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11264

1 APPEARANCES
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Western
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,
and
6 AITAN GOELMAN, Special Attorneys to the U.S. Attorney
General,
7 1961 Stout Street, Suite 1200, Denver, Colorado, 80294,
8 appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, and JANE TIGAR,
Attorneys
10 at Law, 1120 Lincoln Street, Suite 1308, Denver,
Colorado,
11 80203, appearing for Defendant Nichols.

12 * * * * *
13 PROCEEDINGS

14 (Reconvened at 10:50 a.m.)

15 THE COURT: Be seated, please.

16 Counsel, will you approach.

17 (At the bench:)

18 (Bench Conference 96B1 is not herein transcribed by
court

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

20

21

22

23

24

25

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1 (In open court:)

2 (Jury in at 10:54 a.m.)

3 THE COURT: All right. Members of the jury,
we'll

4 proceed; and as I indicated, we'll see how it goes.
And if you

5 feel a need for another recess at some point, or an
early

6 recess, we'll do so.

7 So let's return the witness.

8 All right. You may continue your examination,

9 Mr. Tigar.

10 (Ronald Kelly was recalled to the stand.)

11 CROSS-EXAMINATION CONTINUED

12 BY MR. TIGAR:

13 Q. And, Agent -- Mr. Kelly, excuse me. Mr. Kelly, it
is the

14 case then that you did not take any soil samples or
other

15 samples of any kind from the ground underneath or
around what

16 you have numbered as 06; is that correct?

17 A. Yes.

18 Q. Now, I have these photographs out of order. But do
you

19 remember looking at the back of each frame? Do you
remember

20 looking at the backs of these photographs?

21 A. Yes.

22 Q. And will you tell the jury who is designated as the
23 photographer on the back of each of these.

24 A. Agent Wilson.

25 Q. And that when we see each of these, we mean each of
those

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Ronald Kelly - Cross

that 1 that are in E5 that's now been received in evidence; is

2 correct, sir?

3 A. That's correct.

Honor. 4 MR. TIGAR: I have no further questions, your

5 THE COURT: All right. Any redirect?

6 MS. WILKINSON: Yes, your Honor.

7 Could I have the ELMO, please.

8 REDIRECT EXAMINATION

9 BY MS. WILKINSON:

defense 10 Q. Mr. Kelly, you were reviewing the photographs with

marked 11 counsel, and you were shown the photograph which is

photograph? 12 Frame No. 6 on the back. Do you recall this

13 A. Yes, I do.

14 Q. And you told us there was a piece of plastic there?

15 A. Yes, there is.

described as 16 Q. On your log, you just -- or on the log, it was

17 what?

18 A. Wood panels.

19 Q. Did you recover wood panels from this area?

20 A. Yes, we did.

21 Q. Were they large or small?

22 A. They were various sizes.

bag 23 Q. Okay. And did you place them in a plastic evidence
24 with that plastic piece there in the photograph?
25 A. Yes, I did.

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Ronald Kelly – Redirect

Government's 1 MS. WILKINSON: Your Honor, we'd offer

2 Exhibit 2117 for demonstrative purposes.

3 MR. TIGAR: No objection, your Honor.

for 4 THE COURT: All right. It will be received

5 demonstrative purposes.

6 MS. WILKINSON: Thank you.

7 BY MS. WILKINSON:

2117 8 Q. Mr. Kelly, you reviewed this Government's Exhibit

9 before coming to court today; is that right?

10 A. I'm sorry. I can't see that from here.

11 Q. Did you review this before coming to court today?

12 A. Yes, I did.

13 Q. And does that tell you the CT number?

14 A. Yes, it does.

15 Q. What does it say?

16 A. CT-4/21-02.

17 Q. Was this the second entry on the log of Mr.

Wilson's

18 photograph log? Do you need to see that to refresh
your

19 recollection?

20 A. I -- yes, please. You asked me if it was the
second entry?

21 Q. Yes.

22 A. No, it is not.

23 Q. Okay. Is it entered on that photographic log?

24 A. No, it is not.

25 Q. Okay. So this wasn't entered on the original log
by

11272

Ronald Kelly - Redirect

1 Mr. Wilson; is that right?

2 A. No, it was not.

3 Q. Okay. But the photograph was taken?

4 A. Yes, it was.

5 Q. Have you compared Government's Exhibit 2117 to look
for

6 that piece of plastic in the photograph?

7 A. Yes, I have done that.

8 Q. Is it in there?

9 A. Yes, it is.

10 Q. Why don't you pull it out and show it to the jury,
and I'm

11 going to put the photograph back up. Let me see if I
can zoom

12 in. Can you circle for the jury again that piece of
plastic.

13 Is that the item you're showing the jury?

14 A. Yes, it is.

15 Q. You can put it back in the bag.

16 THE COURT: You want to make it clear to the
jury I

17 think that that's not being offered as evidence in the
case.

18 MS. WILKINSON: Yes, your Honor. Just to show
to --

19 to correspond to the photograph.

20 THE COURT: Right.

21 BY MS. WILKINSON:

22 Q. Mr. Kelly, it's fair to say that you and Mr. Wilson
made

23 some mistakes on the log back on April 21st, 1995?

24 A. Yes, we did.

25 Q. But let's get back to the piece of evidence that
we're

11273

Ronald Kelly - Redirect

1 interested in, 06. You see that in front of you --

2 MR. TIGAR: I object to the sidebar remark
about the

3 piece "we're interested in."

Honor. 4 MS. WILKINSON: I'll withdraw that, your

5 BY MS. WILKINSON:

exhibit 6 Q. Let's focus on 06. Can you see the Government

7 there, 665, in your hand?

8 A. Yes.

9 Q. Is that it?

10 A. Yes, it is.

11 Q. Does it have 06 marked on it?

12 A. Yes, it does.

13 Q. Does it have a Q number marked on it?

14 A. Yes, it does.

15 Q. What is the Q number?

16 A. Q507.

think I 17 Q. Now, can you look at the exhibit number again? I

item 18 might have said 665 and I meant 664. On the actual

19 itself, not the bag. On the item. On the item, not

the bag. 20 A. 664.

21 Q. Okay. I'm sorry. I misspoke.

1995, and 22 Is that the item you recovered on April 21,

23 marked as 06?

24 A. Yes, it is.

25 Q. What is the Q number assigned to it?

11274

Ronald Kelly - Redirect

1 A. Q507.

2 Q. When you seized it, what did you do with it?

3 A. I picked it up, placed it in a plastic bag, sealed
the bag.

4 The bag was labeled with the 06, date, and my initials,
and

5 then I handed it to Agent Wilson.

6 Q. Was the bag sealed when you handed it to Agent
Wilson?

7 A. Yes, it was.

8 Q. And is Government's Exhibit 664, or what we've been
9 referring to as 06, the item itself -- not the bag, the
item --

10 is it in the same or similar condition to when -- as to
when

11 you saw it back on April 21, 1995?

12 A. The item is substantially in the same condition.

13 MS. WILKINSON: We have no further questions,
your

14 Honor.

15 THE COURT: Mr. Tigar.

16 MR. TIGAR: Limited, your Honor.

17 May I retrieve 2117, your Honor?

18 THE COURT: Yes.

19 MR. TIGAR: And 664.

20 RE-CROSS-EXAMINATION

21 BY MR. TIGAR:

22 Q. Mr. Kelly, you told us about 2117; correct, sir?

23 A. We just spoke about that.

24 Q. Yes.

25 A. Correct.

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Ronald Kelly - Recross

of 1 Q. And that is a bunch of wood fragments and one piece

2 plastic; correct?

3 A. Yes.

plastic 4 Q. Now, what made you decide to put the wood and

5 fragments in the same bag, sir?

No 6 A. We just collected several items and bagged them.

7 particular reason.

collected, 8 Q. Now, all of the other wood fragments that you

9 the large ones were put in separate bags?

multiple 10 A. Not necessarily, no. There's other items with

11 items in them.

its own 12 Q. 664 was put -- Government Exhibit 664 was put in

13 bag; correct?
14 A. That's correct. Some items were.
15 Q. And -- and the other items we looked at on these --
this
16 picture book, they were put in separate bags; correct?
17 A. Many items were put in separate bags; that's
correct.
18 Q. And we saw pictures of them?
19 A. Yes, we did.
20 Q. Now, were you aware that what you -- what was going
to
21 happen to things that you collected was that they were
going to
22 be tested to see if they contained any residues?
Right?
23 A. Yes.
24 Q. And do you know that residues, these things left,
are
25 present in minute quantities at bombing crime scenes?

11276

Ronald Kelly - Recross

1 A. Yes.
2 Q. Are you aware of that?
3 A. Yes.
4 Q. And did you know that on the 21st of April?
5 A. Yes.

6 Q. Did you get any instructions about separately
bagging items

7 recovered from the scene so that there was no
8 cross-contamination?

9 A. That's a two-part question.

10 Q. Okay. Do you know what cross-contamination is?

11 A. Yes, I do.

12 Q. Did you receive any instructions before your
recovery on

13 the 21st of April about minimizing the risk of
14 cross-contamination?

15 A. No specific instructions.

16 Q. Okay. What is cross-contamination?

17 A. Cross-contamination would be when one item would
transfer

18 material to another item and that transfer would not be
a

19 desirable transfer.

