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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

ff

REPORTER'S TRANSCRIPT
(Trial to Jury: Volume 68)

ff

Proceedings before the HONORABLE RICHARD P.
MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 11:07 a.m., on the 7th day of
November,
Denver,
1997, in Courtroom C-204, United States Courthouse,
Colorado.

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Transcription
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629-9285

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APPEARANCES

Western

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PATRICK RYAN, United States Attorney for the

Oklahoma

3

District of Oklahoma, 210 West Park Avenue, Suite 400,

4

City, Oklahoma, 73102, appearing for the plaintiff.

JAMIE

5

LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,

U.S.

6

ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the

Denver,

7

Attorney General, 1961 Stout Street, Suite 1200,

8

Colorado, 80294, appearing for the plaintiff.

Attorneys

9

MICHAEL TIGAR, RONALD WOODS, and JANE TIGAR,

Colorado,

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at Law, 1120 Lincoln Street, Suite 1308, Denver,

11

80203, appearing for Defendant Nichols.

12

* * * * *

13 PROCEEDINGS

14 (Reconvened at 11:07 a.m.)

15 THE COURT: Be seated, please.

16 (Jury in at 11:07 a.m.)

17 THE COURT: All right. Next witness, please.

18 MR. MACKEY: Yes, your Honor. We would call
FBI Agent

19 Thomas Brown.

20 THE COURTROOM DEPUTY: Would you raise your
right

21 hand, please.

22 (Thomas Brown affirmed.)

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

24 Would you state your full name for the record
and

25 spell your last name.

7575

1 THE WITNESS: Thomas R. Brown, B-R-O-W-N.

2 THE COURTROOM DEPUTY: Thank you.

3 THE COURT: Mr. Ryan?

4 MR. RYAN: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MR. RYAN:

7 Q. Good morning.

8 A. Good morning.

9 Q. Agent Brown, where are you employed?

10 A. I'm employed with the FBI.

11 Q. And how long have you been an agent of the FBI?

12 A. Approximately eight years.

13 Q. Where are you assigned at this time?

14 A. Wichita, Kansas office, which is part of the Kansas
City

15 division.

16 Q. Were you assigned to that same office in April,
May, 1995?

17 A. Yes, I was.

18 Q. Did you participate in the investigation of the
Oklahoma

19 City bombing?

20 A. Yes, sir.

21 Q. Was one of your tasks that you were asked to
participate in

22 to conduct a search at the home of Terry Nichols?

23 A. Yes, sir.

24 Q. And do you recall when that occurred?

25 A. The first search that I conducted was April 29,
1995.

7576

Thomas Brown - Direct

1 Q. And under what authority were you -- you and the
other
2 agents of the FBI entitled to conduct that search?
3 A. A search warrant authorized by the district court.
4 Q. Now, who accompanied you on the search?
5 A. It was myself, Special Agent Fred Hillman with the
FBI;
6 Special Agent Leslie Earl, also with the FBI, and
Special Agent
7 Fred Hillman (sic), also with the FBI.
8 Q. What items were you authorized to seize in
accordance with
9 the search warrant?
10 A. Various explosives and men's clothing.
11 Q. Did you search the home thoroughly for these items?
12 A. Yes, we did.
13 Q. Did you look in small places?
14 A. Yes, we did.
15 Q. Did you open boxes and look as carefully as you
could for
16 these items?
17 A. Yes, we did.
18 Q. In the course of looking for the items outlined in
the
19 search warrant, did you come across some tools?
20 A. Yes.
21 Q. And would you describe what you came across.
22 A. There were numerous tools throughout the house,
various

number 23 hand tools. There were some drills. There was saws, a

24 of various hand tools.

25 Q. Let me show you what has been marked for
identification as

7577

Thomas Brown - Direct

1 Exhibit 2010. It will appear on your screen right
under your

2 counter.

3 Were photographs taken during the search on
April 29?

4 A. Yes, they were.

5 Q. Do you recall who the photographer was?

6 A. Special Agent Fred Hillman.

7 Q. Now, looking at Exhibit 2010, can you identify that
for us?

8 A. That is a blue box with the word "Makita" on it.

9 THE COURT: Well, you can't go into the
details. It's

10 not evidence.

11 THE WITNESS: Oh.

12 BY MR. RYAN:

13 Q. Just can you identify the photograph?

14 A. Yes, sir. It was a photograph taken on April 29 by
Fred

15 Hillman during that search.

16 Q. Were you present?

17 A. Yes, I was.

18 MR. RYAN: Your Honor, we move to -- well,
before I
19 ask that.

20 BY MR. RYAN:

21 Q. What -- where in the home of Terry Nichols was
Exhibit 2010
22 located?

23 A. In the basement.

24 MR. RYAN: Your Honor, we'd move the admission
of
25 Exhibit -- Government's Exhibit 2010.

7578

Thomas Brown - Direct

1 MR. TIGAR: No objection.

2 THE COURT: 2010 received.

3 BY MR. RYAN:

4 Q. Now, let me show you what's been marked as 2011 --
before
5 we do that, explain to the jury what they're looking at
here on
6 the Exhibit 2010.

7 A. This photograph was taken in the basement. It is a
blue
8 box with the word "Makita" on it. It's a metal box.

9 Q. Did you open the box?

10 A. Yes, we did.

11 Q. Now, let me show you what's been marked for
identification

12 purposes as Exhibit 2011 and ask you if you can
identify that.

13 A. This is a photograph of contents of the blue box
earlier

14 depicted.

15 Q. Did you go through the box at that time?

16 A. Yes, sir.

17 Q. Does Exhibit 2011 accurately depict the contents of
the

18 blue Makita box in Exhibit 2011 -- 2010, I mean?

19 A. Yes, it does.

20 MR. RYAN: Your Honor, we'd move the admission
of

21 Exhibit 2011.

22 MR. TIGAR: No objection your Honor.

23 THE COURT: Received, 2011.

24 BY MR. RYAN:

25 Q. The exhibit is now being displayed to the jury.
Would you

7579

Thomas Brown - Direct

1 tell them what they're seeing in this exhibit.

2 A. This is a Makita cordless drill. To the left of

the

3 photograph is a yellow box that contains drill bits;
and there

4 is an extra battery that you can see laying there, and
there is

5 a battery charger and other miscellaneous items.

6 Q. Now, let me show you what's been marked as Exhibit
2012 for

7 identification, ask you if you can identify this.

8 A. Yes. This is also a photograph taken on the same
day,

9 April 29, 1995.

10 Q. And is this the same box with the contents
displayed that

11 you located in the home of Terry Nichols?

12 A. That's correct.

13 MR. RYAN: Your Honor, we'd move admission of
Exhibit

14 2012.

15 MR. TIGAR: No objection, your Honor.

16 THE COURT: 2012 received.

17 BY MR. RYAN:

18 Q. If you would, Agent Brown, would you explain to the
jury

19 what they're seeing in this exhibit?

20 A. This is a photograph of the interior of the same
box. The

21 only difference is the yellow box is now opened. You
can see

22 the contents of that yellow box and that being drill

bits.

23 Q. Now, following the search on April 29 -- well,
before I go

24 to that question, let me ask you: Did you seize these
exhibits

25 that we've been looking at, the Makita drill box and
the

7580

Thomas Brown - Direct

1 contents, during the search of April 29?

2 A. No, sir.

3 Q. Why not?

4 A. It was outside of the scope of the warrant.

5 Q. Did you following leaving the home of Terry Nichols
on the

6 29th -- did you report the findings of this -- of your
search

7 to your superiors?

8 A. Yes, we did.

9 Q. As a result, was a search warrant requested and
obtained on

10 May 3?

11 A. Yes, sir. It was actually obtained on May 2 and
was

12 executed on May 3.

13 Q. Did you participate in that search as well?

14 A. Yes, I did.

15 Q. Now, when you rushed to the home of Terry Nichols
on May 3,

16 did you seek to locate this Makita drill box?

17 A. Yes, we did.

18 Q. And where did you find it?

19 A. It was in the same place we left it, in the
basement of the

20 residence.

21 Q. Was there -- had there been any change or
alteration at all

22 with respect to the box or its contents?

23 A. No, sir.

24 Q. The photographs that we've admitted into evidence
as 2010,

25 2011, 2012: Would they accurately depict what you saw
in the

7581

Thomas Brown - Direct

1 Makita tool box on the search of May 3?

2 A. Yes, sir.

3 Q. Now, you have before you what has been marked as --
as

4 Exhibit 151 and 151A, the box being 151 and the drill
inside is

5 151A. Would you take a moment and look at those items.

6 A. I notice on the outside of the box, it indicates
the box is

7 151A.

you can 8 Q. Yes. I'd like for you to look at them and see if
that you 9 determine whether or not those are the same exhibits
10 seized in the home of Terry Nichols on May 3.

we took 11 A. Yes. These are the -- this is the same item that
12 on May 3, 1995.

13 Q. Would you look at the serial number on the drill?

14 A. Yes.

evidence 15 Q. And does that serial number correspond with your
16 log?

17 A. Yes, it does.

admission of 18 MR. RYAN: Your Honor, we would move the
19 Exhibits 151 and 151A.

your 20 MR. TIGAR: May I approach the bench briefly,
21 Honor?

22 THE COURT: Yes.

23 (At the bench:)

court 24 (Bench Conference 68B1 is not herein transcribed by
25 order. It is transcribed as a separate sealed
transcript.)

1 (In open court:)

2 MR. TIGAR: Subject to the conference at the
bench,
3 your Honor, no objection.

4 THE COURT: All right. It's 151 and 151A?

5 MR. RYAN: Yes, your Honor.

6 THE COURT: Received.

7 BY MR. RYAN:

8 Q. Now, after you seized the Exhibit 151 and 151A,
what did
9 you do with it?

10 A. A sticker was affixed to the front of the box, and
it was
11 taped with evidence tape.

12 Q. Was it taped in such a way that the box could not
be opened
13 without breaking the tape?

14 A. That's correct.

15 Q. And then what was -- after you taped up the box,
what did
16 you do with it next?

17 A. It was transported back to Junction City, Kansas,
and we
18 put it in an FBI storage facility.

19 Q. And when was the last time that you saw this
Exhibit 151
20 and 151A?

21 A. May 4, 1995.

22 MR. RYAN: That's all I have, your Honor.

23 THE COURT: Is the box that you're referring
to the
24 case?

25 THE WITNESS: Yes, sir, the case. I'm sorry.

7586

Thomas Brown - Direct

1 THE COURT: All right. Mr. Tigar?

2 CROSS-EXAMINATION

3 BY MR. TIGAR:

4 Q. Good morning, Agent.

5 A. Good morning.

6 Q. My name is Michael Tigar. I'm one of the lawyers
appointed
7 to help out Terry Nichols.

8 A. Yes, sir.

9 Q. On the 29th of April, was that the first search
that you
10 had participated in?

11 A. Yes, sir.

12 Q. As a member of the team?

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

14 Q. And you were there with Mr. Earl; correct?

15 A. I was.

16 Q. All right. Now, when you went -- and that warrant,

the

17 first time you went, that authorized you to seize
clothing; is

18 that correct?

19 A. Clothing and explosives.

20 Q. And explosives. And did you get some clothing that
day?

21 A. Yes, we did.

22 Q. Okay. And, of course, you handled that properly
and

23 returned it to the -- took it wherever it was supposed
to go.

24 Correct?

25 A. Yes, sir.

7587

Thomas Brown - Cross

1 Q. Now, you testified that you were searching there
under a

2 warrant issued by a court; is that correct?

3 A. That's correct.

4 Q. Did you have a briefing before you went on the
search?

5 A. We read the warrant and what it authorized us to
took -- to

6 take. I'm not sure that we had a briefing necessarily.
We

7 discussed it informally.

8 Q. Who told you to do it, to make the search on the

29th?

9 A. Supervisor, Mike Shannahan.

10 Q. Did anybody else tell that you Mr. and Mrs. Nichols
had

11 both signed consents to search their home?

12 A. Not that I'm aware of. I don't recall it, if they
did.

13 Q. At any rate, you never saw a signed consent to
search by

14 either Mr. or Mrs. Nichols; is that correct?

15 A. That's correct.

16 Q. Did anyone ever show you a diagram of the house
that had

17 been prepared by Mr. Nichols and given to the FBI?

18 A. No, sir.

19 Q. At the time that you went to the home on the 29th,
was

20 Mrs. Nichols home?

21 A. No, sir.

22 Q. Do you know where she was?

23 A. Not specifically. I don't, no, sir.

24 Q. Now, you say that you went back there on the 3rd
and you

25 found the Makita drill; correct?

7588

Thomas Brown – Cross

1 A. That's correct.

the 2 Q. Now, were you wearing gloves when you handled it on
3 29th?
4 A. Yes, sir.
5 Q. And the latex gloves, or cotton?
6 A. Latex.
7 Q. Latex gloves?
8 A. Yes, sir.
or they 9 Q. Do you know if those had talc in them, or on them,
10 were just plain?
11 A. As I recall, they had talc.
12 Q. And that's for ease of getting them on and off?
13 A. Yes, sir.
you 14 Q. And the reason you wore the latex gloves was that
15 wanted to preserve any fingerprints that might be on
the item.
16 Correct?
17 A. Yes, sir.
correct? 18 Q. And you had seen Makita drills before that date;
19 A. Yes, sir.
store? 20 Q. In fact, you can buy a Makita drill at any hardware
21 A. Yes, sir.
please, and 22 Q. And would you open up the box for us -- for me,

That 23 take out the yellow item that contains the drill bits.
24 was on the picture?
25 A. Yes, sir.

