prills.

Q. Now, when you did this study of your competitors, did you look at the coating agents that were put on their prills?

A. Yes.

Q. And again, we're talking about only low-density explosive-grade prills. Correct?

Vivian DeWyse - Direct

A. Correct.

Q. Did you also look at the additives that are put into the inside of the prills after the ammonium nitrate is manufactured?

A. Yes.

Q. So you looked at two elements of the recipe of the prill. Is that right?

A. Yes.

Q. Now, when did you conduct this study?

A. In '94 and '95.

Q. And did you specifically look at the recipes, let's call them, for your competitors' prills that they manufactured in 1994?

A. Yes.

Q. Did you obtain data on the prills manufactured by all of your competitors?

A. Yes.

Q. How did you know who all of your competitors were? How did you know who all the manufacturers of low-density ammonium nitrate were?

A. I did not; but I was given a list by our business ammonium nitrate group, who, of course, know who all is out there.

Q. And you were given the names of all the companies that produce low-density ammonium nitrate prills in 1994 in North America; is that right?

Vivian DeWyse - Direct

A. That's right.

Q. Did you obtain samples from each and every one of those companies?

MR. TRITICO: Excuse me, your Honor. I'm going to objection as to the leading.

THE COURT: Sustained as to leading.

BY MS. WILKINSON:

Q. What did you do after you received the names of the companies, Ms. DeWyse?

A. I called them up and asked them to receive a sample for evaluation.

Q. Did you ask them for any other information?

A. Yes. Just to give me a rough estimate of what was the type of additives and coatings they were using and if they were pleased with that type of additive and coating and how was their prill performing.

Q. After you received all of that information from your competitors, did you conduct chemical analyses on each of the prills?

A. Yes.

Q. What did you do?

A. Not personally, but our analytical group did because of the study we did before. We knew what additives and coatings are available to ammonium nitrate producers. A data bank was set up, so that was actually used to actually look at all the

Vivian DeWyse - Direct

competitive samples just to duplicate what was verbally said as an additive for that coating.

Q. Let's use an example of Arcadian. They're one of your competitors?

Did you compare the chemical analysis of the prill that you did to the recipe that they had given you?

A. Yes.

Q. And was the recipe accurate?

A. Yes.

Q. And did you conduct that chemical analysis on each and every prill that you received from each and every competitor?

A. Yes.

Q. And were you able to determine, then, what internal additive was used by every competitor?

A. On that specific sample, we did we receive, yes.

Q. And did you determine the elements that were used in the coatings for all of those prills?

A. Same answer, yes.

Q. And did you create a chart setting forth those elements or those recipes for ICI's prills as well as your competitors'?

A. Yes, we did.

Q. Okay. Now, have you reviewed that chart that you created concerning the 1994 low-density prills and reviewed the recipes for the internal additive and the coatings?

A. Reviewed?

Vivian DeWyse - Direct

Q. Did you review it prior to coming to court today, the chart you created?

A. Yes.

Q. And do you recall what internal additive ICI used at the Joplin manufacturing plant in Missouri in 1994 for low-density ammonium nitrate prills?

AMMONIUM NITRATE PRILLS.

A. Aluminum sulfate.

Q. And what coating did they use in 1994 for low-density ammonium nitrate prills?

A. Petro AG and talc.

MR. TRITICO: Excuse me?

THE COURT: Will you repeat that, please.

THE WITNESS: Petro AG and talc.

BY MS. WILKINSON:

Q. Explain to everyone what that is.

A. It's a wet coating agent, in addition to a dry coating agent, so they'll stick together.

Q. You have Petro AG as one portion and talc, T-A-L-C. Is that right?

A. Yes.

Q. So aluminum sulfate is on the inside of the prill for ICI. Is that right?

A. Uh-huh.

Q. And Petro AG and talc are on the outside of the prill?

A. Exact.

Vivian DeWyse - Direct

Q. And that was ICI's recipe in 1994?

A. Exact.

Q. After reviewing the chart, can you determine whether any of your competitors used that exact recipe in 1994 based on the chart?

A. Based on the chart -- as I said before, that chart was based on the information I obtained verbally and also on the sample we received. No, there was no other that had that specific combination.

Q. So based on your analysis, ICI was the only manufacturing company in 1994 to make low-density ammonium nitrate prills with aluminum sulfate and Petro AG and talc. Is that correct?

A. From the information I have, yes.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Mr. Tritico?

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good morning.

A. Good morning.

Q. Do you pronounce your name DeWyse?

A. DeWyse.

Q. My name is Christopher Tritico. You and I have not met before, have we?

A. No.

Q. I have never had the privilege to sit down and talk with

Vivian DeWyse - Cross

you about the testing that you and your company did in 1994 and 1995, have I?