20 Q. And you had been warned prior -- you had been told
prior to

21 the 21st of April that that phenomenon happened; right?
Before

22 the 21st of April, you'd been told about cross-
contamination,

23 what it was; correct?

24 A. I was aware of what cross-contamination was that
day, yes.

25 Q. Now, sir, you testified that item -- the item in
664 is in

11277

Ronald Kelly – Recross

1 the same or similar condition to when you saw it;
correct?

2 A. Those weren't my exact words.

3 Q. Well, the question you were asked was is it in the
same or
4 similar condition and you said yes. Do you remember
that?

5 A. I said the item was substantially in the same
condition.

6 Q. Substantially. And you know that in fact, between
the time
7 that you picked it up and today, many, many chemical
tests have
8 been performed on it; correct?

9 MS. WILKINSON: Objection, your Honor, to his
10 knowledge.

11 THE COURT: Well, do you have knowledge of
that
12 testing?

13 THE WITNESS: I have some limited knowledge.

14 BY MR. TIGAR:

15 Q. And you know that -- that with respect to one of
the -- at
16 least one of the chemicals that -- that was thought to
be on
17 there once, that it's not there anymore. Do you know
that?

18 A. Yes, I do.

19 Q. So it is not correct, sir, that this is in the same
or
20 similar condition as when you found it, is it?

21 MS. WILKINSON: Objection.

22 THE COURT: Well, perhaps it ought to be
broken down

23 to differences between appearances and otherwise --

24 MR. TIGAR: Yes, your Honor.

25 THE COURT: -- similar condition.

11278

Ronald Kelly - Recross

1 MR. TIGAR: I was only responding to that one
2 question.

3 BY MR. TIGAR:

4 Q. In terms of physical appearance -- right -- it
looks the
5 same; is that your testimony?

6 A. Yes.

7 Q. You're testifying to that. In terms of whatever
chemicals
8 might or might not be on it, you don't know, do you?

9 A. No, I don't.

10 MR. TIGAR: Okay. No further questions. Your
Honor.

11 THE COURT: Okay.

12 MS. WILKINSON: This witness -- we don't need
this
13 witness right now. We'll hold him.
14 THE COURT: All right. You may step down.
15 Next, please.
16 MR. MACKEY: We'll call FBI Agent Steve
Burmeister.
17 THE COURT: All right.
18 THE COURTROOM DEPUTY: Would you raise your
right
19 hand, please.
20 (Steven Burmeister affirmed.)
21 THE COURTROOM DEPUTY: Would you have a seat,
please.
22 Would you state your full name for the record
and
23 spell your last name.
24 THE WITNESS: Steven G. Burmeister,
25 B-U-R-M-E-I-S-T-E-R.

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1 THE COURTROOM DEPUTY: Thank you.
2 DIRECT EXAMINATION
3 BY MS. WILKINSON:
4 Q. Good morning, Mr. Burmeister.
5 A. Good morning.

chain of 6 Q. You are here this time to testify just about the
7 custody of a certain item of evidence; is that right?
8 A. Yes.
you? 9 Q. Do you see Government's Exhibit 664 in front of
10 A. Yes, I do.
11 Q. Do you recognize that item?
12 A. Yes, I do.
13 Q. Did you receive that item on April 21st, 1995?
14 A. Yes, I did.
the 15 Q. Okay. If we could turn to that date. Were you at
16 Oklahoma City bombing crime scene on April 21st, 1995?
17 A. Yes, I was.
Recovery Team 18 Q. And were you working on a chemical Evidence
19 with other people?
20 A. Yes.
21 Q. With whom were you working?
Kelly and 22 A. The other individuals of the team were Mr. Ron
23 Special Agent Alton Wilson.
Wilson? 24 Q. At some time, did you receive evidence from Mr.
25 A. Yes.

Steven Burmeister - Direct

1 Q. On what day?

2 A. The 21st of April of 1995.

3 Q. Did you receive Government's Exhibit 664?

4 A. Yes.

5 Q. In what condition was it when you received it?

6 A. The condition was in a sealed plastic bag.

7 Q. Is that the same sealed plastic bag marked 664A?

8 A. Yes, it is.

9 Q. How do you recognize that bag?

10 A. I recognize it based on my initials on the plastic
bag.

11 Q. Do you recognize some of the other writing on
there?

12 A. The other writing, the -- basically, the numeric
numbers

13 and Mr. Kelly's initials and the date.

14 Q. Do you see the date of recovery on there?

15 A. Yes, I do.

16 Q. What does it say?

17 A. It's April 21st, 1995.

18 Q. Was that bag -- or was that Item 664 sealed in
Government's

19 Exhibit 664A when you received it?

20 A. Yes, it was.

21 Q. And what did you do with the bag once you received
it and

22 the item?
23 A. Once I received the item, I transported it to the
Evidence
24 Control Center in Oklahoma City where I entered it into
the
25 Evidence Control Center.

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Steven Burmeister - Direct

1 Q. Okay. Was it sealed when you turned it in?
2 A. Yes, it was.
3 Q. Did you receive that item again back in the FBI
Laboratory?
4 A. Yes.
5 Q. Do you recall what day you received it?
6 A. Yes, I do.
7 Q. What day was that?
8 A. That would be April 28, 1995.
9 Q. Approximately seven days later?
10 A. Yes.
11 Q. And from whom did you receive it at that time?
12 A. I received it from a Mr. Brett Mills.
13 Q. In what condition was it when you received it?
14 A. It was sealed in a plastic bag.
15 Q. And can you tell the jury today, is Government's
Exhibit
16 664 in the same or substantially the same condition as

when you

17 saw it in (sic) April 21st.

18 A. Yes, it is.

same

19 Q. All right. Is it in the same or substantially the

20 condition as when you saw it on April 28th?

21 A. Yes.

right

22 Q. Now, we're not going to have you testify about this

23 now, but did you open the bag on April 28?

24 A. Yes, I did.

Exhibit

25 Q. Did you perform chemical testing on Government's

11282

Steven Burmeister - Direct

1 664 at that time?

2 A. Yes.

your

3 MS. WILKINSON: We have no further questions,

4 Honor.

5 THE COURT: Mr. Tigar.

6 CROSS-EXAMINATION

7 BY MR. TIGAR:

8 Q. Hello again, Mr. Burmeister.

9 A. Good morning.

10 Q. My name is Michael Tigar, and I'm one of the

lawyers

I don't 11 appointed to help out Terry Nichols. I think we met --

12 know, more than a year ago -- right -- very briefly?

13 A. I believe so, yes.

things. 14 Q. Well, I'm only going to ask you about the custody

the 15 You're going to be giving a lot more testimony about

16 chemical tests you did; right?

17 A. Yes.

Just 18 Q. You expect to. And I'll ask you about that then.

19 want to know about custody now.

Kelly -- 20 You told -- you were the one directing Agent

collect 21 excuse me -- Mr. Kelly and Agent Wilson as to how to

22 evidence; correct?

for the 23 A. I was instructing them as to the general location

24 collection of evidence that day.

what 25 Q. And did you give them any instruction about how --

11283

Steven Burmeister - Cross

1 they were to recover?

2 A. We had a -- discussions as to the types of

evidence, as far

3 as the evidence that we would recover would be items
that we

4 could retrieve and take back to the laboratory for
chemical

5 testing. We wanted to capture that in that point in
time.

6 Q. Okay. And who made the decision to use
polyethylene bags

7 as an evidence-collection mechanism?

8 A. That would have been the evidence bags that we had
on hand,

9 and those would have been the ones that Mr. Kelly and I
had

10 with us at the time.

11 Q. And did you instruct Mr. Kelly to wear gloves while
he was

12 doing his collecting?

13 A. That was an understanding, of course, that we would
wear

14 gloves throughout the evidence-collection process, yes.

15 Q. And were these gloves lined with some sort of
powder to

16 make them easier to get on and off, or were they
unlined?

17 A. I don't know.

18 Q. You do know the difference; right?

19 A. Yes, I do.

20 Q. You've used both kinds in your work; correct?

21 A. I have, yes.

was 22 Q. Okay. Now, you say that you got -- the item was --
me. Did 23 transported to the Evidence Control Center. Now, help
the 24 somebody give you the item in the field, out there at
25 parking lot?

11284

Steven Burmeister - Cross

item 1 A. I received several items of -- one of which is this
Special 2 here that's before me, Item 664, which I received from
3 Agent Wilson.

4 Q. All right. And where did you receive it?

5 A. I received it in the parking lot area that
particular day.

Evidence 6 Q. All right. And did you then take it to the
7 Control Center?

8 A. Yes.

9 Q. All right. You did that yourself?

10 A. Yes.

11 Q. And when you took it to the Evidence Control Center
12 yourself, did you sign it in there?

13 A. Yes.

14 Q. And sign it in with Mr. Elliott?

15 A. No.

16 Q. Who was -- who was the person you signed it in
with?

17 A. It was a June Buckner who was at the Evidence
Control

18 Center at that time.

19 Q. And do you know where it was between the time you
signed it

20 in there and the time it arrived in Washington, D.C.?