7589

Thomas Brown - Cross

1 Q. Now, that is a Makita item, or is that a --
something that

2 was bought in the after market?

3 A. As far as I know, it would be bought in the
aftermarket.

4 Q. Okay. And when you go to the hardware store, have
you seen

5 collections of drills (sic) like that, packaged in a
little

6 plastic box like that?

7 A. Yes, sir, I have.

8 Q. There is nothing about those drills (sic) to your
9 inspection that looked different from what you saw in
an

10 ordinary hardware store; is that correct?

11 A. That's correct.

12 Q. Now, the box that you're holding in your hand, sir,
has

13 some black smudges on it. That wasn't on there when
you found

14 it; correct?

15 A. That's correct.

16 Q. And you understand that's from the fingerprinting
process?

17 A. That would be my understanding.

18 Q. Now, do you know what happened to the drill after
you found

19 it? You said you took it to the locker. Correct?

20 A. Yes, sir.

21 Q. Now, when you were looking at it, did you notice
any metal

22 shavings or chips in the chuck of the drill?

23 A. No, sir.

24 Q. All right. And would you take out the drill that
you have

25 there and hold it up for the jury. And I'm just doing
this for

7590

Thomas Brown - Cross

1 the record because everybody has seen a drill, but
could you

2 point to the chuck of the drill?

3 A. It would be this area here towards the front.

4 Q. And that's a part that has -- that's where the
drill bit

5 goes in and then there is a way to tighten the drill
bit;

6 correct?

7 A. Correct.

right? 8 Q. And there is a sort of a gear-type assembly there;

9 A. Yes, sir.

the 10 Q. Okay. You can put that back in there. That's all

11 questions I had.

date, was 12 Now, when you were with Agent Earl on that

on the 13 he doing something else other than looking for a drill,

14 3rd of May?

15 A. Well, we all were together in the house.

16 Q. Uh-huh.

17 A. And went through the house together, so . . .

18 Q. Right. Was he looking for books?

19 A. On May 3?

20 Q. Yes, sir.

21 A. Not particularly. We recovered a book.

22 Q. Oh, you got -- and some other literature and stuff?

23 A. Yes, uh-huh.

29th 24 Q. Okay. Now, had you noticed some books there on the

25 when you went in?

7591

Thomas Brown - Cross

1 A. Yes, sir.

2 Q. And had you noticed a book in a Quaker State
cardboard box?

3 A. I don't recall a Quaker State box, but --

4 Q. Now, when you went in on the 29th, did you see a
number of

5 books?

6 A. Yes, sir.

7 Q. About how many did you see?

8 A. I have no idea. I just don't recall.

9 Q. Did you have a discussion on the 29th with the
other agents

10 about whether you wanted to take some of the books that
you had

11 seen?

12 A. Well, we could not take them under that warrant.

13 Q. Uh-huh.

14 A. Because it was outside the scope of the warrant.

15 Q. I understand that.

16 A. We thought that they could be important, and so we
reported

17 it back to the supervisor.

18 Q. Now, did you report back to the supervisor the name
of just

19 one book, or did you report the name of many books?

20 A. I don't know the answer to that.

21 Q. Okay. You weren't on book detail. Is that fair to
say?

22 A. I was not specifically looking at the books.

23 Q. Okay.

24 A. I was keeping the evidence recovery log.

25 Q. All right. Now, on the 3rd, you did -- did you
keep the

7592

Thomas Brown - Cross

1 evidence recovery log that reflected the recovery of
books and
2 pamphlets and things like that?

3 A. Yes, I did.

4 Q. Okay. Now, at that time, did you have a discussion
with
5 Agent Earl about which books you should take?

6 A. We discussed each item that we -- we looked at. We
7 discussed each item amongst ourselves.

8 Q. Well, what I'm asking you is did you see in Mr. and
9 Mrs. Nichols' house a large number of books on many
different
10 subjects? Do you remember noticing that?

11 A. There were books on different subjects in the
house. That
12 would be correct.

13 Q. Okay. And by number, would you say more than 15 or
20?

14 A. I would think so. I'm just not certain of that,
sir. I
15 just don't recall.

16 Q. Right.

17 MR. TIGAR: Thank you very much, Agent.
18 I have no further questions, your Honor.
19 MR. RYAN: May I have just a moment, your
Honor?
20 THE COURT: Yes.
21 MR. RYAN: We have no redirect, your Honor.
22 We may recall this witness at later time.
23 THE COURT: All right. You may step down now,
Agent.
24 Next, please.
25 MR. MACKEY: Thank you, Judge.

7593

1 Brett Mills.
2 THE COURTROOM DEPUTY: Raise your right hand,
please.
3 (Brett Mills affirmed.)
4 THE COURTROOM DEPUTY: Would you have a seat,
please.
5 Would you state your full name for the record
and
6 spell your last name.
7 THE WITNESS: My name is Brett, B-R-E-T-T,
Ashley,
8 A-S-H-L-E-Y, Mills, M-I-L-L-S.
9 THE COURTROOM DEPUTY: Thank you.

10 THE COURT: Ms. Wilkinson.

11 MS. WILKINSON: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MS. WILKINSON:

14 Q. Good morning, Mr. Mills.

15 A. Good morning.

16 Q. Could you tell the ladies and gentlemen of the jury
where
17 you work.

18 A. I work for the FBI in the FBI Laboratory.

19 Q. How long have you been with the FBI?

20 A. Approximately eight-and-a-half years.

21 Q. When you started, did you start in the FBI
Laboratory?

22 A. No, ma'am.

23 Q. Where did you start?

24 A. I started in the mail room.

25 Q. How long did you stay in the mail room?

7594

Brett Mills - Direct

1 A. Approximately nine months.

2 Q. Then did you go on to the lab?

3 A. Yes, ma'am.

4 Q. First assignment there?

5 A. I was a physical science technician in the

Firearms/Tool

6 Marks Unit.

7 Q. Tell us what the Firearms/Tool Marks Unit is
generally?

8 A. We do cases that have firearms, bullets, cartridge
cases,

9 comparisons of; and then with tool marks we'll compare
tools to

10 known tool marks on a certain item.

11 Q. Tell us again what your position was when you were
in that

12 unit the first time.

13 A. I was a physical science technician.

14 Q. And did you have any training, general training, to
prepare

15 you for that?

16 A. You mean school?

17 Q. School. I'm sorry. Can you tell the jury about
your

18 undergraduate degree.

19 A. My undergraduate degree is in biology. I have a
B.S. from

20 Towson State University, Towson, Maryland.

21 Q. How long were you in the Firearms and Tool Marks
Unit?

22 A. Approximately a year and a half.

23 Q. Where did you go then?

24 A. I went to the Explosives Unit.

25 Q. What was your position in the Explosives Unit?

7595

Brett Mills – Direct

1 A. I was still a physical science technician.

FBI. 2 Q. Tell the jury what the Explosives Unit does at the

bombing 3 A. The Explosives Unit will receive evidence from

4 cases, from a exploded device, or from just what is a

5 suspicious bomb or a hoax bomb; and then we'll try and

and trace 6 reconstruct it and find out the component parts of it

7 it back to manufacturers and everything.

Explosives 8 Q. Were you a physical science technician in the

9 Unit in April of 1995?

10 A. Yes, I was.

responsibilities? 11 Q. At that time, what were your duties and

I 12 A. I would receive evidence, and I would inventory it.

assign an 13 would check it in, assign it a work sheet, and then

we refer 14 identifier number that we use in the laboratory which

15 to as a Q or a K.

16 Q. Okay. Let's break that down a little bit.

17 A. Okay.

18 Q. First you get evidence into the laboratory. Is

that right?

19 A. Yes, ma'am.

20 Q. And how do you receive evidence?

21 A. I receive evidence that has already been assigned
what we

22 refer to as a laboratory number, specific strictly for
the lab.

23 And it is on the original communication, which is a

24 communication from the contributor who is submitting
the

25 evidence.

7596

Brett Mills – Direct

1 The letter will detail, you know, who it's
from, who

2 is the officer; and then it will give us a listing of
the

3 evidence that's being submitted and the exams that are

4 requested of it.

5 Q. Okay. So if someone sent you evidence from
Herington,

6 Kansas, it would have a list of that evidence that was
supposed

7 to be in that container or submission or whatever you
call it?

8 A. Yes, ma'am.

9 Q. All right. And once you receive it, what do you do
with

10 it?

11 A. I would open up the container and read the
incoming, and

12 then I would see how many items I have; and then I
would start

13 comparing the items in the container to the items
listed on the

14 piece of paper to make sure that all the items did come
in.

15 Q. Okay. So you inventory the items; is that right?

16 A. Yes, ma'am.

17 Q. Do you prepare your work space in any way before
you do

18 that?

19 A. Yes, ma'am. I have a workbench. It's probably
about

20 10 feet by 4 feet.

21 I'll clean it down with a cleaning solution,
dry it

22 off. And then we go across the hall where we have a
wrapping

23 room, where we send packages back; and I tear off brown

24 wrapping paper called "craft paper," and I'll bring
that out

25 and lay it out onto the countertop. And then I'll set
my box

7597

Brett Mills - Direct

1 up. And then I'll put my latex gloves on, open the box

up and

2 then start checking in the evidence.

paper?

3 Q. And the purpose of that paper -- is it disposable

4 A. Yes, ma'am.

you're

5 Q. So do you use that with that submission or the box

6 talking about and get rid of it after that?

7 A. Yes, ma'am.

see the

8 Q. All right. Now, once you open up the box and you

9 evidence, what do you do?

items

10 A. As I pull it out of the box, I'll compare it to the

it's all

11 that are on the list itself; and then once I've seen

worksheet.

12 there, I'll start generating what I refer to as a

13 It's an internal document in the laboratory.

Q or K

14 And as I am checking it in, I will assign it a

15 number and then write out a brief description on it.

16 Q. Let's go back to those terms.

17 A. Sorry.

track of the

18 Q. Your worksheet: Is that just a way of keeping

19 evidence in the lab?

20 A. Yes, it's a short description.

numbers and

21 Q. What is a Q number or K number -- or what are Q

22 K numbers?

23 A. A Q number we use in the laboratory refers to a
questioned

24 item. We don't know what it is. And a K number is
what we

25 refer to as a known item, like a firearm or a tool.

7598

Brett Mills – Direct

1 Q. And do you assign a Q or K number to each item as
it comes
2 into the laboratory?

3 A. Yes, ma'am.

4 Q. Let's turn to April of 1995. After the bombing in
Oklahoma
5 City, did you receive an assignment related to the
6 investigation?

7 A. Yes, ma'am.

8 Q. What was your assignment?

9 A. I would be the technician in charge of the evidence
as it
10 was coming in. I would be handling it and doing my
duties with

11 it.

12 Q. And did you receive evidence or check in evidence
on May 18
13 of 1995?

14 A. Yes, ma'am.

15 Q. Do you recall doing it that day?
16 A. Yes, ma'am.
17 Q. And do you see Government's Exhibit 151, 151A -B,
and -C in
18 front of you?
19 A. May I open it?
20 Q. Sure.
21 A. Yes, ma'am.
22 Q. Did you receive those items on May 18, 1995?
23 A. Yes, ma'am.
24 Q. When you received them, what did you do?
25 A. I was checking the case in, and we were generating
our work

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Brett Mills - Direct

1 sheet; and I opened up the box and -- to see what the
items
2 were, gave a brief description for the work sheet, and
assigned
3 it a Q number.

4 Q. Did you examine all the items in the box when you
did that?

5 A. Yes, ma'am.

6 Q. Government's Exhibit 151, the drill, is already in
7 evidence. So could you take that out for a moment.

8 And can you tell the jury what kind of drill

that is.

9 A. This is a Makita cordless driver drill.

10 Q. Is there a battery in the drill?

11 A. Yes, ma'am.

12 Q. And was there a battery in the drill when you
examined it

13 back in May --

14 A. Yes, ma'am.

15 Q. -- of 1995?

16 Now, can you put that back in.

17 Can you look at Government's Exhibit 151C.

18 Now, when you looked in that box on May 18,
1995, what

19 did you see in there?

20 A. I saw a series of drill bits ranging in size from
1/16 to

21 11/64.