A. No.

Q. Okay. You can't nod. He can't take it down. Okay?

A. Okay.
Q. Thank you. Now, how many times have you met with Ms. Wilkinson?
A. Twice.
Q. And when was the first time?
A. On a Thursday night two weeks ago.
Q. Two weeks ago? Thursday night two weeks ago was the first time you met her?
A. Yes.
Q. And how long did you all talk?
A. Roughly an hour, I would say.
Q. About an hour? Did you come here, or did she come to you?
A. I came here.
Q. Where did you come here from?
A. Directly from home.
Q. Okay. Do you live here in Denver, or did you travel here from --
A. I traveled here.
Q. From where?
A. From Montreal.
Q. Okay.

Vivian DeWyse - Cross

A. Quebec.
Q. That's what I was trying to get to.
And you spent how many days here?
A. I left the next morning.
Q. Okay. And did you go over the entire report that ICI did with respect to its testing of the prills that you were talking about a moment ago?
A. No.
Q. Okay. You just talked about the talc and the aluminum sulfate?
A. Yes, the table.
Q. That's all she talked to you about last week?
A. Yes.
Q. When was the first time you met with her?
A. That was two weeks ago.
Q. Okay. When was the second time?
A. That was last Wednesday.
Q. Okay.
A. But that was no talk. Just in and out, and we didn't have to meet, really. That's a misunderstanding.
Q. I'm sorry. I cut you off. You didn't have a chance to sit down and talk with her about the testing that ICI did?
A. Not again, no.
Q. Have you met with anybody else from the prosecution team on this case? Other than Ms. Wilkinson, have you met with any of

Vivian DeWyse - Cross

these other lawyers?
A. No.

Q. Have you met with individuals from the Federal Bureau of Investigation?

A. No.

Q. The testing -- did you personally do the testing in 1994 and 1995 that you were referring to a moment ago wherein you identified the aluminum sulfate and the Petro AG/talc?

A. Not that part specifically, no. That was done by our analytical group, yes.

Q. And the analytical group you were not a part of. Is that fair?

A. At that time, no.

Q. Who did the testing?

A. Carmella Petro Monaco.

Q. Can you spell that?

A. P-I-E-T-R-O, M-O-N-A-C-O, Carmella. She was the chemist at that time.

Q. That handled the testing to determine the outside coating and the inside additives to the different prills that you tested?

A. Yes, reason being because she set up the data bank the year before.

MR. TRITICO: May I approach?

THE COURT: Yes.

Vivian DeWyse - Cross

Please show Ms. Wilkinson what you're --

MR. TRITICO: Oh, oh.

BY MR. TRITICO:

Q. I've handed you what's been marked as McVeigh Exhibit

No. J479. Is that correct?

A. Yes.

Q. Is this the chart that you were talking about a moment ago?

A. Yes.

Q. This is the chart that you looked at to determine that ICI was the only company in 1994 that produced ammonium nitrate prills with aluminum sulfate on the inside and Petro AG/talc on the outside. Is that correct?

A. Yes. I could speak a hundred percent sure for ICI. I cannot for the others.

Q. Okay. And this is the chart that was created by your analytical group. Right?

A. Yes. In conjunction with the information I got verbally, yes.

MR. TRITICO: I'll offer McVeigh J479, your Honor.

MS. WILKINSON: No objection.

THE COURT: Received.

MR. TRITICO: May I publish?

THE COURT: Yes.

BY MR. TRITICO:

Q. Now, what we're looking at here: This is the exhibit;

Vivian DeWyse - Cross

right? Can you see that on your screen?

right? Can you see that on your screen?

A. Yes.

MS. WILKINSON: Your Honor, he's showing the highlighted version.

MR. TRITICO: Mine has highlights on it. I could use hers.

THE COURT: Well, I think it's better to use one that is not highlighted.

MR. TRITICO: Okay.