21 A. I don't know exactly where it was at the Evidence
Control

22 Center.

23 Q. Okay. Do you know how it was transported to
Washington,

24 D.C.? By air, or by surface?

25 A. Not directly, no.

11285

Steven Burmeister - Cross

1 Q. Well, given -- as a scientist, you would be
interested in

2 knowing how things got to your lab; right? So if
there's no

3 objection to it, can you tell us what you understood to
be the

4 transportation method.

5 A. Based on my reviews of the custody logs, it had
been

6 transported to the FBI Laboratory with a -- an
aircraft.

7 Q. Okay. And -- did you -- and once you signed it in
at the

8 Evidence Control Center, you didn't have anything
further to do

9 with it; correct?

10 A. That's correct, yes.

11 Q. And just to clarify, when you say it's the -- the
same or

12 substantially similar, you did a lot of tests on it;
right?

13 A. I did numerous testing once I received it on the
28th, yes.

14 Q. And just to be clear, the appearance of it is the
same as

15 the appearance of the item you remember, but we're
going to

16 find out later that there are some chemical differences
-- is

17 that fair to say -- between the item as you got it and
the way

18 it is now?

19 A. Well, I don't know if there's chemical differences.
I

20 don't agree with that. There were chemicals that I
removed off

21 the surface of this that I did some testing on.

22 Q. In other words -- but there were changes that took
place --

23 I'm not attempting to suggest anything other than to
point out

24 there are some changes that took place in the testing
process;

25 right?

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Steven Burmeister - Cross

1 A. After I initially looked at it, it went to other
2 individuals for further testing. I was the first
person to
3 receive it for testing.

4 Q. Yes. Yes, sir. I'm -- but as -- as it sits there
today,
5 there are some other processes that happened to it;
correct?

6 A. Yes. After I looked at it.

7 MR. TIGAR: No further questions. Thank you,
sir.

8 MS. WILKINSON: Your Honor, just to make the
record
9 clear.

10 REDIRECT EXAMINATION

11 BY MS. WILKINSON:

12 Q. Mr. Burmeister, without telling us your findings as
to what
13 items you found on Government's Exhibit 664, are you
able to
14 tell us whether the chemicals that you found on there
could
15 permeate a plastic bag?

16 A. They would not permeate a plastic bag. That's
correct.

17 MS. WILKINSON: That's all.

18 MR. TIGAR: No questions, your Honor.

19 THE COURT: All right. You may step down now,
and
20 we'll hear from you later.

21 Next, please.

22 MR. MACKEY: Your Honor, we would recall Mr.
Brett
23 Mills.

24 THE COURT: All right. If you'll please
resume the
25 stand under the oath you took with us before.

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1 THE WITNESS: Yes, sir.

2 (Brett Mills was recalled to the stand.)

3 DIRECT EXAMINATION

4 BY MS. WILKINSON:

5 Q. Mr. Mills, this is your last appearance, isn't it?

6 A. I hope so.

7 Q. You've told the jury that you're responsible for
logging in
8 the evidence; right?

9 A. Yes, ma'am.

10 Q. And did you receive Government's Exhibit 664 at
sometime

11 during this investigation?

12 A. Yes, ma'am.

13 Q. That plastic piece?

14 A. Yes, ma'am.

15 Q. Do you recall what day you received it in the
laboratory?

16 A. April 27, 1995.

17 Q. And do you recall how it was -- was it in that
plastic bag,

18 Government's 644A, when you received it?

19 A. Yes, ma'am.

20 Q. Okay. Was there another plastic bag on top of it
when you

21 received it?

22 A. Yes.

23 Q. Or it was in another plastic bag, I should say?

24 A. Yes, ma'am. 664B.

25 Q. Okay. So it was double-wrapped by the time you got
it?

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Brett Mills - Direct

1 A. Yes, ma'am.

2 Q. Okay. And did you examine it?

3 A. Yes, ma'am.

4 Q. Did you open the interior bag, 664A?

5 A. I didn't open either bag.

6 Q. Okay. Did you mark 664A, the interior bag?

7 A. No, ma'am.

8 Q. Look at 664A, the bag.

9 A. Right.

10 Q. Did you put a Q number on there?

11 A. No, ma'am.

12 Q. Did someone put a Q number on there?

13 A. Yes, ma'am.

14 Q. What's the Q number?

15 A. Q507.

16 Q. Okay. You did not put that Q number on there?

17 A. No, ma'am.

18 Q. Okay. What did you do with Government's Exhibit
664 when
19 you received it into the laboratory?

20 A. When I was checking it in to make my worksheet,
664B, the

21 outer bag, I wrote my lab number and the Q507 on there.

22 Q. I'm sorry. So you didn't even take it out of the
first
23 bag. You put the Q number on the outside?

24 A. Yes, ma'am.

25 Q. Okay. So you didn't do any of the writing on the
interior

Brett Mills - Direct

1 bag?

2 A. No, ma'am.

3 Q. Did someone do that at a later time?

4 A. Yes, ma'am.

664B -- 5 Q. Okay. You marked the -- the exterior, which is

6 A. Yes, ma'am.

7 Q. -- with Q507?

8 A. Yes, ma'am.

9 Q. And you put the laboratory number on it?

10 A. Yes, ma'am.

11 Q. What did you do with it after that?

12 A. I put it back into the box, finished checking in my case.

13 Q. And did you deliver Government's Exhibit 664 and the two

14 plastic bags to an examiner for testing?

15 A. Yes, ma'am.

16 Q. To whom did you deliver it?

17 A. Agent Burmeister.

18 Q. And was it sealed at that point when you delivered it to

19 him?

20 A. Yes, ma'am.

21 Q. Had you delivered it to anyone else for testing before you

22 gave it to Agent Burmeister?

23 A. No, ma'am.

24 Q. Did you personally take it to Agent Burmeister?

25 A. Yes, ma'am.

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1 MS. WILKINSON: We have no further questions.

2 THE COURT: Mr. Tigar.

3 CROSS-EXAMINATION

4 BY MR. TIGAR:

5 Q. We have to stop meeting like this.

6 Mr. Mills, when you checked the evidence into
the

7 laboratory, you -- you wrote that number on it using
the same

8 procedure you've described before; correct?

9 A. Yes, sir.

10 Q. Using the DW initials?

11 A. Yes, sir.

12 Q. And that was because Mr. -- Agent Williams was the

13 principal examiner; correct?

14 A. Yes, sir.

15 Q. And so if we looked at that, we'd see a number and
the

16 initials DW; correct?

17 A. Yes, sir.

Q507? 18 Q. And you say -- you assigned the Q number; correct?

19 A. Yes, sir.

20 Q. That was your next Q number in order; correct?

21 A. That's correct.

22 Q. That's your standard procedure; is that right?

23 A. Yes.

in a 24 Q. Now, it arrived -- this arrived in your laboratory

25 box; correct?

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Brett Mills - Cross

1 A. Yes, sir.

2 Q. A box that had been air-freighted?

3 A. No, sir.

4 Q. Where had the box been?

5 A. The box was hand-carried back by another agent.

6 Q. I see. And carried on an airplane or surface

7 transportation, do you know?

8 A. It was an airplane.

9 Q. Okay. And it was just a regular, old cardboard

box; right?

10 A. Yes, sir.

11 Q. And hand-carried back from Oklahoma City to

Washington,

12 D.C.; correct?

13 A. Yes, sir.

Hoover 14 Q. And then directly to your offices in the J. Edgar
15 Building on Pennsylvania Avenue?

16 A. Yes, sir.

17 Q. That's where your laboratory is; right?

18 A. Yes, sir.

you took 19 Q. And from the time that you got it to the time that
20 it to Agent Burmeister, how much time elapsed?

received 21 A. I took it to Agent Burmeister on the 28th, and I
22 it on the 27th.

23 Q. Where was it overnight?

24 A. It was in my office.

Edgar 25 Q. And that's an office in that space there in the J.

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Brett Mills - Cross

1 Hoover Building; correct?

2 A. That's correct.

3 MR. TIGAR: Nothing further, your Honor.

4 THE COURT: Anything else?

5 MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

6

7 BY MS. WILKINSON:

8 Q. To clear up one thing, Mr. Mills. You've been
telling all

9 along that you put "Dave Williams" on there; is that
right?

10 A. Yes, ma'am.

11 Q. When you put down DW there, are you indicating that
he

12 himself reviewed it?

13 A. No, ma'am.

14 Q. Okay. Have you reviewed other evidence in this
case that

15 Mr. Williams has reviewed?

16 A. Yes, ma'am.

17 Q. And has he initialed that evidence?

18 A. Yes, ma'am. He puts DRW.

19 MS. WILKINSON: No further questions.

20 MR. TIGAR: No other questions, your Honor.

21 THE COURT: All right.

22 MS. WILKINSON: Oh, I do, your Honor. I --
we've

23 completed the chain. We'd move in Government's Exhibit
664.

24 MR. TIGAR: No objection, your Honor.

25 THE COURT: All right. 664 is received.

defense 1 MS. WILKINSON: Thank you. He can now -- if
2 will agree --

we 3 MR. TIGAR: No objection subject to the matter
4 discussed at the bench, your Honor.

5 THE COURT: All right.

be -- 6 MS. WILKINSON: Your Honor, Mr. Mackey says to
664B so 7 just to be sure, we'd like to admit the bag 664A and
8 there's no question on the chain of custody.