22 Q. Were there any missing at that time?

23 A. No, ma'am.

24 Q. Is there one missing from there now?

25 A. Yes, ma'am.

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Brett Mills - Direct

1 Q. Can you look at Government's Exhibit 151B.

2 Do you recognize that?

3 A. Yes, ma'am.

4 Q. Now, is that -- can you -- can you recognize what's
in the
5 bag?

6 A. It is a drill bit.

7 Q. Okay. Now, is there a marking on that bag, Q
number on
8 that bag?

9 A. Yes, ma'am. It's "From 2898."

10 Q. Tell the jury how you marked this whole Exhibit,
11 Government's Exhibit 151, 151A, -B and -C, with a Q
number.

12 A. This entire box with all the contents were given
one Q,

13 Q2898. And when this was removed out, the designation
of "From
14 Q2898" was assigned to it.

15 MS. WILKINSON: Your Honor, we offer
Government's

16 Exhibit 151B, which is the drill bit.

17 MR. TIGAR: No objection, your Honor.

18 THE COURT: Received, 151B.

19 BY MS. WILKINSON:

20 Q. After you examined all the items, did you place
them back
21 in the box?

22 A. Yes, ma'am.

23 Q. How did you seal the box after you had examined the
items?

24 A. I placed it in this Ziploc bag here.

25 Q. Did you mark the bag in any way?

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Brett Mills - Direct

1 A. Yes, ma'am.

2 Q. How did you mark the bag?

3 A. I put the laboratory number and the Q number,
Q2898, on it.

4 Q. Now, you have Government's Exhibit 151B in your
hand.

5 A. Yes, ma'am.

6 Q. That's the drill bit?

7 A. Yes, ma'am.

8 Q. Was that sent on to Agent Cadigan for examination
by the

9 Tool Marks and Firearms Unit?

10 A. Yes, ma'am.

11 MR. TIGAR: Objection.

12 If he knows, your Honor.

13 BY MS. WILKINSON:

14 Q. If you know. Do you know that it was sent?

15 A. Yes, ma'am.

16 Q. And did you receive it back from him after he
conducted his

17 examination?

18 A. Did I personally? No, ma'am.

19 Q. Are you aware whether the Explosives Unit received
it back?

20 A. Yes, ma'am.

21 MR. TIGAR: Your Honor, object. Lack of
foundation.

22 MS. WILKINSON: That's fine, your Honor.
We'll

23 withdraw the question.

24 THE COURT: All right. We'll strike the
answer.

25 MS. WILKINSON: All right. No further
questions.

7602

1 THE COURT: Mr. Tigar.

2 MR. TIGAR: Yes, your Honor, move to strike
the

3 answer.

4 I'm sorry. She's done. I'm about half a step
behind,

5 your Honor.

6 CROSS-EXAMINATION

7 BY MR. TIGAR:

8 Q. Good morning, Mr. Mills.

9 A. Hi.

10 Q. I'm Michael Tigar. I'm one of the lawyers
appointed to

11 help Terry Nichols in this case, sir.

12 You have a degree in biology?

13 A. Yes, sir.

14 Q. In 1991, you were transferred to the Explosives
Unit; is

15 that correct?

16 A. Yes, sir.

17 Q. And in the Explosives Unit, you were trained by Mr.
Davitch

18 and Mr. Rogers?

19 A. Yes, sir.

20 Q. Is that correct? And also by Special Agent David
Williams.

21 Is that right?

22 A. Yes, sir.

23 Q. And that was an informal training program that
lasted about

24 six months. Is that correct?

25 A. No, sir.

7603

Brett Mills – Cross

1 Q. How long did it last?

2 A. With Mr. Davitch, it was about six or eight months.
He was

3 going to agents class. Mr. Rogers stayed, and I still
learned

4 under him; and it kept on basically being an ongoing

process

5 with Mr. Williams.

6 Q. Is that right? So your training period lasted
longer than

7 six months?

8 A. Yes, sir.

9 Q. Do you remember giving a deposition in this case?

10 A. Yes, sir.

11 Q. Do you remember asking -- being asked the question:
"How

12 long did you train with Williams? Did you have a
training

13 period?"

14 Question (sic): "Uh-huh."

15 "Let's see. Approximately six months."

16 Is that what you're referring to, the Williams
17 training period, six months?

18 A. Are you referring to my deposition?

19 Q. Yes.

20 A. When I said that it was six months, that was like
my

21 initial trial period.

22 Q. Okay.

23 A. And then as time progressed, Mr. Williams would
still

24 review my work and I would still learn new things in
this new

25 school, so it was still an ongoing process.

Brett Mills – Cross

1 Q. All right. Now, you have a -- you testified to a
procedure

2 for maintaining cleanliness in your laboratory.
Correct, sir?

3 A. Yes, sir.

4 Q. Do you have a written protocol for maintaining
cleanliness

5 in your laboratory?

6 A. In the laboratory itself?

7 Q. Yes, sir.

8 A. Not that I'm aware of at the moment, sir.

9 Q. Yes. You've never seen one, in fact. Is that
right, sir?

10 A. Not for the lab.

11 Q. Okay. Now, the area of the laboratory we're
talking about

12 here where you receive the evidence: Does that have a
name or

13 a designation?

14 A. Which area? Are you talking about the Evidence
Control

15 Center?

16 Q. Yes, sir.

17 A. It's the Evidence Control Center.

18 Q. I see. And is there something called a 1B area?

19 A. Yes, sir.

20 Q. What is that?

21 A. That was a part of the Explosives Unit area.

with the
22 Q. Okay. Now, does the 1B area have anything to do
23 evidence that you're testifying about today?

24 A. Yes, sir.

25 Q. All right. What does it have to do with it?

7605

Brett Mills - Cross

1 A. This evidence was stored down there at one time.

evidence
2 Q. All right. Now, prior to its being used to store
3 in this case, what had the area been used for?

--
4 A. For a long period of time, or right before it, or

5 Q. Right before.

6 A. Right before? We had parked our crime scene
vehicle and a

7 box fan in there.

8 Q. A box fan. Now, was there a time when it was used
to store
9 a case -- evidence from another bombing?

10 A. Yes, sir.

11 Q. And the evidence that was stored there from the
other

12 bombing: What kind -- was that a pipe-bomb case?

13 A. To my knowledge, yes, sir.

14 Q. All right. Now, after -- prior to getting the
evidence in

15 this case, you did wash the floor and paint it;
correct?

16 A. Yes, sir.

17 Q. Now, you testified that when the evidence that
you're

18 looking at came in, there was something about Q numbers
and K

19 numbers. Right?

20 A. Yes, sir.

21 Q. Okay. Now, a K number -- that means a "known";
correct?

22 A. That's what we refer to it as, yes, sir.

23 Q. And a Q number means "questioned"; that is, we
don't know.

24 A. Correct.

25 Q. And one of the things that people in your business
try to

7606

Brett Mills - Cross

1 do is to figure out if a Q matches a K; right?

2 A. Yes, sir.

3 Q. Okay. If we could take a simple illustration of
that: If

4 I touched a piece of paper and left a latent
fingerprint and

the 5 that were recovered somewhere and processed to bring up
6 latent fingerprint, that might get a Q number; correct?
7 A. Are you talking about the piece of paper?
8 Q. Yes. The piece of paper might get a Q number.
9 A. Yes, sir.
10 Q. Right?
11 A. Yes, sir.
out if I 12 Q. And then they would go to their records and find
13 had ever been fingerprinted?
14 A. True.
has got a 15 Q. So they'd know that somebody named Michael Tigar
16 set of prints, and that might be the K that they would
try to 17 compare to the Q. Is that right? Is that how it
works?
18 A. I'm not sure about how Latents does. I don't know
--
19 Q. Okay.
20 A. I don't know if they K their fingerprint cards.
21 Q. Okay. You don't.
22 Can you give me an example from your
experience of the
23 comparison so that I can understand how this Q and K
business
24 works?
25 A. An example would be a bullet. You pull a bullet

out of a

7607

Brett Mills - Cross

1 victim's body.

2 Q. Okay.

3 A. And then we get a suspect weapon in.

4 Q. Ah. And you test-fire it.

5 A. Test-fire it.

6 Q. And we know that a -- the bullet out of the
suspect's body

7 is then put under a microscope and somebody looks at
the

8 little --

9 A. Striations.

10 Q. -- striations on it?

11 A. Yes, sir.

12 Q. And then we test-fire and we compare the
striations.

13 Correct?

14 A. Yes, sir.

15 Q. And that's because a bullet spins as it goes out
the front

16 of the firearm. Correct?

17 A. Yes, sir.

18 Q. And do you have any idea -- well, we'll ask
somebody else

19 about the details. This is just an example. Okay.

20 So do you have a written protocol for
determining

21 whether a specimen gets a Q or a K number?

22 A. It wasn't a protocol. We had papers from our
units. If we

23 received evidence and they would wind up doing their

24 examinations, we would -- they would like it written up
a

25 specific way. Firearms, for example: They had a
specific way

7608

Brett Mills - Cross

1 of writing up a weapon or a cartridge case or etc. So
we did

2 have paper on that, yes, sir.

3 Q. Now, you said on your direct examination that the
number

4 Q2898 was assigned. Right?

5 A. Yes, sir.

6 Q. Who assigned it?

7 A. I did.

8 Q. Okay. So you decided that Q2898 was the whole
package, the

9 box with the drill bits, and so forth.

10 A. Yes, sir.

11 Q. Now, there came a time when you took out the
quarter-inch

12 drill; right?
13 A. Yes, sir.
14 Q. When was that?
15 A. I believe July 11. I did not do it personally.
16 Q. Oh, you didn't do it personally?
17 A. No, sir.
18 Q. Who gave the drill bit that separate Q number?
19 A. The alphanumeric?
20 Q. Yes, sir.
21 A. Q2898A or B?
22 Q. Yes.
23 A. That would be by Mr. Cadigan.
24 Q. And Mr. Cadigan is?
25 A. Is a firearms/tool marks examiner.

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Brett Mills - Cross

He's
further
then
character

1 Q. Special Agent Cadigan, firearms/tool mark examiner:
2 the one that put the number on there. Is that right?
3 A. Not the number. We do have an alphanumeric. If
4 exams are going to be done on a large item like this,
5 someone might want to put either an alpha or numeric

two drill 6 behind it. In this case, Mr. Cadigan put A and B on

7 bits.

8 Q. Then that was done by him?

9 A. Yes, sir.

10 Q. Now, did -- at that point, did -- were you
responsible for

do his 11 getting the drill bit over to Mr. Cadigan so he could

12 work?

13 A. Did I personally deliver it to him?

14 Q. Yes, sir.

15 A. No, sir, I don't think I did.

you 16 Q. Okay. Now, with respect to the drill itself, were

conducted 17 aware of any metallurgical examinations that were
on

18 the drill or things that were attached to it?

this one 19 A. I was aware that metallurgy had been assigned to

20 submission, yes, sir.

metallurgy. 21 Q. Now, would you tell the jury, please, what is

22 MS. WILKINSON: Objection, your Honor.

23 MR. TIGAR: For these purposes.

beyond the 24 MS. WILKINSON: Beyond his expertise and

25 scope.

Brett Mills - Cross

1 THE COURT: Well, you're not asking for a
dictionary
2 definition.

3 MR. TIGAR: No, I'm just asking what he
understood
4 that was in his office, your Honor. I'm not asking for
a
5 metallurgical opinion. I just want to know what it is.

6 THE WITNESS: From my understanding is -- is
when we
7 have a metallurgical exam is they're comparing
basically, I
8 guess, like a Q and a K. I'm not sure if they do, but
to see
9 if the metals match.

10 BY MR. TIGAR:

11 Q. Okay. Now, was it your understanding that they
were going
12 to find out what kind of metal the drill was made of,
or the
13 particles that adhered they wanted looked at?

14 MS. WILKINSON: Objection, your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: That, I'm not sure of. I didn't
take it
17 over.

18 BY MR. TIGAR:

to be 19 Q. Okay. When did the -- this item leave your custody
whatever 20 taken over, as you say, for this metallurgical work,
21 it was?
22 A. I believe that was June 2.
Cadigan 23 Q. And did you ever have a conversation with Agent
24 about his work on the drill bit? Just yes or no?
25 A. Yes.

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Brett Mills - Cross

1 Q. Whether you did -- you did. Okay.
2 A. Yes.
3 Q. When was that conversation?
Marks 4 A. After I transferred back over to the Firearms/Tool
5 Unit. He was my training instructor.
6 Q. Oh, all right. And did you ever have a
conversation with
7 Special Agent Williams about the metallurgy?
8 A. About the metallurgy? No, sir.
9 Q. Okay. Did you ever have a conversation with anyone
about
10 the metallurgy?
11 A. Not the metallurgy, no, sir.
12 Q. Did there -- did there ever come a time when the

drill was

13 sent to the Oak Ridge Laboratory, to your knowledge?

14 A. Not to my knowledge.

15 Q. You don't know one way or the other. Is that
right?

16 A. I had heard later on, but I don't think we sent it.

17 Q. Okay. No -- not -- in other words, of your
personal

18 knowledge, you were not responsible for sending it to
the Oak

19 Ridge Laboratory if indeed that happened. Is that
right?

20 A. No, sir.

21 MR. TIGAR: All right. Your Honor, I have no
further

22 questions with respect to the scope of this witness'

23 appearance.

24 THE COURT: All right.

25 MR. TIGAR: On this subject.

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1 MS. WILKINSON: He will be recalled, your
Honor, for

2 other purposes.

3 THE COURT: Okay. You may step down for now.

4 THE WITNESS: Thank you.

5 THE COURT: Next witness.

Cadigan. 6 MR. MACKEY: Your Honor, we would call James

7 THE COURT: All right.

8 THE COURTROOM DEPUTY: Raise your right hand,
please.

9 (James Cadigan affirmed.)