BY MR. TRITICO:

Q. This one is the same one that you were looking at a moment ago; right? Can you read it?

A. Yes.

Q. Without highlights. Right?

A. Yes.

Q. Okay. Now, ICI, Joplin, is the one you looked at that says "aluminum sulfite"; right?

A. Yes.

Q. And "Petro AG/talc"; right?

A. Right.

Q. Now, let's go down here to ETI - DuPont. Can you see that where I'm pointing now?

A. Yes.

Q. If we look over at their additives, they have aluminum sulfate and they have Petro AG, but this says "clay." Right?

Vivian DeWyse - Cross

A. Yes.

Q. Is that different from the talc?

A. Yes.

Q. It's a powder form?

A. It's a powder form.

Q. Okay. And now we got -- does that say "Nutrite"?

A. Yes, sir.

Q. That's a company that makes ammonium nitrate?

A. Also, yes.

Q. That's not ICI?

A. No.

Q. If you look at their additives, the internal additive says "Aluminum Sulfate"?

A. "Ammonium Sulfate."

Q. It sure does. And they have Petro AG/talc?

A. Yes.

Q. Well, that impeachment didn't go very far.

I didn't take chemistry in high school.

Now, how many companies use aluminium sulfate as an internal additive?

A. To my best recollection, they're all listed here.

Q. Okay.

A. I believe it's three.

Q. Looking at this, Dyno --

A. Nobel.

Vivian DeWyse - Cross

Q. Dyno Nobel?

A. Uh-huh.

Q. They use aluminum sulfate as a special additive?

A. That year, yes.

Q. ICI, of course. We'll skip over Nutrite.
And ETI. Right?

A. Yes.

Q. How many of the companies used Petro AG/talc as an internal additive?

A. None. It's not an internal additive.

Q. I mean -- I'm sorry. As an external coating.

A. I believe only one.

Q. Well, Laroche, right? Can you read this, or do I need to make it closer?

A. It's very small, and my memory is not good.

Q. Okay. All right. So Laroche -- let me move this over there. Do you see the Laroche?

A. Yes.

Q. Now, if I move this over to the coating, that's the Petro AG/talc. Right?

A. Yes.

Q. And ICI, of course, uses the Petro AG/talc; right?

A. Yes.

Q. At both plants, Carseland, AB -- do they use the Petro AG/talc there?

Vivian DeWyse - Cross

A. Yes.

Q. And then Apache Powder; is that right?

A. Yes.

Q. They use the Petro AG/talc; right?

A. Yes.

Q. Were you involved in any other work with respect to this case at ICI?

A. No.

Q. Do you know if -- if your company performed any other work on this case for the Federal Bureau of Investigation or the prosecution in this case?

A. I'm not aware of it, no.

Q. Were -- in 1994 -- '95 and '96, were you in the lab at ICI? Did you work in the lab is what I'm trying to ask you.

A. Yes.

Q. And were you aware of any testing done by your company for the Federal Bureau of Investigation or for the prosecution?

A. From what I understand, it could have been, yes; but agriculture, which is not my field of expertise at all, so that's about all I know about it.

Q. Your understanding is that the agricultural department did some testing?

A. I'm --

Q. I'm not arguing with you. I didn't understand what you said.

Vivian DeWyse - Cross

Was it your understanding that the agricultural department did some testing?

A. I believe that's what went on, but I was not involved in it.

Q. Have you reviewed any reports prepared by ICI on behalf -- for the Federal Bureau of Investigation or for the prosecution in this case?

A. One, yes.

Q. And what's the date of that report?

A. '90 -- I don't know. I can't remember.

Q. Do you know Mr. -- I believe -- somebody named Flanagan?

A. Yes.

Q. Is that a man, or a woman?

A. A man.

Q. And what's his first name?

A. John. Dr. John Flanagan.

Q. And how about M. A. Kennedy?

A. Dr. Kennedy. That's a lady.

Q. And how about W. Ridley?

A. That's Bill Ridley.

Q. Have you read their report?

A. That's the one I was referring to, yes. I couldn't remember.

Q. This was an analysis of ammonium nitrate samples provided to ICI by the Government in this case. Is that right?

Vivian DeWyse - Cross

A. I believe so, yes.

Q. Do you know where the samples came from?

A. No. I'm afraid --

MS. WILKINSON: Objection, your Honor. She doesn't have personal knowledge.

THE COURT: Sustained.

BY MR. TRITICO:

Q. Do you know how they arrived at ICI?

MS. WILKINSON: Objection.

THE COURT: Sustained. It's beyond the scope.

MR. TRITICO: Okay.

BY MR. TRITICO:

Q. Did you review the entire report prior to coming to testify here today?

THE COURT: Which report?

MR. TRITICO: I'm sorry. The ones that I was referring to.

BY MR. TRITICO:

Q. The one by Mr. Flanagan, Ms. Kennedy and Mr. Ridley.

Did you read it?

A. I did.

Q. Did you have a discussion with either Mr. Flanagan, Ms. Kennedy, or Mr. Ridley prior to your coming to testify today?

A. Mr. Ridley, I did, yes.

Q. And you discussed this report with him and the work that he

Vivian DeWyse - Cross

did for the Government in this case?