9 MR. TIGAR: May I just look, your Honor?

10 THE COURT: Yes, you may.

briefly, your 11 MR. TIGAR: Thank you. May I just ask
12 Honor, so that I understand?

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION

15 BY MR. TIGAR:

16 Q. The item is 664; correct?

17 A. Yes, sir.

664A; 18 Q. Okay. The bag -- then we've got a bag here that's
19 correct?

20 A. Correct.

21 Q. And when you first got this, was 664A inside of

664B?

22 A. Yes, sir.

23 Q. And when you logged it in, you did the writing
that's on

24 the outside of 664B; correct?

25 A. Yes, sir.

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1 MR. TIGAR: All right. Subject to the
discussion at

2 the bench, your Honor, no objection.

3 THE COURT: All right. We'll receive 664A,
664B,

4 664 -- 664. All right.

5 MS. WILKINSON: And I think we can finally
dismiss

6 Mr. Mills.

7 MR. TIGAR: Yes, your Honor. No -- no problem
with

8 that.

9 THE COURT: All right.

10 THE WITNESS: I can leave?

11 THE COURT: You're not dismissed. You're
excused.

12 THE WITNESS: I'm excused. All right. Take
care.

13 THE COURT: All right. Are you prepared to go
forward

14 with Mr. Burmeister?

15 MR. MACKEY: We are, your Honor.

16 THE COURT: Let me just ask: Members of the
jury,

17 we're going to go into an area that is going to be
technical in

18 nature and require careful attention, technical in the
sense of

19 scientific or laboratory type; and I know it's the day
after a

20 holiday, and I -- I'm not suggesting anything by that,
but just

21 wondering whether you're prepared to go forward, all of
you, to

22 listen to some technical testimony.

23 All right. We'll do so. Bring in Agent
Burmeister

24 again.

25 If you want to take a recess any time during
this,

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You 1 just let me know and we'll do it. I mean any of you.

2 don't have to do a majority vote on it.

oath 3 If you would please resume the stand under the

4 you just took with us.

5 (Steven Burmeister was recalled to the stand.)

6 Ms. Wilkinson.

7 MS. WILKINSON: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MS. WILKINSON:

10 Q. Mr. Burmeister, let's start at the beginning. Tell
us what

11 your title is at the FBI.

12 A. My current title with the FBI is supervisory
special agent,

13 but I'm serving as the acting unit chief for the
Chemistry

14 Unit.

15 Q. What does the Chemistry Unit do in the FBI
Laboratory?

16 A. The Chemistry Unit has numerous functions. Our
principal
17 duty is to conduct chemical analysis of evidence that's
18 submitted to the laboratory. It's a wide variety of
materials,

19 from toxicology samples to drugs to explosive samples.

20 Q. Have you in your career focused on one particular
area?

21 A. Yes.

22 Q. In what area have you focused?

23 A. The areas in the -- the field of the explosives
analysis

24 and explosive-residue analysis.

25 Q. Okay. Now, we'll get into this a little bit later,
but

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Steven Burmeister - Direct

1 you're describing two different types of analyses; am I
right?

2 A. Yes.

3 Q. Can you tell us what they are and distinguish them
for the
4 jury, please.

5 A. There would be an area of explosives analysis, and
this is
6 the examination of bulk, solid samples of explosives as
well as

7 the area of explosives residue analysis; and that is
once an
8 explosive goes off, it produces by-products and
materials. The

9 explosive-residue analysis is the examination of those
10 particular materials themselves.

11 Q. When you examine an item in your laboratory for
residue, is

12 it visible to the human eye?

13 A. A residue is typically invisible to the -- to the
naked

14 eye.

15 Q. And would it be visible under a microscope?

16 A. Usually, it's not.

17 Q. And is that different from what you have described
to us as

18 explosives analysis?
19 A. Yes. Explosives analysis would be the physical
material
20 that I would look at a surface and be able to
physically pick
21 off of a surface an item and take it over for testing.
22 Q. Could it be a very large item?
23 A. Yes, it could.
24 Q. Could it be a small item that you see under a
microscope?
25 A. Yes.

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Steven Burmeister – Direct

1 Q. Did you find items like that on Government's
Exhibit 664?
2 A. Yes.
3 Q. So when you describe for us your analysis of that
item, are
4 you going to be describing explosives analysis or
5 explosives-residue analysis?
6 A. I will be describing explosives analysis, but
7 explosive-residue analysis is certainly parts that I
would have
8 taken with that particular specimen.
9 Q. Okay. Now, how long have you been working for the
FBI?
10 A. I started working in March of 1987.

as a 11 Q. And when you came on, were you -- were you trained

12 special agent?

13 A. Yes.

field? 14 Q. And after that, did you serve somewhere in the

15 A. Yes. I was assigned to the field.

Laboratory? 16 Q. At some point, were you assigned to the FBI

17 A. Yes.

18 Q. At what point was that?

Laboratory. 19 A. In January of 1992, I was assigned to the FBI

educational 20 Q. Could you tell the jury a little bit about your

21 background, please. Where did you go to college?

from 22 A. I hold a bachelor of science degree in chemistry

degree 23 Susquehanna University as well as a master's of science

of 24 in chemistry and forensic chemistry from the University

25 Pittsburgh.

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Steven Burmeister - Direct

1 Q. And have you ever taken any other advanced organic

2 chemistry courses?

3 A. Yes, I have.

4 Q. When did you do that?

5 A. That was after graduating from Susquehanna
University, I

6 took several advanced organic chemistries -- chemistry
courses

7 at Villanova University.

8 Q. After you finished your education and your
master's, did

9 you go right into the FBI?

10 A. No, I did not.

11 Q. Did you work in the private sector?

12 A. Well, yes, I did.

13 Q. Okay. Tell us, in describing that for the jury,
how long

14 you've been working in the field of explosives and
explosives

15 residue.

16 A. Probably since the early 1980's. That was when I
started

17 working in the area of explosives analysis.

18 Q. When was the first time that you held a job where
you

19 worked in that area?

20 A. That would have been with the Allegheny County
crime

21 laboratory for a short period of time in Pittsburgh,

22 Pennsylvania, and that would have been in the -- just
shortly

23 after 1984.

24 Q. What did you do after that?

25 A. I then went to work for a company called Pharmacon,

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Steven Burmeister - Direct

particular 1 Incorporated, in Pittsburgh, Pennsylvania. In this

the 2 company, I served as the laboratory manager as well as

3 supervisor of their forensic division.

4 Q. What type of laboratory is Pharmacon?

5 A. Pharmacon is a private forensic laboratory.

specifically? 6 Q. And what type of work did you do there

-- as 7 A. My specific duties, of course, like I said, is the

work 8 the laboratory manager, I basically reviewed all of the

cases 9 that was coming in for toxicology as well as forensic

10 that were going out, as well as the supervisor of their

these 11 forensic division. So forensic samples that came in,

well as 12 were samples of accelerant cases, drug analysis, as

laboratory. 13 explosives analysis that were handled by the

you ever 14 Q. When you worked for that private laboratory, were

15 asked to testify regarding examinations?

16 A. Yes.

17 Q. Did you testify on -- on behalf of both the
prosecution and

18 the defense?

19 A. Yes, I did.

20 Q. And would that alter your results in any way?

21 A. No.

22 Q. Now, you worked for Pharmacon for how long?

23 A. I worked for Pharmacon up until 1987 when I entered
into

24 the FBI Laboratory -- or, I'm sorry. Into the FBI.

25 Q. If we could --

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Steven Burmeister - Direct

1 A. Excuse me.

2 Q. If we could, let's go back to your master's field
of study.

3 Could you tell the jury a little bit about your area of
4 concentration when you worked on your master's degree.

5 A. The area that I concentrated with the master's
degree was

6 in the area of microcrystal analysis; that is, taking
the

7 crystalline nature of explosives and explosive residues
and

8 analyzing their crystalline formation.

9 Q. During that time, did you analyze the crystalline
structure
10 of ammonium nitrate?
11 A. Yes.
12 Q. And are you familiar with the crystalline structure
of
13 ammonium nitrate from your work at that time?
14 A. Yes.
15 Q. Can you tell us in laymen's terms what it means to
do that
16 kind of microcrystal analysis.
17 A. Well, it's a broad-ranged area. There's numerous
ways of
18 looking at the crystalline formation of particular
samples,
19 explosive samples. One, you can add a chemical to form
new
20 chemicals, new crystalline shapes; and those crystals
can be
21 examined using microscopes and other techniques, or you
can
22 actually recrystallize the actual explosive itself and
analyze
23 its crystalline formation, its structure, its shape and
size
24 and how light penetrates it. And so all of these would
be
25 examined using microscopic techniques.

Steven Burmeister - Direct

your
private
there
explosive

1 Q. Now, during your time working on your master's and
2 subsequent experience in the FBI Laboratory and in
3 laboratories, have you determined or are you aware that
4 are certain unique structures for each crystalline
5 material?

of

6 A. There are unique formation, unique physical shapes
7 various crystals, yes.

8 Q. And does that help you identify certain explosives?
9 A. It's one thing that you will look at in the
identification
10 phase.

formation

11 Q. Does ammonium nitrate have a unique crystalline
12 or structure?

13 A. It has a unique shape and size, yes.

various
crystal?