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

11 Would you state your full name for the record
and

12 spell your last name.

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

14 THE COURTROOM DEPUTY: Thank you.

15 MR. ORENSTEIN: May I proceed, your Honor?

16 THE COURT: Yes.

17 MR. ORENSTEIN: Thanks.

18 DIRECT EXAMINATION

19 BY MR. ORENSTEIN:

20 Q. Good morning, Mr. Cadigan.

21 A. Good morning, sir.

22 Q. Where are you employed, please.

23 A. I am a special agent of the Federal Bureau of
24 Investigation, and I'm assigned to the Firearms and
Tool Marks

25 Unit of the FBI Laboratory in Washington, D.C.

James Cadigan – Direct

1 Q. What are your responsibilities there?

2 A. As a member of that unit, I have three areas of
3 responsibility. I do serial number restoration
examinations, I
4 do firearms identifications, and I also do tool mark
5 examinations.

6 Q. How long have you been doing tool mark
examinations?

7 A. For 20 years.

8 Q. Now, can you tell the ladies and gentlemen of the
jury

9 basically speaking what a tool mark examination is.

10 A. Tool mark examination deals with the comparison of
marks
11 that are left at the scene of a crime with a particular
tool in
12 order to determine whether or not that particular tool
made
13 that mark.

14 For instance, in a burglary in which a
screwdriver is
15 used to pry open the window of a residence, tool mark
16 identification or tool mark examination would look at
the marks
17 on the window sill and compare them to marks made by
the
18 screwdriver to determine whether or not that
screwdriver made
19 the marks on that window sill.

there 20 Q. Now, when you do that kind of examination, are
21 different types of marks that can be examined?
22 A. Yes, sir.
23 Q. Can you describe the different types of marks?
24 A. Well, basically, there are two different types of
marks.
25 One would be called a compression or impression, where
the

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James Cadigan – Direct

1 screwdriver blade would be pushed in and then pressed
down.
2 That would leave a depression or impression on the
window sill.
3 The second type or general type of tool mark
would be
4 called a striation or scratch, and that would be from
the blade
5 of the screwdriver dragging across the window sill and
leaving
6 scratches on the surface.

7 Q. Now, did you conduct any tool mark comparison in
this case?

8 A. Yes, I did.

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

10 A. Yes, it did.

11 Q. Before I ask you about that examination, let me ask

you:

12 Could you describe your educational background?

13 A. Yes, sir. I have a bachelor of science degree in
chemistry

14 from the University of Maryland in College Park.

15 Q. What year did you graduate?

16 A. 1971.

17 Q. How long after your graduation did you join the
FBI?

18 A. Five months.

19 Q. And can you describe for the jury what you've done
with the

20 FBI since joining?

21 A. Well, after I was -- after training school, I was
assigned

22 to the Savannah, Georgia field division for a year,
where I did

23 general criminal work; and then I was assigned to the
Newark,

24 New Jersey field division for approximately three-and-
a-half to

25 four years, and I did stolen-car investigations in
Newark. And

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James Cadigan - Direct

1 then I was assigned to the FBI Laboratory in 1977.

2 Q. When you were first assigned -- is 1977 when you
became an

3 examiner, or when you were assigned to the laboratory?

then
4 A. Yes. I was assigned to the laboratory in 1976 and
5 became a qualified examiner in 1977.

6 Q. In that interim, did you receive some training?

7 A. Yes, sir.

during that
8 Q. Can you describe the training that you received
9 year?

underwent a
10 A. Upon my assignment to the Firearms Unit, I
11 training program that included reading of literature
available

12 in the field of firearms and tool marks identification,
13 instruction in the types of equipment used by the
laboratory

14 for these kinds of examinations. Also, I went to
manufacturing
15 plants to observe firsthand the marks -- the machining

16 processes that go into the production of tools; and I
also
17 received on-the-job training, which included thousands

of
18 examinations.

19 Q. Now, in this on-the-job training, did you have just
one
20 person who was training you, or is there more than one?

21 A. No, there was more than one.

22 Q. And did that on-the-job training involve the
examination of

23 evidence from actual cases?

24 A. Yes, sir, it did.

25 Q. When you did that, were you actually making reports
or

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James Cadigan – Direct

1 testifying in court?

2 A. No. I was just examining the evidence.

3 Q. Just so you could learn?

4 A. Yes.

5 Q. Now, during any period of your training, were you
6 testifying in court?

7 A. During my training? No, sir.

8 Q. Now, at the end of that training, did you become
qualified
9 within the FBI and allowed to conduct examinations on
your own?

10 A. Yes, sir.

11 Q. And since then, have you become involved yourself
in
12 training others to become firearms and tool marks
examiners?

13 A. Yes, sir, I have.

14 Q. We just met someone named Brett Mills a few minutes
ago.

15 Is he one of the people you trained?

16 A. Yes, sir.

17 Q. Doing the same thing now that you did 20 years ago?

18 A. Yes.

19 Q. Now, in addition to helping to train new examiners,
have
20 you done any teaching or lecturing in your field?

21 A. Yes. In the field of tool mark identification,
I've given
22 hundreds of lectures on various aspects of tool mark
23 identification to federal, state, and local law
enforcement
24 agencies as part of courses of study that involve the
25 identification of automobiles and the identification of
stolen

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James Cadigan - Direct

1 automobiles and other aspects.

2 Q. Have you also lectured at training seminars at the
FBI
3 training academy?

4 A. Yes. I conduct one in-service training class at
Quantico a
5 year for our agents in stolen-car investigations, a
significant
6 portion of which involves tool mark identification.

7 Q. Now, earlier you mentioned that you have several
areas of
8 responsibility in your current work, tool mark
examination,

9 firearms, and serial number restoration?

10 A. Yes, sir.

11 Q. When you first completed your training back in
1977, did

12 you have any area in particular that you specialized
in?

13 A. Yes. For the first approximately 11 years of my
stay in

14 the laboratory, I did nothing but tool-mark-
identification-type

15 examinations.

16 Q. And in the course of those 20 years since you first
became

17 an examiner with the FBI, approximately how many tool
mark

18 comparisons have you done?

19 A. Thousands.

20 Q. Have any of those involved the comparison of marks
left by

21 a spinning drill bit?

22 A. Yes.

23 Q. On more than one occasion?

24 A. Yes.

25 Q. So this is not the first case in which you've done
that

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James Cadigan - Direct

1 kind of examination?

2 A. No, sir, it's not.

3 Q. Now, you were explaining earlier that there are two
types

4 of marks that a tool can leave. You mentioned
impressions and

5 striations. Is that right?

6 A. Yes, sir.

7 Q. "Striations" is just a fancy word for scratches?

8 A. They can be.

9 Q. Are there -- what kind of marks does a spinning
drill bit

10 leave?

11 A. It would leave striations or scratches from the
cutting of

12 the blade of the screwdriver -- I'm sorry -- did you
say

13 screwdriver?

14 Q. I'm sorry. I may have. If I did, I meant to say
drill

15 bits. What kind of marks does a drill bit leave?

16 A. A drill bit would leave striations left by the
cutting of

17 the blade and the tip of the drill bit.

18 Q. Now, you mentioned striations when I asked the
wrong

19 question about screwdrivers and other tools. Are there
other

20 tools that leave striations?

21 A. Certainly. There would be screwdrivers, a crowbar,

if a

22 crowbar was used, among others.

23 Q. Is there anything particularly different or
difficult about

24 examining the mark left by a spinning drill bit?

25 A. No. It's just another one of the kinds of
examinations

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James Cadigan – Direct

1 that fit in under the umbrella of tool mark
identification.

2 Q. You apply the same practices and ideas in doing
your

3 examination?

4 A. Yes, sir.

5 Q. Now, you've testified in court before today. Is
that

6 correct?

7 A. Yes, sir.

8 Q. About how many times have you testified in court as
a tool

9 marks examiner?

10 A. Approximately 250 times.

11 Q. When I say "tool marks," I should say including
tool marks

12 and the other areas of specialization.

13 A. Yes, sir.

of a 14 Q. Now, earlier in your testimony, you gave an example
been 15 tool mark examination involving a window sill that had
16 pried open or a window that had been pried open by a
17 screwdriver. Using that example, could you explain a
little 18 more about how you would go about doing your analysis?
19 A. Yes. In the case in which a window sill was pried
open by 20 a screwdriver tip or screwdriver itself, I -- the best
way to 21 examine that particular case would be if you could
remove the 22 portion of the window sill that had the impression on
it and 23 then taking the particular screwdriver in question,
make test 24 impressions, normally in lead, because lead is very
soft, but 25 scraping test impressions of the screwdriver to see
what kinds

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James Cadigan - Direct

1 of striations and marks the screwdriver blade would
leave and 2 then compare, using a comparison microscope, the tool
marks 3 left by the screwdriver blade with the marks left on
the window

4 sill.

You 5 Q. Let me ask you a couple of questions about that.

in this 6 mentioned that you look at the marks left by the blade

7 test impression. First of all, why do you make a test

and 8 impression, rather than just look at the blade itself

9 compare it to the mark left on the window sill?

would 10 A. Well, as part of your examination, of course, you

evidence and 11 look at the blade to see if there was any trace

12 other considerations. And then you would make the test

13 impressions so that you could compare like items, the

on the 14 impression of the screwdriver blade with the impression

15 window sill.

photograph, 16 Q. Sort of like looking at a photograph with a

17 rather than a negative?

18 A. Yes.

times 19 Q. Now, you also mentioned that -- you mentioned a few

behind that 20 already these striations or scratches that are left

21 you look at. What produces those scratches?

for the -- 22 A. Well, there can be two sources for the scratches

be left 23 or actually one source for the scratches. That would

24 by the screwdriver blade as it scraped across the
surface, the
25 tip of the blade going across the top of the window
sill.

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James Cadigan - Direct

1 Q. Are you talking about just if the blade has a chip
in it?

2 A. Right. In order to know whether or not a
particular
3 screwdriver blade was individual, as opposed to a class
4 characteristic, class characteristic being the same
size -- for
5 instance, a screwdriver bit (sic) that was 1/4 of an
inch wide.

6 That would be a class characteristic, because a whole
class of
7 screwdriver blades would have that same width.

8 Then there are individual tool marks that the
examiner
9 looks at, and that usually comes from the manufacturing
10 processes that go into the production of the
screwdriver blade

11 and also the subsequent use and abuse of the tool. For
12 instance, a chip in the blade would make it very
unique.

13 Q. Now, are all of these things that can happen to a
blade --
14 you mentioned the manufacturing process, subsequent use

and

15 perhaps a chip coming out -- are all of those things
visible to

16 the naked eye?

17 A. No, not always.

18 Q. So in the course of your work, do you use a
microscope?

19 A. Yes, sir.

20 Q. Does that help you see the tiny scratches that can
also be

21 left behind by a blade?

22 A. Yes, sir.

23 Q. Now, you told us earlier that you did tool mark
analysis in

24 this case. Can you in general terms first explain to
the jury

25 what it is that you did?

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James Cadigan - Direct

1 A. Yes. I received a padlock that had some drill-bit
2 impressions in it, and I was given two drill bits; and
the

3 request was to determine whether or not either one of
the two

4 drill bits made the impressions contained on the
padlock.

5 MR. TIGAR: Your Honor, may I approach the
bench?

6 THE COURT: Yes.

7 Members of the jury, feel free to stand and
stretch

8 when we're up here at the bench.

9 (At the bench:)

10 (Bench Conference 68B2 is not herein transcribed by
court

11 order. It is transcribed as a separate sealed
transcript.)

12

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1 (In open court:)

stretch
2 THE COURT: I will give you these chances to
3 when we have these little conferences, which won't be
very
4 often. But please don't talk while you're doing that.

5 Proceed.

6 MR. ORENSTEIN: Thank you, sir.

7 BY MR. ORENSTEIN:

any
8 Q. Now, when you received the padlock, did you measure
9 parts of it?

padlock,
10 A. Yes. There were two drill-bit impressions in the
class of
11 and I measured the diameter of them to determine what
padlock.
12 drill bits might have produced the marks on the

to?
13 Q. When you refer to "class," what are you referring

which
14 A. As I mentioned before, in a -- examining a case in

15 drill bits are used, one of the first class
characteristics, if

would be
16 you can determine it, that you would be interested in

for
17 the diameter of the drill bit, because if you had --

had
18 instance, if the impression was 1/4 of an inch and you

19 drill bits that were 1/2 inch in diameter, you would

you would 20 immediately know they couldn't have done it, and then

21 move on to your next case.

the 22 Q. What did you find when you measured the holes in

23 padlock?

24 A. They were 1/4-inch in diameter.

bits of 25 Q. So you knew you didn't have to bother with drill

7628

James Cadigan - Direct

1 other sizes; is that correct?

2 A. Yes, sir.

about the 3 Q. Now, what -- what, if anything, did you observe

4 holes in the padlock?

was a 5 A. Well, there were two of them. There was one that

that was 6 very shallow in depth, and then there was a second one

padlock 7 much further and deeper into the lock cylinder of the

8 itself.

that you 9 Q. And from those observations, did you see anything

10 would characterize as a tool mark worth examining?