A. Yes. I discussed the results with him.

Q. And found out what the results of the testing he performed for the Government was; is that right?

A. Yes.

Q. In other words, you wanted to know before you testified what they had done, how they did it, and what conclusions they arrived at; right?

A. Yes.

Q. And he told you that; right?

A. It's written in the report.

Q. Sure. And he explained to you what they did. Right?

A. Yes.

Q. And you've been practicing in biology for how long -- chemistry -- excuse me -- for how long?

A. Since '84.

Q. And you handled the machines and the analysis techniques that were done in this report before -- you've done that before; right?

A. No. When I said I've worked in the analytical group, I've done it on the physical characteristics, never on identifying footprints of the additives and the chemicals. That part, no.

Q. And the reason that you haven't -- one of the reasons that you haven't is ICI doesn't typically do the things that the FBI asked them to do that resulted in the creation of this report;

Vivian DeWyse - Cross

is that right?

MS. WILKINSON: Objection, your Honor. Again, beyond the scope.

THE COURT: Sustained.

MR. TRITICO: That's all I have at this time, your Honor.

THE COURT: Ms. Wilkinson?

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Just to clarify, Ms. DeWyse, Defense Exhibit J479: When was this chart created?

A. The report is issued in '95.

Q. Was that, if you know, before, or after Mr. Ridley performed some of the testing?

A. Which testing?

Q. The testing he did for the FBI.

A. Way before.

MS. WILKINSON: Your Honor, if I could publish this again.

THE COURT: All right.

BY MS. WILKINSON:

Q. Mr. Tritico pointed out to you that of all these companies, there is only one that has a similar formula, but the difference was down here at ETI they use aluminum sulfate -- there you go. See where I'm pointing?

Vivian DeWyse - Redirect

A. Yes.

Q. And they use Petro AG, but they use Kaolin clay. Correct?

A. Yes.

Q. Whereas at ICI, you all use talc?

A. Correct.

Q. For us amateurs, that may sound similar; but for you chemists, there is a big difference between the clay and the talc? Are they different elements?

A. Yes.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Anything else of this witness?

MR. TRITICO: Not at this time, your Honor; but I would like to have her held on call.

THE COURT: I can't hear.

MR. TRITICO: I would like to have her subject to recall.

THE COURT: Well, you may step down now and return home, but you could be summoned back here again; so what that means is that you must not discuss your testimony with anybody else who may be a witness. You understand?

THE WITNESS: I understand.

THE COURT: All right. You're excused for now.

Members of the jury, we'll take our usual recess and, of course, with the usual cautions that you must avoid discussing what you hear and see about the case and anything else about the case. And of course, as you're aware from being here this morning, our subject matter broadens as we go along. The thing that you must not talk about -- and that includes now what you're hearing from chemists, so that's another area that we say is out of bounds for you in your discussions, not that you are likely to discuss chemistry during the noon recess. We ask that you be careful.

And, of course, that's part of the requirement that you keep open minds about the case until our trial is completed and the case given to you for decision.

You're excused now until 1:40.

(Jury out at 12:09 p.m.)

THE COURT: Recess, 1:40.

(Recess at 12:10 p.m.)

* * * * *

INDEX

Item

Page

WITNESSES

Ronald Kelly

Cross-examination Continued by Mr. Tritico 9394

Redirect Examination by Ms. Wilkinson

Recross-examination by Mr. Tritico

Redirect Examination by Ms. Wilkinson

Recross-examination by Mr. Tritico

Redirect Examination by Ms. Wilkinson

WITNESSES (continued)

(Ronald Kelly)

Recross-examination by Mr. Tritico

Marsha Moritz

Direct Examination by Mr. Mendeloff

Voir Dire Examination by Ms. Ramsey

Direct Examination Continued by Mr. Mendeloff 9474

Cross-examination by Mr. Mendeloff

Redirect Examination by Mr. Mendeloff

Recross-examination by Ms. Ramsey

Redirect Examination by Mr. Mendeloff

Vivian DeWyse

Direct Examination by Ms. Wilkinson

Cross-examination by Mr. Tritico

Redirect Examination by Ms. Wilkinson

PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
420	9482	9482			
421	9494	9494			
423	9468	9468			
426	9472	9475			
467	9504	9504			
738	9441	9441			
738A	9451	9451			
738B	9457	9457			

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
J417					
J417	9433	9433			
J478	9412				
J478					
J478	9435	9435			
J478A	9417	9417			
J479	9528	9528			

* * * * *

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 19th day of May, 1997.

Paul Zuckerman

Kara Spitler