14 Q. And if you looked at a crystal, could you, through
15 forms of testing, identify it as an ammonium nitrate

ammonium
particular
myself,

16 A. You could determine that it is consistent with
17 nitrate. You -- as an experienced examiner of that
18 crystal, some may say that they could identify it. For

require 19 I would just say that it's consistent with. I would

20 further testing.

you 21 Q. And if you conducted that further testing, could

ammonium 22 actually identify the substance as a crystal of

23 nitrate?

24 A. Yes.

and the 25 Q. And are you familiar with the crystalline structure

11302

Steven Burmeister - Direct

crystal that 1 ions and other portions of that ammonium nitrate

2 you could use to identify it?

3 A. Yes, I am.

and 4 Q. Now, in addition to being -- to being interested

have any 5 educated in explosives and explosives residue, do you

6 experience in arson investigations?

7 A. Yes, I do.

8 Q. Have you ever been a firefighter?

9 A. Yes.

expertise in 10 Q. Can you tell the jury a little bit about your

11 arson investigations.
12 A. I have approximately 12 years' experience as a
volunteer
13 firefighter, during which that period of time, I was
also
14 working with the Pennsylvania state police fire
marshal's
15 office and received training from the Pennsylvania
state fire
16 school in the area of arson and accelerant examination;
and
17 I've also subsequently taken varied courses on
accelerant
18 identification and examination in this area.

19 Q. Do you belong to any associations -- associations
that are
20 connected to those areas of expertise?

21 A. Yes, I do.

22 Q. What association do you belong to, or what
associations?

23 A. Would you like all the associations or just in the
area

24 of --

25 Q. Why don't you give us the ones in the area of arson
first.

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Steven Burmeister - Direct

1 A. Okay. The one primary organization is the
International

2 Association of Arson Investigators.

3 Q. And through that and through your subsequent
research, are

4 you familiar with the types of fires suppressants used
by

5 arson -- used by firefighters?

6 A. Yes, I am.

7 Q. And is the -- to your knowledge, is ammonium
nitrate used

8 in -- as a fire suppressant by firefighters?

9 A. No.

10 Q. Now, let's turn to your time at the FBI. When you
joined

11 the FBI and were assigned to the laboratory, were you
qualified

12 at that point to be an examiner?

13 A. No.

14 Q. What did you have to do?

15 A. Initially, when I first came on board into the FBI
16 Laboratory, I was assigned to work a particular area,
and I was

17 assigned a particular individual as my training
supervisor, if

18 you will, and began the studies for the area of
explosive

19 residue and explosives analysis.

20 Q. During that time, did you take any courses in the
use of

21 certain instruments?

22 A. Yes. That was part of my training.

23 Q. What type of courses did you take?

24 A. I took courses in various techniques of chromatography,

25 x-ray powder defraction, other instrumental techniques that

11304

Steven Burmeister - Direct

1 would be used during the course of my employment.

2 Q. All right. And during that time, at some point, did you

3 become qualified to be an examiner on explosives and explosives

4 residue for the FBI Laboratory?

5 A. Yes.

6 Q. At what time did you become familiar -- did you become

7 qualified?

8 A. It's January of 1993.

9 Q. And after that, did you work on numerous explosives
10 examinations?

11 A. Yes.

12 Q. Now, have you ever attended any conferences or symposia in

13 your field of explosives and explosives residue?

14 A. Yes, I have.

15 Q. And have you talked to other experts in the field?

16 A. Yes, I have.

17 Q. And have you ever discussed with them the
properties of

18 ammonium nitrate?

19 A. Yes, I have.

20 Q. Have you participated in the investigation of other
bombing

21 crime scenes?

22 A. Yes.

23 Q. Now, let's turn to April 19, 1995. Were you in
your

24 laboratory on that day?

25 A. Yes, I was.

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Steven Burmeister - Direct

1 Q. And do you recall learning about the bombing in
Oklahoma

2 City?

3 A. Yes.

4 Q. Were you asked to go to the crime scene?

5 A. Yes.

6 Q. What was your purpose in going to the crime scene
that day?

7 A. The purpose to go to the crime scene was to examine
the

8 entire scene and to collect physical evidence that
could be

determine 9 brought back to the FBI Laboratory for testing to

10 what possible explosive was used.

11 Q. Now, when you did that, were you in charge of that
12 collection of the explosive residue and explosives
evidence?

13 A. Yes, I was.

14 Q. And did anyone direct you as to what to do when you
got to

15 the crime scene?

16 A. No.

17 Q. Were you in charge of that team?

18 A. Yes, I was.

19 Q. On what day did you arrive?

20 A. I arrived on April 20th, 1995.

21 Q. And why did you arrive on April 20th?

22 A. Because of inclement weather that was in the
Oklahoma City

23 area, we, as a group, had to sit (sic) down our plane
in Little

24 Rock, Arkansas, and wait the storm out.

25 Q. And do you recall -- were you in a hotel on the
night of

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Steven Burmeister - Direct

1 the 19th?

2 A. Yes, I was.

3 Q. Did you see pictures of the bombing crime scene?
4 A. Yes, I remember watching it on the television.
5 Q. And do you recall what you thought when you heard
about the
6 rain and you saw the pictures of the bombing crime
scene?
7 A. Yes. I remember looking at the pictures, seeing
the rain
8 coming down and thinking that much of it was being
washed away.
9 Q. All right. Well, let's tell the jury a little bit
about
10 that. Why is it -- why were you concerned, looking at
the
11 crime scene and seeing the rain, that some of the
evidence
12 might be washed away?
13 A. Well, as part of the overall examination, various
14 explosives and explosive residues are, in fact, water
soluble;
15 and so anytime you come in contact with the water,
direct
16 water, it could potentially be washed off of a
particular item.
17 Q. Is that true for different types of explosives?
18 A. Well, some explosives will be absorbed into a
surface and
19 held in and captured there, even though you have water
washing
20 over the surface. And so in certain cases like that,
you will

21 retain it and it will still be captured. But some
surfaces --
22 for example, a piece of glass, or a piece of metal --
it could
23 readily be washed off of that particular item.
24 Q. Now, to start with, let's talk about the different
kinds of
25 explosives you could look for at a crime scene. Are
there

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Steven Burmeister - Direct

1 different categories of explosives that you refer to in
your
2 field?
3 A. Yes.
4 Q. Is there such a thing as high explosives?
5 A. Yes, there are.
6 Q. Can you tell the jury generally what a high
explosive is.
7 A. Generally, a high explosive is in a material that
will
8 detonate. Once it goes off, it has very high speeds.
It will
9 cause things to go into small fragments and do
extensive
10 damage. But classically, they are in the area of what
we call
11 in chemistry organic chemistry, and they are usually
12 carbon-based materials. These particular explosives

usually

13 have a high velocity of detonation, which is a -- a
term for

14 how fast the material will function.

15 Q. Can you give us some examples of what high
explosives are.

16 A. Certain examples of these materials would be things
like

17 TNT, nitroglycerine, certain dynamites would fall
within this

18 particular category.

19 Q. Is there another category of explosives?

20 A. Yes.

21 Q. What is that?

22 A. There's another category called low explosives.

23 Q. And what are they?

24 A. Typically, low explosives are materials that will
burn

25 rapidly. And the classic one would be things like
black powder

11308

Steven Burmeister - Direct

1 or the pyrotechnics that we see at 4th of July, which
are

2 usually flash powder. These are things called low
explosives.

3 Q. And what is the difference again between low
explosives

4 and high explosives are either detonated or burned?
Can you
5 explain that again, please.
6 A. Yes. The high explosives are materials that will
detonate.
7 That is, there's some sort of shock wave that allows it
to
8 function. A low explosive does not function with a
shock wave.
9 It's a rapid burning, so it's burning through as it's
10 functioning. So there is a major difference in the
speed at
11 which it will actually work.
12 Q. You haven't mentioned ammonium nitrate. Is that an
13 explosive?
14 A. It is in its own right, yes.
15 Q. Okay. Tell us how ammonium nitrate is an
explosive.
16 A. Ammonium nitrate is considered classically as an
oxidizer.
17 And in chemistry, a material that's considered an
oxidizer is
18 something that will promote the release of oxygen.
It's
19 readily available for reaction. And in chemistry, when
we have
20 reaction taking place, one of the primary things that
we need
21 is oxygen. The other things that we need are fuels and
some
22 sort of heat to get the reaction to go. But having the
oxygen

oxygen 23 present is very crucial. Ammonium nitrate has the
in -- 24 there. It also has built into it the fuel aspect. But
the use 25 ammonium nitrate as it stands alone is not efficient in

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Steven Burmeister - Direct

additional 1 of that oxygen. So what it requires is some sort of
2 fuel in order to act a little better.

expert, 3 Q. We've heard a little bit about that from another
4 but can you combine fuel oil with ammonium nitrate?

5 A. Yes.

6 Q. And does that make it an explosive?

7 A. Yes, it does.

nitrate? 8 Q. Okay. Can you combine nitromethane with ammonium

9 A. Yes.

10 Q. Does that make it an explosive?

11 A. Yes.

organic 12 Q. Now, is ammonium nitrate by itself an inorganic, or
13 explosive?

material. 14 A. Ammonium nitrate is classified as an inorganic

15 Q. And is ammonium nitrate water soluble?

16 A. Yes.

17 Q. So when you saw the rain at the crime scene on
April 19th,

18 were you worried about different types of explosives
being

19 washed away?