11 A. Yes. In both impressions.

12 Q. Mr. Cadigan, I'd like you to look on the table in

front of

13 you and see if you can find Government's Exhibit 126 in
14 evidence, which is a padlock.

15 Do you have it, sir?

16 A. Yes, sir, I do.

17 Q. Do you recognize what that is?

18 A. Yes, I do. This is the padlock that I was given to
examine

19 in this case.

20 Q. Now, did you do anything to the padlock upon
receiving it

21 to facilitate your examination?

22 A. Yes. I did two things to the lock. There was a
hasp

23 portion that was attached. I had that removed to
facilitate my

24 examinations; in other words, to allow me to put it
under a

25 comparison microscope. And then I also cut off six
portions or

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James Cadigan – Direct

1 several portions of the lock to allow me to look at and
remove

2 the lock cylinder.

3 Q. Now, why were you interested in looking at the lock

4 cylinder?

the lock
goes into
is where
under

5 A. Because the lock cylinder, which is the portion of
6 that I am indicating here with my pen, where the key
7 the lock that turns the -- to open the padlock -- that
8 the two impressions that I saw from the drill bit were
9 contained. And I needed to look at those very closely
10 the microscope.

11 Q. Did you prepare a series of photographs to
illustrate your
12 testimony about how you disassembled that lock to
remove the
13 lock cylinder?

14 A. Yes.

15 MR. ORENSTEIN: If I may ask Agent Tongate to
assist,
16 your Honor, I would like to show the witness Exhibit
246,
17 Government's Exhibit 246.

18 THE COURT: Yes, you may assist.

19 MR. ORENSTEIN: If you could first show the
witness
20 the exhibit.

21 BY MR. ORENSTEIN:

22 Q. Agent Cadigan, do you recognize that?

23 A. Yes, I do.

24 Q. That is the chart that you prepared?

25 A. Yes, it is.

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James Cadigan – Direct

admission 1 MR. ORENSTEIN: Your Honor, we'd move the
2 for demonstrative purposes of 246.

3 MR. TIGAR: No objection, your Honor.

may be so 4 THE COURT: All right. 246 is received and
5 used.

6 BY MR. ORENSTEIN:

Perhaps 7 Q. Now, Agent Cadigan, actually, it's not very large.
8 you could just hold it up -- Agent Cadigan, if you
could hold 9 it up and just explain to the jury what's depicted in
these 10 photographs and what it shows about your work here?

padlock 11 A. These are three photographs that I had made of the
12 and its various stages of disassembly as it was taken
apart.

its 13 The first one to your far left is the lock in
14 unremoved condition.

much of 15 The second one shows how many of the -- how
16 the lock I had to remove in order to expose the lock
cylinder,

key 17 which again is that separate portion which accepts the
area in 18 which turns and opens the lock itself. That's this
19 here.

cylinder 20 And then a much closer photograph of the lock
see, 21 itself showing the -- one of the impressions as you can
breaking 22 the drill bit went all the way into the lock almost,
23 through but not quite, at the bottom of the lock.

where is 24 Q. So specifically in Photograph No. 3 on that chart,
25 the tool mark that you're referring to?

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James Cadigan - Direct

bottom of 1 A. One of them was contained in the bottom here, the
through, 2 the lock cylinder, where the -- As the drill bit went
quite. 3 it then, as I mentioned, almost broke through but not

immediately 4 And there is a second one which is not
portion 5 apparent in this particular photograph in the shallow
6 up in the top of the lock cylinder.

7 Q. Now, the shallower mark is not apparent in that
photograph.

8 Is that correct?

9 A. Yes, sir, that is correct.

10 Q. You could just put that back on the easel for the
time
11 being.

12 Let me show you on your screen, Agent Cadigan
-- I'd
13 like to use the computer, please -- Exhibit 1841. Have
you
14 seen that before?

15 A. Yes, sir.

16 Q. What is that in that photograph?

17 A. Government's Exhibit 1841 is another photograph
that I had
18 taken of the lock cylinder, the top portion of it.

19 Q. Does that show the shallow mark that you referred
to?

20 A. Yes, sir, it does.

21 MR. ORENSTEIN: Government offers 1841.

22 MR. TIGAR: May I examine, your Honor?

23 THE COURT: You may.

24 VOIR DIRE EXAMINATION

25 BY MR. TIGAR:

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James Cadigan - Voir Dire

1 Q. Agent Cadigan, my name is Michael Tigar. I'm one

of the

2 lawyers appointed to help Terry Nichols.

the

3 You're showing us here -- you're looking at,

on a

4 Government has offered, something that shows some marks

5 lock. Is that correct?

6 A. Yes, sir.

recovered

7 Q. And is it your understanding that that lock was

8 at a quarry in Marion, Kansas?

it was

9 A. I'm not exactly sure where it came from, but I know

10 recovered.

time it

11 Q. And do you know where it was kept in between the

Laboratory?

12 was recovered and the time it came to the FBI

13 A. No, sir.

investigated put

14 Q. Do you know whether or not the sheriff who

15 that lock onto a property report?

16 MR. ORENSTEIN: Objection, your Honor.

17 THE COURT: What's the objection?

18 MR. ORENSTEIN: Relevance to the voir dire.

19 THE COURT: Overruled.

before I

20 THE WITNESS: No, I have no idea where it was

21 got it.

22 BY MR. TIGAR:

23 Q. Well, is it important to you as a tool marks
examiner to
24 know who has had the opportunity to change, tamper
with, or
25 alter material that you're looking at before you look
at it?

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James Cadigan – Voir Dire

1 A. The concern that I have when I receive evidence is
whether
2 or not I can identify or compare the marks that are
contained
3 on that evidence.

4 Questions as to where those -- how those marks
could
5 have gotten there are not my ability to resolve.

6 Q. I understand you can't resolve them, sir. I'm
asking you
7 as a man with this experience in the FBI, do you care
whether
8 somebody else has had the opportunity to change or
alter the
9 thing before you do your examination?

10 A. Care?

11 Q. Does it matter to you in your expertise, sir?

12 A. It wouldn't affect my examination.

13 Q. All right. Because in other words, what you're
prepared to

is when 14 do -- what you do is you take it in whatever state it
15 it arrives in your laboratory and then compare it with
Is that 16 something else that's also arrived in your laboratory.
17 right?

18 A. Yes, sir, that's what I can do.

business 19 Q. And it's your testimony that it's somebody else's
20 what happened to it before it got to you. Is that
right?

21 A. Certainly.

22 MR. TIGAR: With that understanding, I have no
23 objection to this picture, your Honor.

And the 24 THE COURT: All right. Then we may proceed.
25 exhibit is?

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James Cadigan - Voir Dire

1 MR. ORENSTEIN: 1841, your Honor.

2 THE COURT: 1841?

3 MR. ORENSTEIN: Yes, sir.

4 THE COURT: Received.

easel out of 5 MR. ORENSTEIN: Perhaps we could move the
6 the jury's way while this is up.

7 Thank you.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. ORENSTEIN:

10 Q. You mentioned that this photograph shows the
shallower --

11 well, actually, does it show both of the areas of tool
marks

12 that you saw?

13 A. Yes, sir, it does.

14 Q. Can you point out each of them?

15 A. Yes. This area here and this area here is the
shallow

16 portion. In the photograph you can see striations or
lines

17 that were left by a drill bit.

18 Then the second area of my concern is in this
area

19 down here, in which the drill bit almost went all the
way

20 through the lock cylinder, down in this fashion and
then -- but

21 did not go all the way through.

22 Q. Now, this particular photograph, the focus is on
the

23 shallower mark? Is that correct?

24 A. Yes, sir, the shallower mark, which is this area
here.

25 Q. Did you also take photographs of the mark left in
the

James Cadigan – Direct

1 deeper area?

2 A. Yes, sir, I did.

3 Q. Did you prepare a series of photographs to show how
you can

4 follow on where you're going?

5 A. Yes, sir.

6 MR. ORENSTEIN: I'd like with Agent Tongate's
7 assistance, please, to show the witness Exhibit 152.

8 BY MR. ORENSTEIN:

9 Q. Agent Cadigan, do you recognize that?

10 A. Yes, sir, I do.

11 Q. You're turning it right side up?

12 A. Yes, sir.

13 Q. Is that a chart that you prepared showing
photographs that

14 you had taken of the deeper area in the drill -- in the
drilled

15 lock?

16 A. Yes, sir, it is.

17 MR. ORENSTEIN: Government offers Exhibit 152,
please.

18 THE COURT: Do you want to approach?

19 MR. TIGAR: No. I can just see it from here,
your

20 Honor.

21 No objection.

22 THE COURT: All right. 152 is received, may
be
23 displayed.

24 MR. ORENSTEIN: Thank you, sir.

25 Will you put that up on the easel, please.

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James Cadigan – Direct

1 BY MR. ORENSTEIN:

2 Q. Now, for the record, Agent Cadigan, there are four
3 photographs on that chart. Is that correct?

4 A. Yes, sir.

5 Q. Would you start with the photograph on the far left
side of
6 the chart and describe for the jury what it is that
these
7 photographs show.

8 A. These photographs show -- first photograph on the
far left
9 shows the lock as it's still in its assembled
condition.

10 The second one to its right is a picture of
the lock
11 cylinder taken at 10 power.

12 The third picture, as it's labeled, is at 20
power.

13 And then the fourth picture is a picture -- is
part of

14 the lock cylinder taken at 40 power.

15 And what this does is that the second picture
or the
16 one labeled 10 power shows the shallow mark; and then
as we
17 travel further into the lock cylinder, we see the marks
that
18 were contained at the bottom of that lock cylinder.

19 Q. So this is a progression of photos that shows you
how to
20 get down to the bottom of that lock cylinder and see
the deeper
21 tool mark impressions?

22 A. Yes, sir.

23 Q. Let me show you on your screen, if I may,
Government's

24 Exhibit 1842. Do you recognize that?

25 A. Yes, sir.

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James Cadigan – Direct

1 Q. Is that simply a single photo that is the same
photo as on
2 the chart on the far right?

3 A. Yes, sir.

4 MR. ORENSTEIN: Government offers Exhibit 1842
just
5 for purposes of discussing that photo with the witness.

6 MR. TIGAR: No objection, your Honor.

7 THE COURT: All right. 1842 is received.

8 MR. ORENSTEIN: And, Agent Tongate, if I could
ask you
9 to move the easel once again.

10 Thank you.

11 BY MR. ORENSTEIN:

12 Q. Now, using the Photograph 1842, can you describe
for us
13 what the tool marks are that you looked at?

14 A. Yes. In examining the bottom part of this lock
cylinder, I
15 noticed that there were marks left in this area here
and a
16 portion of the lock cylinder here and also over here.

17 As you can see and as I mentioned before, when
the
18 drill bit went deep into the lock cylinder, it almost
broke
19 through but not quite; and that's why there is no
continuity
20 between this portion here and this portion here and
this
21 portion here. They're slightly fractured and pushed
away from
22 each other from the action of the drill bit going into
the lock
23 cylinder.

24 Q. Now, in addition to the fracturing or the
discontinuity
25 that you just described, did the pressure from the bit

cause

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James Cadigan – Direct

1 this not to be a flat surface?

2 A. Yes, that's correct.

3 Q. Now, you described before that you compared this
mark to a

4 drill bit. Is that correct?

5 A. Yes.

6 Q. And which drill -- do you have Exhibit 151B in
front of

7 you?

8 A. Yes, sir, I do.

9 Q. By the way, does that have a Q number on it, 151B?

10 A. Yes.

11 Q. Did you assign -- when you received the bit, did it
already

12 have a Q number as part of a larger group of evidence?

13 A. Yes, sir.

14 Q. And was that Q2898?

15 A. Yes, sir.

16 Q. Did you assign a sub-number to this particular bit?

17 A. Yes.

18 Q. Is that 2898B?

19 A. Yes, sir.

Exhibit 20 Q. Now, did you examine the tip of that drill bit,
21 151B?
22 A. Yes, I did.
on your 23 Q. And was -- let me show you, if I may, Exhibit 155
24 computer screen. Do you recognize that?
25 A. Yes, sir.

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James Cadigan - Direct

1 Q. What is that?

2 A. This is a picture of the drill bit.

3 Q. And that is a picture of 151B?

4 A. Yes, sir.

5 MR. ORENSTEIN: Government offers Exhibit 155.

6 MR. TIGAR: May I inquire?

7 THE COURT: You may inquire.

8 VOIR DIRE EXAMINATION

9 BY MR. TIGAR:

10 Q. Once again, sir, do you know when the drill that is
11 pictured in Government's Exhibit 155 was recovered?

12 A. No, sir. Exactly when it was recovered, no, I do
not.

13 Q. Do you have some general idea?

14 A. Well, it would have had to have been before I
received it,

15 which was in July.

16 Q. Yes, it was. You got it in July?

17 A. Yes, sir.

18 Q. And did -- were you told that it had been recovered
19 sometime in May?

20 A. I don't recall if I was told when it was recovered.

21 Q. Certainly recovered after April 19, 1995. Correct?

22 A. Yes, sir.

23 Q. All right. And when you -- when you first looked
at the

24 drill that's pictured there, was it in a box with other
drills,

25 other drill bits?

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James Cadigan - Voir Dire

1 A. No, sir.

2 Q. It had been taken out and given to you; correct?

3 A. Yes, sir.

4 Q. To be sent to you. Now, do you know the date on
which the

5 lock, the pictures of which we're looking, was first
recovered?

6 A. No, sir.

7 Q. Do you understand it to be the fall of 1994?

8 MR. ORENSTEIN: Objection to the relevance of
the

9 questions about the lock.

10 THE COURT: Sustained.

11 BY MR. TIGAR:

12 Q. When was this picture taken?

13 A. It would -- I'm not exactly sure the exact date
that it was

14 taken; but it was taken after I received the drill bit.

15 Q. All right. Now, when -- in a little while --
you're here

16 today to show us some other comparison pictures; right?

17 A. Yes, sir.

18 Q. Now, when you do a comparison of pictures like
you're going

19 to do, is it important to you how much time elapsed
between the

20 time a tool mark was left and the time the tool that
might have

21 made the mark is recovered?

22 MR. ORENSTEIN: Objection to the relevance to
this

23 exhibit.

24 THE COURT: Overruled.

25 THE WITNESS: Okay. I'm sorry. Could you
repeat

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James Cadigan - Voir Dire

1 that.

2 BY MR. TIGAR:

pictures,

3 Q. Yes, sir. When you're going to look at some

have

4 comparing the mark made by a tool and a tool that might

how much

5 made the mark, it is -- is it important to you to know

made and

6 time has elapsed between the time the tool mark was

recovered?

7 the time the tool that might have made the mark was

pictures. I

8 A. Well, first of all, I don't do comparisons by

pictures after

9 look at actual -- the actual marks. I take the

10 I do the comparisons to refresh my recollection.

because of

11 Q. Yes, sir. My question was asked deliberately

do. My

12 the way you're going to do that. I understand what you

time?

13 question is very simple: Is it important to you, the

necessarily, no.

14 A. Is it important to know what time? Not

important

15 Q. Okay. When you say "not necessarily," is it ever

time a

16 to you to know how much time has elapsed between the

made the

17 mark was left and the time that a tool that might have

ever

18 mark that you're going to look at was recovered? Is it

19 important to you?

20 A. I can't think of a time when it would be.

21 Q. All right. Well, let me suggest: Is it important
to you

22 to know how much use the tool that might have made the
mark has

23 had between the time that a mark was left somewhere and
the

24 time you get the tool?

25 MR. ORENSTEIN: Your Honor, I object.

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James Cadigan - Voir Dire

1 THE COURT: Your objection is overruled. This
is

2 foundational. I'm going beyond voir dire because we
haven't

3 gone through the foundational pattern for the witness
to be

4 able to do it. I thought you would understand that.

5 Proceed.

6 THE WITNESS: I'm sorry. The question is?

7 BY MR. TIGAR:

8 Q. Yes, sir. If -- this is an example. If a tool
mark is

9 made on a window sill by a screwdriver in October of a
certain

10 year and somebody -- and you can preserve that window
sill so

11 it -- you know, so it can't be altered and then
sometime six
12 months later somebody finds a screwdriver that might
have made
13 that mark, is it important to you to know what use that
14 screwdriver has had in between October and the time
that you
15 recover it?
16 A. No.
17 Q. You don't consider the fact that somebody might
have used
18 the screwdriver in the meantime and altered it in some
way?
19 A. Well, the --
20 Q. Do you, or don't you?
21 A. If that was the case, then that would change the
mark left
22 by that tool, and then you couldn't make a conclusion
one way
23 or another.
24 Q. I understand. But you understand that over time,
tools get
25 used; right?

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James Cadigan - Voir Dire

1 A. Certainly. That's what gives them their
individuality and
2 allows you to identify them, yes, sir.

3 Q. And in the time that tools get used, they get
changed in

4 different ways; right?

5 A. They can. Yes, sir.

6 Q. All right. Now -- and it's your testimony that
other than

7 knowing when -- it had to be sometime after April 19.
You

8 don't know when this particular drill that we're going
to see a

9 picture of was recovered; is that right?

10 A. That's correct.

11 Q. And you don't know what use it had between, let's
say, the

12 fall of '94 and the time that you took this picture.
Correct?

13 A. That is correct.

14 Q. All right.

15 MR. TIGAR: Subject to that understanding,
your Honor,

16 no objection.

17 THE COURT: All right. The exhibit is
received. 155.

18 MR. ORENSTEIN: Excuse me. Now that -- if we
could

19 display that to the jury, please.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. ORENSTEIN:

22 Q. Now that Exhibit 155 is on the screen, can you
point out to

23 us what you were looking at in conducting your
examination when

24 you looked at that drill bit and the impressions it
made?

25 A. Yes. In examining the tip of this drill bit, the
cutting

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James Cadigan - Direct

I 1 edges are found here and here. And as I looked at it,

2 noticed that there was wear on both blades.

3 Q. Is that the kind of wear that produces the
striations you

4 were talking about before?

5 A. Yes, sir.

-- you 6 Q. Now, you marked before you had just put them away

7 had marked two separate lines there?

edges of 8 A. Yes. Here and here. Those are the two cutting

9 the drill bit.

pattern of 10 Q. And does each cutting edge produce a different

11 striations?

12 A. Yes, it does.

to 13 Q. Now, did you do anything with this drill bit itself

14 conduct your examination?

15 A. Yes, sir, I did.
16 Q. What did you do?
17 A. Upon receiving the drill bit, I made impressions in
lead to
18 determine what kind of tool marks that this particular
drill
19 bit left and to enable me to compare those tool marks
left by
20 this drill bit, Government's Exhibit 151B, with the
tool marks
21 that were present on Government's Exhibit 126.

22 Q. And 126, you were just holding it up. That's the
lock?

23 A. Yes, sir.

24 Q. Let me ask you if you have in front of you Exhibit
244?

25 MR. ORENSTEIN: May I approach to assist, your
Honor?

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James Cadigan - Direct

1 THE COURT: Yes.

2 MR. ORENSTEIN: I thought I could assist, your
Honor.

3 Oh. Thank you.

4 BY MR. ORENSTEIN:

5 Q. Do you have 244 before you right now?

6 A. Yes, sir, I do.

7 Q. Do you recognize it?

8 A. Yes, I do.

9 Q. What is Exhibit 244?

10 A. 244 is one of the -- is an impression I made with
11 Government's Exhibit 151B. It's the lead that I
actually made

12 the impression in and that I used in my comparisons.

13 Q. Do you recognize that in particular as the
particular piece

14 of lead in which you made an impression from Exhibit
151B?

15 A. Yes, sir.

16 Q. And how do you recognize it?

17 A. It bears my initials, and also on the -- the item
itself,

18 it has the designation "rusty bit."

19 Q. Is that because you had more than one bit and this
one

20 happened to have some rust on it?

21 A. Yes, sir.

22 MR. ORENSTEIN: Government offers Exhibit 244.

23 MR. TIGAR: I'm sorry, your Honor. May I just
see it?

24 THE COURT: You may, yes.

25 MR. TIGAR: May I inquire?

1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MR. TIGAR:

4 Q. How many drill-bit impressions did you make with
the tool

5 151B?

6 A. I think it was approximately three or four.

7 Q. All right. And is this the only one you brought
with you?

8 A. It's the only one that I have with me right now,
yes, sir.

9 Q. And in connection with making your comparison, did
you make

10 other impressions?

11 A. Yes, did I.

12 Q. In lead?

13 A. Yes, I did.

14 Q. And did you do that with 151B, or -- you did that
with

15 other drill bits. Is that right?

16 A. Yes, sir.

17 Q. How many other drill bits?

18 A. One other drill bit.

19 Q. All right. How many drill bits did you have for
purposes

20 of making impressions?

21 A. Two.

22 Q. Didn't you have 75 others?

23 A. I was given two.

24 Q. I understand you were given two. Did you have at
the time

25 you were working on this project 75 other drill bits?

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James Cadigan – Voir Dire

1 A. No, sir.

2 Q. It's your testimony you never had 75 drill bits
that you

3 had obtained for purposes of working on this matter
that you're

4 testifying about today? Is that your testimony?

5 A. I obtained 75 drill bits later, after I conducted
this

6 examination.

7 Q. You did.

8 A. Yes, sir.

9 Q. Well, did you make any impressions in lead with the
75

10 other drill bits?

11 A. Not in lead. They were in brass and aluminum.

12 Q. And did you bring those today?

13 A. No, sir.

14 Q. Why did you make them in brass -- well --

15 THE COURT: This is voir dire.

16 MR. TIGAR: This is voir dire.

to get 17 Your Honor, I just realized that I was about

18 into my cross-examination. I'll save it.

19 We consent to the admission of this with that
20 understanding.

21 THE COURT: All right.

22 MR. TIGAR: Sorry.

23 THE COURT: 244 is received.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. ORENSTEIN:

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James Cadigan - Direct

to the 1 Q. Now, it's a small item. Could you just hold it up

2 jury to indicate what you're looking at?

3 A. Yes. This piece of lead.

the 4 Q. And that's right now encased in a Baggie that has

5 exhibit sticker?

6 A. Yes, sir, it is.

up 7 Q. Obviously it's too small for the jury to look at it

impression? 8 close. Did you take any photographs of that

9 A. Yes, sir.

10 Q. And did you prepare a similar chart showing varying

11 magnifications of that impression?

12 A. Yes, sir, I did.

13 Q. With Agent Tongate's assistance, I'd like to show
you

14 Exhibit 153. Is that the chart that you prepared?

15 A. Yes, sir.

16 Q. Does it show varying magnifications of the drill
bit that's

17 just been introduced into evidence?

18 A. Yes, sir.

19 Q. I'm sorry. The drill-bit impression?

20 A. Yes, sir.

21 MR. ORENSTEIN: Government offers Exhibit 153.

22 MR. TIGAR: No objection, your Honor.

23 THE COURT: Received. May be displayed.

24 BY MR. ORENSTEIN:

25 Q. Now, Mr. Cadigan, starting with the photograph --
and for

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James Cadigan - Direct

1 the record, there are four of them on that chart --
starting

2 with the one on the extreme right-hand side, would you
describe

3 for the jury what is displayed in this chart?

4 A. This is a photograph of the piece of lead that I
used to

5 make my drill-bit impression.

6 Second one at slightly higher magnification,
then a
7 third and then a fourth at the listed magnifications,
showing
8 you the drill-bit impression that I used to make my
comparison
9 in this case.

10 Q. So again, we're just getting a closer and closer
view of
11 the test impression?

12 A. Yes, sir.

13 Q. Are these the same magnifications that you used in
the
14 photographs of the padlock hole?

15 A. Yes, sir.

16 Q. Now, let me show you on your screen Exhibit 1843.
Is that
17 just a single copy of the photo at the far left side of
the
18 chart that we were just looking at?

19 A. Yes, sir.

20 Q. That's once again the 40-power magnification of the
test
21 impression?

22 A. Yes, sir.

23 MR. ORENSTEIN: Government offers Exhibit
1843.

24 MR. TIGAR: No objection, your Honor.

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James Cadigan - Direct

1 BY MR. ORENSTEIN:

2 Q. Now that the photograph is before the jury, can you
3 describe the striations that you looked at on the test
4 impression?

5 A. Yes. In that particular photograph which shows the
6 drill-bit impression I made with Government's Exhibit
151B, the
7 comparisons I did looked at these striations that are
all along
8 here that are going in a circular fashion and also the
9 striation marks that are here that are also going in a
circular
10 fashion and comparing those with the ones that were
found in
11 the lock cylinder.

12 Q. Now, when you made Exhibit 244, which is the
photograph in
13 this item, was that on a flat surface?

14 A. This was, yes, sir.

15 Q. Now, once you had made these photographs -- and
these are
16 just for illustrative purposes -- did you compare the
padlock
17 and the test impression?

18 A. Yes, sir, I did.

19 Q. How did you go about comparing them?

20 A. I placed the lock cylinder under the comparison
microscope

21 and looked at the tool marks that were present in that
lock

22 cylinder and compared them to the marks that I had
produced

23 with Government's Exhibit 151B to determine whether or
not that

24 drill bit made the impressions contained on that lock
cylinder.

25 MR. TIGAR: Your Honor, may that answer be
stricken?

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James Cadigan – Direct

1 THE COURT: Yes. It is stricken.

2 MR. ORENSTEIN: Your Honor, may I approach for
a

3 moment?

4 THE COURT: No.

5 BY MR. ORENSTEIN:

6 Q. Now, in conducting your comparison, did you use an
7 instrument?

8 A. Yes, I did.

9 Q. What instrument did you use?

10 A. I utilized a comparison microscope.

11 Q. Can you describe what a comparison microscope does?
12 A. Simply a comparison microscope is just two
microscopes
13 joined optically by a series of lenses and mirrors.
Also, it
14 has a stereoscopic viewer, which means an examiner can
use both
15 of his items to look at two items that are side by
side, and
16 what he sees when he looks into the microscope is a
circle --
17 circular area that has a dividing line in the middle of
it.
18 And on one side of that area is -- would be marks from
the left
19 side of the microscope, and the other side of the
hairline
20 would be the marks from the right side of the
comparison
21 microscope.
22 Q. Did you do that with the test impression on one
side and
23 the tool mark in the lock on the other side?
24 A. Yes, sir.
25 Q. Did you prepare a chart or photograph to illustrate
what

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James Cadigan - Direct

1 you saw when you looked through the comparison
microscope?