20 A. Yes.

21 Q. Are there other explosives other than ammonium
nitrate that

22 could be washed away?

23 A. Yes.

24 Q. Can you give us other items that are -- other
explosive

25 items that are water soluble.

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Steven Burmeister - Direct

1 A. Well, actually, all explosives, to some degree or
another,

2 are water soluble, even the ones that we were talking
about,

3 the TNT and the nitroglycerine. Those themselves have
a degree

4 of water solubility. The important aspect is what type
of

5 material or surface that it's actually adhering to.

6 Q. All right. Based on your knowledge of explosives
and how

7 they detonate, are there other reasons why you may not
find
8 explosives residue or explosives at a crime scene other
than
9 wet?

10 A. Yes. There are things that can cause it to
disappear, if
11 you will, if that's what you're asking.

12 Q. Okay. Well, let's start with first how an
explosion works.

13 Can you tell the jury generally how an explosion works.

14 A. Well, if we go back to the principal items that we
need in
15 order for an explosion to take place, we need to have
the fuel
16 present, we also need to have an oxygen source present,
and we
17 also have to have something that will bring those two
together.

18 And typically, that's a heat source or some sort of
shock. So
19 those are principally the two ways that you would
initiate the
20 reaction to take place.

21 Q. And how does the reaction take place once you have
those
22 items?

23 A. Well, an explosive is a material that's an
energetic
24 material, that is something that's packed full of a lot
of
25 energy. And it's very tightly held, and it's anxious

to

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Steven Burmeister - Direct

1 release that energy. And so if you can provide some
sort of 2 stimulus to release that energy, that's what an
explosive is 3 doing. It's releasing masses -- massive amounts of
energy that 4 are packed very tightly together in the material.

5 Q. Now, can you give us an example of how that would
work if 6 you had these tightly -- this tight material and the
shock 7 force. What would happen during that reaction?

8 A. What I usually like to describe is a series of
rubber bands 9 that are wound together and really tightly held; and
that, 10 itself, if we held it, would be classified as an
explosive.

11 Now, if we provided some sort of stimulus to release
those 12 rubber bands, they would unravel and spread all over
the place.

13 Well, as it's spreading all over the place, the residue
that is 14 formed are the parts of the rubber bands that were once
formed 15 in that original material. The other thing is as it's

16 unwinding, it's pushing out various parts of unraveled
17 particles of the rubber band. So not only am I
detecting them
18 later, the unraveled parts of the rubber band, which is
the
19 original explosive, but also the residues that are
formed once
20 it unravels.

21 Q. Now, let's use as an example, if we could, ammonium
nitrate
22 with some sort of fuel oil and some kind of fusing
mechanism to
23 provide the shock to the explosion. Would that work?

24 A. Yes.

25 Q. Okay. What would happen if the device were
properly

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Steven Burmeister - Direct

1 constructed if you have a proper mixture of ammonium
nitrate
2 and fuel oil and this shock source? What would happen
to the
3 device?

4 A. The entire --

5 Q. Chemically.

6 A. Chemically, you have the material that will
actually form a

7 chemical reaction, and the material will explode and

detonate.

properly 8 Q. Would you expect, if it was -- if it was designed
the 9 and put together properly, that a lot of the explosive,
10 ammonium nitrate and the fuel oil, would remain?

device 11 A. It's dependent on the actual configuration of that
12 as to how effectively it will initiate or explode.

13 Q. Tell the jury why that is.

the case 14 A. Well, there's various aspects. If you're -- if in
parts of 15 of ammonium nitrate and fuel oil, there may be some

then it 16 the entire mixture that do not receive the fuel oil,
material is 17 will not explode fully and to completion. If the

may not 18 in an irregular shape -- and there's various parts that
imagine 19 actually explode because it's blowing out. But if you

unraveling of the 20 in your mind the explosion taking place, that

and as 21 rubber bands, it's moving out in an outward direction;

pushed 22 it pushes out, there's various material that is being

will not 23 out with it. So there's various parts of that that

chemical 24 explode and will not be consumed in the overall

25 reaction.

11313

Steven Burmeister - Direct

1 Q. What if that ammonium-nitrate/fuel-oil bomb were
contained
2 in a truck? Would you expect the entire truck to be
consumed
3 by the bomb? Or would you expect some of it to remain?

4 A. I would expect some of it to remain because it's
moving out
5 from that particular center area of the explosion.

6 Q. Okay. Let's go back to a term we've heard before
called an
7 improvised explosive device. Can you tell the jury
what you
8 understand that to be.

9 A. This would be something that will be constructed
from
10 materials that one can readily obtain. These are
either
11 commercial products or materials that they would put
together
12 themselves. In the area of the explosive, you could
13 commercially obtain an explosive or you could actually
14 manufacture it yourself. And putting all of the pieces
15 together to form an explosive device would actually be
an
16 improvised explosive device, something you participate
in

17 making.

18 Q. If someone put together an improvised explosive
device and

19 it detonated and you were there post-blast, could you
predict

20 what residues would survive and which ones would not?

21 A. No. You wouldn't be able to predict that.

22 Q. Why is that?

23 A. There is a random nature that as the explosion
occurs, you

24 could do it several times and finding explosive on a
particular

25 piece, for several different chances at doing the
explosion,

11314

Steven Burmeister - Direct

You may

1 you may not find explosive on that particular piece.

2 find it in one of the particular series. It all
depends. It's

3 a very random way at which the explosion occurs.

4 Q. Now, what if you knew that the device, the
improvised

5 explosive device was ammonium nitrate/fuel oil and it
was

6 placed inside a truck? Could you predict, based on
your

7 knowledge of the chemical capabilities of that type of
device,

portions 8 what portions of the truck would survive and which
9 would not?
10 A. I wouldn't be able to predict that.
-- if 11 Q. Okay. Would you be able to predict what portions
12 there were containers, what portions would survive and
which 13 portions would not?
14 A. I wouldn't be able to predict that.
15 Q. Would the size of the device affect that? Your --
what 16 portions would survive and what portions would not?
17 A. I don't think I'd be able to answer that, either.
18 Q. Okay. Are there a variety of factors that one
would have 19 to know to be able to predict what residues would
survive and 20 which ones would not?
21 A. Certainly, there's variables that would come into
play as 22 to whether or not it would survive or not. How those
variables 23 will impact on a particular explosion, you would have
to do 24 several test studies to test your particular model that
you're 25 setting up for that experiment.

11315

Steven Burmeister - Direct

1 Q. And would you have to know the size of the device
to do 2 that?

3 A. Size is a variable, yes.

4 Q. Would you have to know the composition of all of
the 5 explosives?

6 A. You would have to know that, yes.

7 Q. Would you have to know how the device was actually
8 constructed?

9 A. Yes.

10 Q. Would you have to know where it was constructed
inside the 11 truck?

12 A. That would be another important factor.

13 Q. Would you have to know the weather that day?

14 A. Yes.

15 Q. Why is that?

16 A. Well --

17 Q. I mean at the time of the explosion, not after it.

18 A. These are all test parameters that you would have
to know, 19 the weather being the temperature, the humidity, the
pressure 20 that's in the air. All of these factors have to be
reported in

21 order to reproduce that particular type of event.
22 Q. And that would -- would that be the only way, if
you could
23 reproduce exactly what happened at the time, that you
would be
24 able to predict what would survive and what would not?
25 A. And even then, you'd probably have to do several
series of

11316

Steven Burmeister - Direct

1 tests and numerous testing over and over to reproduce
that.
2 Q. And why is it that it's virtually impossible for
you to
3 predict for us what would survive and what wouldn't?
4 A. It's again the random nature; that it occurs in
various
5 angles. And if you're putting this particular
experiment
6 together, it could react in one particular direction
and
7 change. And so the survivability on a particular item
would --
8 would change and vary based on all of the parameters
that
9 we've -- we've talked about.
10 Q. Knowing that it's impossible for you to predict
once you
11 come to a blast scene after the explosion has been
completed,

you 12 how do you decide how to look for certain residues when
13 come to a crime scene?
what 14 A. It's based on seeing previous samples and knowing
it's not 15 types of materials explosives will survive on. And
only for 16 that I go to a crime scene and say that I will look
materials 17 these particular materials. But there is a list of
seek 18 that I have had -- I have in my mind that I will try to
for the 19 out because in the past, they have been good surfaces
20 capturing of explosives and explosive residues.
to 21 Q. What type of surfaces do you think are more likely
for when 22 contain those residues or explosives and that you look
23 you go to a crime scene?
good 24 A. There's glass, for example, pieces of metal, wood
25 fragments. Pieces of plastic and foam have always been

11317

Steven Burmeister - Direct

1 surfaces to capture and hold explosives.
2 Q. Why are they good surfaces?

3 A. Well, the -- they provide a -- an open area to
retrieve it.

4 Plastic, for example, it will absorb high explosives.
Foam

5 rubber, for example, expands and almost serves as a
baseball

6 glove, almost, and captures material as it penetrates
through

7 it. Metal, of course, is just another flat surface
where

8 material is deposited onto.