2 A. Yes.

3 Q. Do you have before you Exhibit 157?

4 A. Yes, I do.

5 Q. And what is 157?

6 A. 157 is a photograph that I had prepared that showed
what I
7 saw under the microscope when I examined the impression
on the
8 lock cylinder and the test impression that I made with
9 Government's Exhibit 151B.

10 MR. ORENSTEIN: Your Honor the Government
offers
11 Exhibit 157.

12 MR. TIGAR: I don't see it on my screen, your
Honor.
13 If I could just look at it.

14 THE COURT: Yes, you may.

15 MR. TIGAR: Yes, your Honor, it's what I've
seen. No
16 objection.

17 THE COURT: 157 is received, may be used.

18 MR. ORENSTEIN: And may I retrieve it to
display on
19 the ELM0?

20 THE COURT: Yes.

21 MR. ORENSTEIN: Thank you.

22 BY MR. ORENSTEIN:

23 Q. Now, Agent Cadigan, this photo has two halves. Is

that

24 correct?

25 A. Yes, sir.

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James Cadigan - Direct

1 Q. Let me first show you the half -- the right-side
half. And

2 I'll zoom out here.

3 What do we see on the right-hand side of this
4 photograph?

5 A. On the right-hand -- on this particular portion of
the

6 photograph that's exposed is a portion of the tool
marks made

7 by the Government's Exhibit 151B, by the drill bit that
I made

8 in the test impression in lead.

9 Q. So that's the test impression; correct?

10 A. Yes, sir.

11 Q. All right. Now, if we open up the left side -- let
me zoom

12 in a little bit there. Does that show the -- what you
saw on

13 the other half of the comparison microscope?

14 A. Yes. This portion of the photograph shows tool
marks that

15 were -- that are at the bottom of the lock cylinder
from the

16 padlock.

17 Q. Now, if we open up both sides of this exhibit, do
we see

18 what you saw when you looked through the comparison
microscope?

19 A. You see a portion of it, yes, sir.

20 Q. And is that -- does that illustrate what you saw
when you

21 looked through the comparison microscope?

22 A. Yes, sir.

23 Q. Now, do you see any areas of similarity from one
side to

24 the other?

25 A. Yes, sir, I do.

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James Cadigan - Direct

1 Q. And can you point out the similarities that you
saw?

2 A. Certainly. As we can see from the striations that
are left

3 by the drill bit -- continue over onto the lock
cylinder in

4 these areas. And those are tool marks that are
contained on

5 the lock cylinder again on the left side and the drill-
bit

6 impression on the right side.

7 Q. So these striations on one side from the test

impression

8 you see is also reflected on the other side in the
impression

9 in the lock; is that correct?

10 A. Yes, sir.

11 MR. ORENSTEIN: Thank you, Agent Cadigan.

12 Your Honor, I have nothing further on direct.

13 THE COURT: All right. Mr. Tigar?

14 MR. TIGAR: Your Honor, we would respectfully
15 request -- I made a motion to strike most inartfully.

Would

16 the Court instruct the jury as to the significance of
that?

17 THE COURT: Well, what the motion to strike
was about

18 was the witness giving an opinion with respect to
comparison,

19 and I struck that because what is permitted here is to
show

20 what he saw through the microscope and the comparison
21 microscope and then with his experience and training
the

22 similarities that he pointed out.

23 MR. TIGAR: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. TIGAR:

James Cadigan – Cross

1 Q. Agent Cadigan, you have been a special agent for
how many 2 years, sir?

3 A. 26 years tomorrow.

4 Q. 26 years. I'm going to show you something that's
been

5 furnished to us in discovery, if I may.

6 Is that a biography of you, sir?

7 A. It is one of the CV or curriculum vitae that I
prepared,

8 yes, sir.

9 Q. Yes, sir. And in there you list the fact that you
have a

10 bachelor of science from the University of Maryland.
Is that

11 correct?

12 A. Yes, sir.

13 Q. And you list that you have testified in 250 court
cases.

14 Is that correct, sir?

15 A. Yes, sir.

16 Q. And you say that you're a member of the AFTE?

17 A. The Association of Firearms and Tool Marks
Examiners, yes,

18 sir.

19 Q. And the 250 court cases in which you've testified:
Are

20 those in the areas of -- all the areas of tool marks?

21 A. No, they are in tool mark identification, firearms
22 identification, and serial number restoration only.

23 Q. Okay. In terms of spinning drill bits, how many
cases have

24 you testified in?

25 A. None.

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James Cadigan – Cross

1 Q. This is your first time out?

2 A. This is my first time testifying about the
identification

3 of a drill bit. It's not the first identification I've
made

4 with a drill bit.

5 Q. I understand that. You testified you made others.
This

6 case is your first testimony. Now, in that case you
list that

7 you did the firearms work in the Branch Davidian case;
is that

8 correct, sir?

9 A. That is correct.

10 Q. And that was -- that involved a great deal of very
11 elaborate ballistics work on your part; correct?

12 A. It involved firearms identification work, yes, sir.

13 Q. Are there similarities between firearms
identification and

14 drill-bit identification?

15 A. Firearms identification is one subset of the
general

16 umbrella term "tool mark identification."

17 Q. So the answer to my question are there
similarities: Is

18 the answer yes, or is the answer no?

19 A. Certainly, it's part of it.

20 Q. Thank you. Now, in your biography there, you do
not list

21 your participation in the Ruby Ridge case. Is that
correct?

22 A. That is correct, I guess.

23 Q. Will you look at it?

24 A. No, I don't.

25 Q. Why did you leave it off?

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James Cadigan – Cross

1 MR. ORENSTEIN: Objection to relevance.

2 THE COURT: Sustained.

3 BY MR. TIGAR:

4 Q. When you first got this drill bit in, you said that
you had

5 examined other drill bits in the past. Is that right?

6 A. Yes, sir.

7 Q. Now, you told us earlier on the voir dire that you
had gone

8 out and gotten 75 other drill bits; is that correct?

9 A. It's more than 75, but 75 from one manufacturer,
yes, sir.

10 Q. Oh, 75 from one manufacturer. And how many total
drill
11 bits did you get?

12 A. Approximately 150.

13 Q. Now, the purpose of that was to help you in your
analysis;
14 correct?

15 A. What was?

16 Q. To get all the 150 drill bits.

17 A. No, sir.

18 Q. What was the purpose of it?

19 A. The purpose was to -- it was part of initiating a
study in
20 the area of drill-bit manufacture and the tool marks
left by a
21 drill bit.

22 Q. And did you think it was necessary to initiate that
study?
23 A. I thought in reading the literature that is
available in
24 the field of tool mark identification, I noticed that
there
25 were not many studies concerning tool mark
identification

James Cadigan – Cross

a good 1 utilizing drill bits, and I thought that this would be
2 area to initiate a study.
notes that 3 Q. All right. So you -- and in fact, you made some
4 you thought that you were going to purchase a Microsoft
program 5 called Mathematica. Correct?
6 A. I didn't make, no, sir.
concerning 7 Q. Oh, didn't make that note? Did you make notes
8 the use of a Poisson figure, Poisson equation?
9 A. No, sir.
ask you 10 Q. Did you attempt to -- well, let me make -- let me
11 some about some differences here. A ballistics case
involves 12 looking at striations, doesn't it?
13 A. If you mean a firearms identification as opposed to
14 ballistics, ballistics being the study of the motion of
15 projectiles or projectiles in motion, firearms
identification 16 would be the study of striations left on a bullet from
the 17 barrel of a firearm.
18 Q. Exactly. And in order to make the striations -- in
order 19 to understand the striations, you have to understand
how the

20 striations get made in the firearm; correct?

21 A. Yes, sir.

22 Q. And in a 4-inch barrel, Smith & Wesson revolver, if
you get

23 a bullet that is a projectile that's fired from that
and you

24 put it under a microscope, you can see striations;
correct?

25 A. Yes, sir.

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James Cadigan - Cross

1 Q. And how many turns or twists does the projectile
make as

2 it -- as it travels the 4-inch length of the barrel of
the

3 Smith & Wesson?

4 A. Well, that would depend on the rate of twist of the
barrel.

5 Some barrels turn the -- the bullet would turn once
every

6 8 inches, once every 12 inches, once every 16. It
depends on

7 the manufacturer.

8 Q. All right. But in any case, it would be very rare
for a

9 bullet coming out of a Smith & Wesson revolver to have
made

10 more than one complete revolution before it leaves the
end --

11 the business end of the gun. Right?

12 A. I don't know, but --

13 Q. Well, you said if it turns once in 8 inches or once
in

14 12 -- those are reasonable numbers, aren't they?

15 A. They are some of the rates of twist that are
utilized by

16 manufacturers, yes, sir.

17 Q. All right. And so that in those cases, at any
rate, the

18 bullet would not have made one complete revolution by
the time

19 it gets out the barrel. Correct?

20 A. That is correct.

21 Q. Now, how fast is the bullet being fired from a
typical

22 Smith & Wesson revolving? How many rpms?

23 A. I don't know.

24 Q. All right. And we could compute that, couldn't we,
by

25 asking ourselves what the speed was, if we knew the
speed at

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James Cadigan - Cross

1 which it left the barrel --

2 A. Correct.

3 Q. Yes, sir and then if we knew how many revolutions

it would

4 make in an 8-inch or 12-inch area, then we could
compute that.

5 Right?

6 A. I guess so.

7 Q. Okay. But you've never done it?

8 A. No, sir.

9 Q. Now, that Makita drill that's in front of you --
how fast

10 does the drill rotate -- that is the right term? Is it

11 "rotate" or "revolve"? I never know. But spin. How
about

12 that?

13 How fast does the drill bit spin on that drill
when

14 it's being used in the -- at the rated capacity?

15 A. I don't know.

16 Q. Well, would you agree with me, sir, that a drill-
bit

17 impression -- let's take these one at a time. When a

18 screwdriver or crowbar is placed against a window to
jimmy it,

19 the usual thing is that you'll see a mark made by the

20 application of the force of the crowbar or screwdriver
to the

21 window. Correct?

22 A. You would see one of either that -- the impression
that was

23 made as it pressed against the window or striations as
it slid

24 across the window sill.

the 25 Q. And the drill bit that you analyzed, here, however,

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James Cadigan - Cross

had, a 1 hypothesis is that it was applied -- that the lock you

2 drill was applied to it like a spinning tool. Correct?

3 A. Yes, sir.

any 4 Q. And the impressions that are left are not left by

spinning 5 single contact of the drill but rather by a process of

6 at the rated speed of the drill. Correct?

-- it 7 A. Well, the impressions that are left if -- depends

8 depends on what happens as the user utilizes the drill.

9 Q. Right.

10 A. If he goes all the way through, no marks are left.

marks? 11 Q. Of course. The end of the drill doesn't leave any

impression 12 A. But if in this case in which there was a shallow

would be 13 and a deeper impression, the impression that is left

was pulled 14 the last turn of that particular drill bit before it

15 away.

16 Q. That's right. Before it was pulled away.
17 A. The last sweep.
18 Q. You use electric drills, don't you?
19 A. Yes, sir.
20 Q. And sometimes if you're drilling a hole in a little
ways,
21 do you run the drill bit back in to smooth out the
partial hole
22 that you've made and to have the process of the drill
remove
23 any chips?
24 A. Sometimes.
25 Q. Okay. And so you're familiar with that process;
right?

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James Cadigan – Cross

1 A. Yes, sir.
2 Q. Well now let's look at the two parts of the
equation.
3 Let's look first at a drill bit. All right? How is a
drill
4 bit manufactured?
5 A. Well, it's a several-step process that goes into
the
6 production of the drill bit, starting out with bar
stock that
7 can be of different diameters.

bit 8 Q. Okay. Let's start with that. A quarter-inch drill
inch in 9 starts out its life as a piece of bar stock a quarter
10 diameter. Correct?
then it's 11 A. Not necessarily. It can be wider than that, and
12 manufactured down to a particular diameter.
13 Q. Could be machined down; correct?
14 A. Yes, sir.
Now, bar 15 Q. So it starts out life as a piece of bar stock.
some kind? 16 stock is not a casting, is it? It's an extrusion of
17 A. It usually is, yes, sir.
do. Is 18 Q. Because a casting wouldn't have the strength that's
19 necessary to do the work that a drill is supposed to
20 that your understanding?
21 A. That's my understanding.
make a 22 Q. Now, this piece of bar stock is then machined to
drill. 23 pointed end -- that's the -- the pointy end of the
24 Right?
25 A. Yes, sir.

things 1 Q. The pointed part. And then there are -- the little

Correct? 2 you can see around those are called the flutes.

3 A. That's what they're called.

of 4 Q. Now, the drill as it's manufactured has two types

the end 5 cutting edges, does it not? One is the cutting edge at

picture you 6 of the drill, if you looked at it end on, like that

edges 7 and I were looking at, and you see those two little

8 there; correct?

9 A. Yes, sir.

correct? 10 Q. In addition to that, the flutes are sharp; is that

11 A. The flutes are sharp, yes, sir.

12 Q. In order to get sharp, they have to be sharpened?

13 A. Yes, sir.

14 Q. You don't find them in nature sharpened.

15 A. No.

16 Q. That's what I'm saying.

correct? 17 Now, the manufacturer makes drill bits, the
18 quarter-inch drill bits according to specifications;

19 A. Yes, sir.

buy 20 Q. That is to say, if I go to the hardware store and

bit and 21 something out of a bin that says a quarter-inch drill
I want 22 I'm going to drill a hole in my boat to put lag bolts,
Right? 23 to make sure that it's a quarter inch and not 17/32.
24 A. That is correct.
25 Q. So they have tolerances in the manufacture that are

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James Cadigan - Cross

respect to 1 designed to make the drills identical at least with
2 size. Is that correct?
3 A. That is correct.
respect to 4 Q. Now, in addition to making them identical with
5 size, the manufacture of drill bits in today's world is
6 automated, isn't it?
7 A. Yes, sir.
preparation for 8 Q. Did you visit any drill-bit plants in your
9 your debut as a testifier about drill bits?
during my 10 A. I visited drill-bit manufacturing facilities both
11 training and before coming to testify here, yes, sir.
12 Q. Okay. So you've watched them make them. Right?
13 A. Yes, sir.

14 Q. Now, the automated process involves the use of a
lathe of
15 some kind -- is that fair to say -- to machine this bar
stock
16 into drill bits of the requisite size? Is that fair?
17 A. A lathe is used in part of the process. There is
also a
18 cutter that cuts the flutes, and there is also a
grinder that
19 sharpens the tips of the blades to allow them to cut.

20 Q. Okay. Now -- and again, these processes are
designed to
21 produce drill bits that meet the manufacturers'
specifications;

22 correct?

23 A. That is correct.

24 Q. Now, metal that is extruded as bar stock has
certain
25 strength characteristics that are along its longitude;
that is,

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James Cadigan - Cross

1 along the long way. Is that right?

2 A. Yes, sir.

3 Q. That is to say, if you cut -- if you cut through
metal --

4 and I don't know the answer to this. Could you help
me? If I

5 cut through a piece of bar stock and looked at it very

closely

fibrous? 6 under a microscope, would I see things that looked

7 A. I don't know.

8 Q. You don't know the answer to that.

9 A. No, sir.

belief 10 Q. Okay. Now, in this machining process, is it your

when it 11 that every drill bit that comes off the line is unique

12 leaves the factory?

13 A. In the production, once it's sharpened.

14 Q. Yes, sir.

15 A. Yes, sir.

unique, 16 Q. All right. And the -- now, when you say that it's

time a 17 you're taking account of the fact that, what, every

18 cutting tool cuts something, it changes; right?

sharpened, it is 19 A. It's based on the fact that as the tool is

pattern grit 20 sharpened using a wheel that presents in a random-

grit falls 21 that removes metal; and each time that wheel turns,

pattern on the 22 off, pieces of metal fall off and leave a unique

23 tip of that screwdriver blade or drill bit.

24 Q. Talking about drill bits?

25 A. Drill bit. And those unique patterns on the tip of

that

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James Cadigan – Cross

1 screw -- drill bit are left when that drill bit is used
on a

2 surface.

3 Q. Now, we're talking about the manufacturing process,
sir.

4 We've gone a little bit beyond.

5 When the -- let's look at the place where the
pointy

6 end of the drill is being made. Right? That pointy
end makes

7 contact with a wheel. Correct?

8 A. Yes, sir.

9 Q. All right. And the wheel is spinning very fast.
Right?

10 A. Yes, sir.

11 Q. Now -- and that's the same -- if I make -- if the
12 manufacturer makes a thousand drill bits in one day,
every

13 single one of the ends of those drill bits is going to
come in

14 contact with that same wheel; correct?

15 A. Yes.

16 Q. All right. And if you were at the factory and you
took

17 that wheel, would you be able -- at the end of a day's

run,

were 18 would you be able to identify the 1,000 drill bits that

19 made that day using that wheel?

20 A. I don't understand that question.

example 21 Q. Well, you testified, sir, that in our hypothetical

manufacturer. 22 a thousand drill bits are going to be made by a

23 Correct? We understand that. That's our hypothetical?

24 A. Yes, sir.

bits. 25 Q. Let's assume they're a thousand quarter-inch drill

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James Cadigan - Cross

1 A. Yes, sir.

made is 2 Q. And you told us that the way those drill bits get

into 3 that the -- what's going to become the pointy end comes

production 4 contact with a grinding wheel sometime during the

5 process. Correct?

6 A. Yes, sir.

it under 7 Q. All right. Now, if you were able at the end of the

8 production day to take that grinding wheel and look at

9 your microscope, would you be able to correlate that to

the

10 thousand drill bits that were manufactured that day?

11 A. Would I be able to match the grinding wheel?

12 Q. Yes.

13 A. With the drill bits?

14 Q. Yes, with the drill bits.

15 A. I don't think so.

16 Q. All right. Well, a grinding wheel is a cutting
tool, isn't

17 it?

18 A. Yes, sir.

19 Q. And a drill bit is a thing that receives an
impression from

20 a cutting tool. Correct?

21 A. Yes, sir.

22 Q. And it's your testimony that in that instance you
would not

23 be able to make a match between the thing that cuts and
the

24 thing that's being cut. Right?

25 A. Well, in the case --

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James Cadigan - Cross

1 Q. You can explain in a minute, but I need you to
answer my

2 question. Is it your testimony that you would not in
that case

the 3 be able to make a match between the thing that cuts and
4 thing that's being cut? Yea, or nay?
wouldn't 5 A. It's sharpened, as opposed to being cut, but there
compare to 6 be any pattern on the grinding wheel that you could
7 the drill bit.
cut." 8 Q. Okay. And you say, "sharpened, as opposed to being
diamond or 9 The -- a grinding wheel has little bits or flecks of
10 emery or something like that. Right?
11 A. Yes, sir.
that's a 12 Q. So when we say "grind," all we mean is cut --
grit 13 series of little cuts rendered by the little pieces of
14 that are on the wheel; right?
15 A. "Sharpened" is a more accurate term for me.
we're 16 Q. All right. Now, in this manufacturing process that
so 17 talking about, you said you collected, you know, 150 or
literature 18 drills. Right? Now, is -- have you read any of the
19 about drill-bit comparison?
20 A. Yes, sir.
Scientific 21 Q. Okay. Have you read a book called Modern

22 Evidence, The Law and Science of Expert Testimony?

23 A. I don't know that I have.

24 MR. TIGAR: May I display it to the witness,
your

25 Honor?

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James Cadigan – Cross

1 THE COURT: Yes.

2 BY MR. TIGAR:

3 Q. Do you know this book?

4 A. No, sir.

5 Q. Have you read any work on firearms and tool marks
by Alfred

6 Biasotti and John Murdock?

7 A. Yes, sir.

8 Q. Do you recognize Alfred Biasotti and John Murdock
as

9 experts in the field of tool mark identification?

10 A. They have written several articles in the field,
yes, sir.

11 Q. I didn't ask that, sir. Do you recognize them as
experts

12 in the field of tool mark identification?

13 A. I recognize them as people that have expertise.

14 Q. Now, are they members of this AFTE? Do you know?

15 A. Mr. Biasotti was a member of it and Mr. Murdock is.

change 16 MR. TIGAR: Okay. Your Honor, I am about to
leave 17 subjects. If I could have the Court's indulgence and
I'll 18 five minutes early, I would appreciate it. If not,
19 continue.

20 THE COURT: How long do you expect to go?

and a half 21 MR. TIGAR: Your Honor, I have another hour
22 or so with this witness.

23 THE COURT: All right. We'll recess.

24 MR. TIGAR: Thank you, your Honor.

25 THE COURT: You may step down.

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Monday 1 Members of the jury, we will recess now until
And, of 2 morning, at which time we expect to start at 8:45.
recognize 3 course, as I already told you, Tuesday we're going to
4 the holiday of Veterans Day.

come back 5 So between now and Monday morning when you
at it, 6 to the courthouse is a short time in one way you look
which is 7 your way; it's a long time in the way I look at it,

8 how much opportunity there is for you to come into
contact with

9 things that you ought not during that time.

10 And, you know, I just repeat what I said here
when you

11 were going through the jury selection process in
assuring you

12 or reassuring you that we do not anticipate having you
kept

13 separate and apart from other people -- "sequester," as
we call

14 it, the jury during the course of the trial. And I
still, of

15 course, adhere to that.

16 But that all depends on you and it depends
upon your

17 willingness to and your exercising the discipline to,
first of

18 all, keep open minds, remembering that, of course,
you've heard

19 a lot in this case but you're going to hear a lot more,

20 remembering also that you must avoid discussing any
impressions

21 or even coming to impressions about what all this
means. Let

22 us go through the whole trial process, meaning all of
the

23 evidence, the arguments, and the instructions on the
law, all

24 of the phases of the trial that I discussed with you or

25 mentioned to you when you were first selected.

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1 So please wait for that with respect to your
own views 2 of the case.

3 But, you know, you have to be extremely
careful about 4 all things that you might come into contact with in
newspapers, 5 magazines, radio, television, books, whatever, because
you're 6 going to get a lot more evidence in this case; and it's
the 7 evidence in the case that you're going to have to rely
on when 8 you decide the case and only that.

9 I do want to mention one thing about exhibits.
You 10 hear these exhibits being referred to with numbers like
2000 11 and all that. I don't want you to leap to the
conclusion that 12 you're going to get thousands of exhibits. The
numbering 13 system we use here is not, as you've already learned,
14 sequential. We don't go from 1 to X number or
infinity. So 15 bear with us on that.

16 And also, when it comes time to deliberate in
the

17 case, the exhibits will be there in a room for you to
handle

18 and deal with. You don't have to remember each
photograph that

19 you see or each physical piece of evidence that you
see.

20 You'll have all of that at the time of deliberation.
So don't

21 be concerned with, Gee, I don't remember what that
photograph

22 was, or something. That will all be there for you.

23 But the important thing, of course, is that
you must

24 be extremely careful in talking with other people or
letting

25 other people talk to you or in your presence about
anything

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1 connected with the case.

2 Obviously, as you can appreciate, there is
some public

3 comment about our trial and I'm sure will be. But, you
know,

4 your understanding of the case has to be based on what
happens

5 in this room and on nothing else. And I have to rely
on you

6 for that because, you know, to put it to you in just
plain old

7 terms, if somebody violates that, I'd have to change my
8 approach in this case and then sequester you.

I 9 So I'm sure you don't want that to happen; and
10 don't, either. But it depends on every one of you
following 11 this instruction and being very careful about it.

12 Now, we -- you know, in all other respects, of
course, 13 you're free to go and do as you will this weekend. I
can't 14 guarantee you good weather all the time. I don't have
any 15 jurisdiction over that, so we'll see what happens. We
kind of 16 hope for good weather on Monday.

17 But with these cautions, then, I'm going to
excuse you 18 until the usual time when we'll gather you up on Monday
and 19 have you come to the courthouse.

20 So please continue to be very careful, as I am
sure 21 you will, recognizing what your responsibility is in
the case.

22 And I'm not going to be able to tell you now how long
you can 23 expect this trial to take because we still don't know.
I mean, 24 we're well under way here, but I'm not going to be able
to give

25 you a prediction about the length of the trial; so
don't ask

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1 me. I can't answer it.

2 With these cautions, members of the jury --
and also

3 we do, on a more positive side, hope for you to have a
pleasant

4 and restful weekend. You're now excused till Monday
morning.

5 (Jury out at 1:02 p.m.)

6 MR. TIGAR: May we approach, your Honor?

7 THE COURT: Yes.

8 (At the bench:)

9 (Bench Conference 68B3 is not herein transcribed by
court

10 order. It is transcribed as a separate sealed
transcript.)

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1 (In open court:)
2 THE COURT: Well, we had a little discussion
here at 3 the bench concerning a couple of matters respecting the
4 evidence and then also scheduling.
5 8:45 -- we'll be in recess until 8:45 Monday
morning.

6 (Recess at 1:08 p.m.)

7 * * * * *

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	1	PLAINTIFF'S EXHIBITS				
Withdrawn	2	Exhibit	Offered	Received	Refused	Reserved
	3	151-151A	7581	7585		

4	151B	7600	7600
5	152	7635	7635
6	153	7648	7648
7	155	7639	7643
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12	1842	7637	7637
13	1843	7649	7649
14	2010	7577	7578
15	2011	7578	7578
16	2012	7579	7579

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18 REPORTER'S CERTIFICATE

19 I certify that the foregoing is a correct
transcript from

20 the record of proceedings in the above-entitled matter.
Dated

21 at Denver, Colorado, this 7th day of November, 1997.

22

23

Paul Zuckerman

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