9 Q. When you went to Oklahoma City on April 20th, did
you

10 determine whether you could collect everything that was
on the

11 crime scene to look for the residue?

12 A. It would have been impossible, I think.

13 Q. Why is that?

14 A. There were thousands and thousands of pieces of
evidence.

15 It was a very complex crime scene principally because
of the --

16 the active ongoing processing, looking for survivors,
moving of

17 equipment around. There were a lot of variables that
were

18 taking place that had to be overcome.

19 Q. I take it you can't make it into a laboratory
setting; is

20 that right?

21 A. That's right.

20th? 22 Q. So what did you do when you got there on April

23 A. On April 20th, principally, examined the scene and
24 developed a strategy as to attack various areas that I
would
25 see as being viable spots for explosive-residue
analysis and

11318

Steven Burmeister - Direct

1 basically doing an assessment and developing a strategy
at that
2 point.

20th? 3 Q. Do you recall walking to the crime scene on April

4 A. Yes.

5 Q. At that time, were you looking for residue or were
you
6 developing your strategy you just told us about?

7 A. Both. Initially, it was developing the strategy.

8 Q. Tell us what you saw when you got to the crime
scene,

9 Mr. Burmeister.

10 A. Oh, I -- I remember vividly walking up 6th Street
where

11 there was numerous pieces of debris that were in the
roadway,

12 pieces of glass, fragments of metal. I just remember
that it

13 seemed to be a town frozen in time because there was no

Street, 14 activity in the streets. Moving to the North Robinson
Murrah 15 when I rounded the corner, I remember seeing the -- the
the 16 Building sort of silhouetted in the blue sky and the --
building. At 17 immense damage that was done to that particular
for the 18 that point, I in my mind tried to develop a strategy
19 examination of that entire scene.
large? 20 Q. Had you ever been to a bombing crime scene that
building had 21 A. Not of that magnitude where the exterior of a
22 that much damage.
accompanied 23 Q. Had you ever been to a bombing crime scene that
buildings? 24 that large of an area, streets and -- and other
25 A. Not that wide of an -- of an area; right.

11319

Steven Burmeister - Direct

and 1 Q. So what strategy did you determine to use to try
2 collect explosives and explosives-residue evidence?
protected 3 A. I wanted to go to various areas that would be
4 from the elements, in buildings, and particular objects

that

5 would have been sheltered from the -- from the
elements.

6 Q. What areas of the Murrah Building and the
surrounding area

7 did you choose?

8 A. This would have been -- initially, I remember
certain

9 beams, concrete beams that were out in front of the
building

10 and swabbing the underside of those beams which would
have been

11 protected from the direct elements. Pieces of metal
fragments

12 that were on the exterior, we were doing the underside.
Those

13 areas that were protected from direct rain activity.

14 Q. Now, at that time, did you have any idea which
items might

15 have residue on them or explosives and which items
would not?

16 A. No. I -- the basis behind it was going towards
those items

17 which in my mind had been good in the past, and that's
what I

18 was moving forward to.

19 Q. Did you have a microscope with you on April 20th to
look at

20 those items?

21 A. No.

22 Q. Would you conduct an examination of evidence at the
crime

23 scene?
24 A. There would have been a -- if I will, a visual
examination
25 of the particular material, but principally, to capture
it and

11320

Steven Burmeister - Direct

1 take it back for retrieval to the laboratory for
examination.
2 Q. Why is it that you wouldn't perform your tests for
chemical
3 residues or explosives at the crime scene?
4 A. I wouldn't have had the proper instrumentation, the
proper
5 area to work with the particular sam -- samples out in
the
6 field. It's best to take it to the laboratory where I
have
7 better equipment to work with.
8 Q. And on April 20th, did you seize any evidence that
day?
9 A. Yes.
10 Q. What evidence did you seize?
11 A. There was a street sign that was out in front of
the Murrah
12 Building, there was a piece of tire fragment, as well
as some
13 swabbings that were taken.

14 Q. Do you recall where exactly the parking sign was
before you

15 took it?

16 A. Yes.

17 Q. Where was it?

18 A. It was in front of the Murrah Building, across the
street.

19 And there was a sign that was bent over -- the actual
signpost

20 was bent over, but a "no parking" sign was affixed to
the

21 signpost.

22 Q. I want to show you what's been marked but not yet
in

23 evidence Government's Exhibit 827. Do you recognize
that

24 photograph?

25 A. Yes, I do.

11321

Steven Burmeister - Direct

1 Q. How do you recognize it?

2 A. I recognize the -- the pole and the street sign and
the

3 parking lot area on 827.

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

5 Exhibit 827.

6 MR. TIGAR: Briefly, your Honor.

7 THE COURT: Yes. You may.

8 MR. TIGAR: I wonder if I -- may I put this --
this is
9 940 in evidence.

10 VOIR DIRE EXAMINATION

11 BY MR. TIGAR:

12 Q. Mr. -- Agent Burmeister, would you just indicate
for us,
13 please, where along this N.W. 5th Street that street
sign was
14 approximately, just so I can see what we're looking at
on that
15 picture you just saw.

16 A. Okay.

17 Q. So when you -- so that -- that -- that parking sign
18 controls the parking along 5th Street and is implanted
in the
19 sidewalk that's between the street and the parking lot,
itself?

20 Is that fair to say?

21 A. It's fair to say that it was a street sign on that
22 sidewalk. Whether it regulated the parking, I don't
know --

23 I'm not a parking attendant.

24 Q. All right. And the cars that we'll see in the back
when
25 it's in evidence, those were cars that were actually in
that

Steven Burmeister – Voir Dire

1 parking lot; right?

2 A. Yes.

3 MR. TIGAR: No objection, your Honor.

4 THE COURT: All right. 827 received.

5 MS. WILKINSON: If we could display it, your
Honor?

6 THE COURT: Yes.

7 DIRECT EXAMINATION CONTINUED

8 BY MS. WILKINSON:

9 Q. Mr. Burmeister, tell the jury what they are looking
at.

10 A. This particular picture, in the center of the
picture is a

11 signpost, and at the top of the signpost is a sign that
is

12 bent. It has a curvature to it; and if you lined it
up, the --

13 the pointed end of that particular sign would point
towards the

14 Murrah Building and the center crater area of the
Murrah

15 Building.

16 Q. Did you find this parking sign of interest when you
saw it?

17 A. Absolutely.

18 Q. Were you so interested in it that you seized it?

19 A. Yes.

20 Q. Why did you do that?
21 A. Yes. Because the parking sign itself would serve
as -- as
22 a baseball mitt, if you will, to capture anything that
is
23 coming from that particular blast scene. And so it
would have
24 served as an excellent recovery site, so the entire
sign was
25 retrieved.

11323

Steven Burmeister - Direct

1 Q. Would you recognize that sign if I showed it to
you?

2 A. Yes.

3 Q. Take a look at Government's Exhibit 826. Do you
recognize

4 it?

5 A. Yes, I do.

6 Q. How do you recognize it?

7 A. I recognize it based on my initials as well as
laboratory

8 numbers and designations.

9 MS. WILKINSON: Your Honor, we'd offer 826.

10 MR. TIGAR: May I just, your Honor --

11 THE COURT: Sure. You want to approach and
take a

12 close look at it?

13 MR. TIGAR: I'd like to take a look at it.

14 THE COURT: All right.

15 MR. TIGAR: May I just inquire, your Honor,
from here?

16 THE COURT: Yes.

17 VOIR DIRE EXAMINATION

18 BY MR. TIGAR:

19 Q. This is another one of these items of evidence that
was

20 logged in by Brett Mills at the lab and then forwarded
on to

21 you? Is that right?

22 A. I received it from Mr. Mills at the laboratory.

23 Q. Okay. And do you see a Q number on here? Is it
there

24 anymore?

25 A. Yes. It's right here.

11324

Steven Burmeister - Voir Dire

1 Q. Q501. So this went to the same package as 507 or
at the

2 same time, do you know?

3 A. I received numerous pieces of -- from Mr. Mills.
And 501

4 was delivered to me at the same time.

5 Q. As 507?

6 A. Yes.

7 MR. TIGAR: No objection. Shall I leave it up
there?

8 MS. WILKINSON: Yes, please, if you could,
thanks.

9 THE COURT: 826, received.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. WILKINSON:

12 Q. Mr. Burmeister, just to be -- to make it clear,
because

13 we're using a lot of different numbers. Mr. Tigar was
asking

14 you about another piece of evidence, Q507?

15 A. Yes.

16 Q. Is that the portion of the wood panel of the truck
that

17 we've also called 664 and 06 on the log?

18 A. Yes.

19 Q. Okay. So those two items came to you together; is
that

20 right?

21 A. They were separate, but they came to me at the same
time.

22 Q. Sorry. They were in separate bags?

23 A. Yes.

24 Q. Sealed?

25 A. Yes.

11325

Steven Burmeister - Direct

1 Q. Okay. Now, can you take the parking sign out and
tell the
2 jury what you noticed about it -- take it out of the
plastic
3 bag -- when you were at the scene.

4 A. Well, as you can see in the particular picture, it
would
5 have been in a kind of an angled position like this,
but the
6 curvature on the sign was significant to me because it
had
7 taken a pressure on this side to bend it in that
direction.

8 Plus there were -- was visible signs of materials that
had
9 penetrated the particular sign itself. And that's
principally
10 the surface itself would have been an excellent
material to
11 examine for explosive residues, and I retrieved it that
way.

12 Q. Now, you're saying it would have been a good
surface. Did
13 you test it for residue?

14 A. Yes, I did.

15 Q. Did you find any?

16 A. None were identified.

17 Q. Okay. You can put it down.

earlier 18 Before we leave that item, we heard a little
term? 19 about cross-contamination. Are you familiar with that
20 A. Yes, I am.
21 Q. What is cross-contamination?
some 22 A. Cross-contamination, contamination being anytime
that 23 material is introduced into a particular object when
contamination 24 object did not have it to begin with. And cross-
contact with 25 would be where, say, something on my hands came on

11326

Steven Burmeister - Direct

exhibit. 1 this particular exhibit and now is on that particular
them. 2 That's been now cross-contamination between the two of
determine 3 Q. Okay. Now, are there different ways for you to
items 4 whether there's been cross-contamination on a series of
5 that are brought to you together?
examine the 6 A. Well, one thing that I would do is typically
whether 7 exterior portions of the packing material to determine
8 there's explosives on those materials, itself.

Government's

9 Q. All right. I'm going to hold up for you

about;

10 Exhibit 664. This is the other item we've been talking

11 correct?

12 A. Yes.

series of 13 Q. And you received this in the package -- the same

14 items as you did the parking sign; is that right?

15 A. Yes.

parking 16 Q. And you found no residues or explosives on the

17 sign?

18 MR. TIGAR: Objection. Leading, your Honor.

your 19 MS. WILKINSON: I thought I already asked him,

20 Honor. He said no.

21 BY MS. WILKINSON:

22 Q. Did you find any residues on the parking sign?

would 23 A. There were some inorganic residues, but none that I

24 determine as explosive residues.

you find 25 Q. Okay. And without getting into your findings, did

11327

Steven Burmeister - Direct

1 some explosives or explosive residues on Government's

Exhibit

2 664?

3 A. Yes.

4 Q. Okay. And since you found them on 664 and you
didn't find

5 them on the parking sign, does that tell you anything
about

6 cross-contamination?

7 A. Yes.

8 Q. What does it tell you?

9 A. That it did not occur.

10 Q. What else did you do on April 20 after you
recovered the

11 parking sign, Mr. Burmeister?

12 A. Afterwards, the materials that we -- that is,
myself and

13 Mr. Kelly -- had retrieved, these items were then
entered into

14 the FBI's Evidence Control Center in Oklahoma City.

15 Q. All right. Did you continue to work at the crime
scene on

16 April 21st, 1995?

17 A. Yes.

18 Q. On that Friday, were you called away at some point?

19 A. Yes, I was.

20 Q. And were you directed to go to another location to
assist

21 in the investigation of the bombing?

22 A. Yes.

23 Q. Where were you told to go?

24 A. At that point, principally making arrangements for
a future

25 flight on the following day to another location for

11328

Steven Burmeister - Direct

1 examination, as well as additional evidence that was
being

2 brought -- being brought into the Evidence Control
Center for

3 examination.

4 Q. Okay. You've already told us in your previous
testimony

5 that you received Government's Exhibit 664 from Mr.
Wilson;

6 correct?

7 A. Yes.

8 Q. And you turned it in to the Evidence Control
Center?

9 A. Yes.

10 Q. Did you leave the following day?

11 A. Yes.

12 Q. Where did you go?

13 A. Boarded a flight to Junction City, Kansas.

14 Q. And were you directed to participate in some
searches in

15 the Junction City, Kansas, area?

16 A. Yes.

17 Q. Did you participate in the search of Mr. Nichols'
18 residence?

19 A. Yes, I did.

20 Q. And did you do some chemical analysis during that
search?

21 That's the wrong term, isn't it?

22 A. That's the wrong term.

23 Q. Did you do some -- did you try and do some
detection for

24 chemical -- potential chemical residues?

25 A. Yes.

11329

Steven Burmeister - Direct

1 Q. Did you participate or did you become familiar with
the
2 search warrant for Mr. Nichols' house before you did
that?

3 A. Yes.

4 Q. And do you recall going to Mr. Nichols' house on
the
5 afternoon of April 22d, 1995?

6 A. Yes, I do.

7 Q. And do you recall the order in which the house was
8 searched?

9 A. Yes.

10 Q. Was there a search for booby traps or other
explosives?

11 A. Yes, there was.

12 Q. Was that the first part of the search?

13 A. That was initial, prior to the search team making a
direct

14 entrance into the house.

15 Q. You did not participate in that portion of the
search; is

16 that right?

17 A. No.

18 Q. Who did that portion of the search?

19 A. These were individuals from the FBI's bomb
technician group

20 that were located in that general area.

21 Q. Now, were you aware that Mr. Nichols had told the
agents

22 the night before that he didn't have any booby traps in
his

23 house?

24 A. I was aware of that, yes.

25 Q. Okay. Did that make any difference to you in terms
of

11330

Steven Burmeister - Direct

1 having that first search conducted?

2 A. No.

3 Q. Why is that?

4 MR. TIGAR: Objection, your Honor.

5 THE COURT: Sustained.

6 BY MS. WILKINSON:

7 Q. Did you have that first portion of the search
conducted?

8 A. Yes.

9 Q. And did you conduct the second portion of the
search?

10 A. Yes.

11 Q. And was that prior to any of the seizing agents
going in to

12 actually take evidence out of Mr. Nichols' house?

13 A. That was, yes.

14 Q. What type of search did you do -- and we'll call it
the

15 second phase of the search?

16 A. Okay. The second phase was principally to move
through the

17 residence, looking for direct chemical evidence and, if

18 possible, to -- to take custody of that particular
chemical

19 evidence prior to the second or -- if you will, the
third phase

20 of that particular search.

21 Q. Did you wear any special clothing when you did that
search?

22 A. Yes.

23 Q. What type of clothing did you wear?

boot
24 A. Full Tyveks gear. That is full-body suits with
hands.
25 coverings, as well as disposable rubber gloves on the

11331

Steven Burmeister - Direct

1 Q. What color are those body suits?
2 A. They are white.
3 Q. Some of us have referred to them as bunny suits?
4 A. Bunny suits or Tyveks bunny suits.
5 Q. And did -- were there others who were assisting you
in that
6 second phase of the search?
7 A. Yes.
8 Q. Did they all wear the same Tyveks gear?
9 A. The entire team that moved in was fully clothed.
10 Q. Did you use any instrument to assist you in your
search?
11 A. Yes.
12 Q. What type of instrument did you use?
13 A. It was an ion mobility spectrometer. It's a
14 chemical-analysis instrument.
15 Q. What does it do?
16 A. The instrument will screen for a select group of
high
17 explosives and principally things like TNT and

nitroglycerine.

18 It will do an examination for that and give preliminary
19 findings.

20 Q. Did you find -- did you get any results during that
search?

21 A. Yes.

22 Q. What results did you get?

23 A. There were positive responses for nitroglycerine.

24 Q. Was that in any way substantial to you at that
point?

25 A. No. I -- I'd seen weapons in the house and having
the

11332

Steven Burmeister - Direct

1 weapons in the house, it's very typical to see the
2 nitroglycerine.

3 Q. So that didn't indicate to you that there were any
4 explosives in the house at that point; correct?

5 A. That's correct.

6 Q. And tell us why nitroglycerine is consistent with
having
7 firearms in one's house.

8 A. Someone who uses an awful lot of firearms, does a
lot of
9 shooting will have materials, by-products from the
combustion
10 of the bullets on their hands, on their clothing, and

it could

11 be moved around in the house, especially if they are
storing,
12 say, empty shells of ammunition or something like that.

13 Q. Did you find any other indications of explosives
residue
14 during that second phase of the search?

15 A. There were some bottles in the basement area during
the
16 second phase of that search that were observed.

17 Q. Okay. Other than that, did you find any residues?

18 A. No.

19 Q. And after you completed that second phase of -- of
the
20 search, were the search -- was the rest of the search
team
21 allowed in for the final phase?

22 A. Yes.

23 Q. Did you also participate in the final phase?

24 A. Yes.

25 Q. Were you aware that Mr. Nichols had told the agents
the

11333

Steven Burmeister - Direct

1 night before that he didn't have any explosives in his
home?

2 A. Yes.

3 Q. Did you find explosives in his home?

4 A. Yes.

5 Q. Would it -- would it have made any difference to
you
6 whether Mr. Nichols had said he had explosives in his
home or
7 not in conducting your search?

8 A. No.

9 Q. Do you recall what kind of explosives you found in
his
10 home?

11 A. Yes.

12 Q. What type was it?

13 A. Ammonium nitrate, and also a combination that could
go with
14 the ammonium nitrate. There was a container of
nitromethane as

15 well as Primadet which is a -- an initiation mechanism.

16 Q. Let's just focus on the ammonium nitrate, if we
could. Do

17 you recall seeing any ammonium nitrate on the outside
of

18 Mr. Nichols' home?

19 A. Yes.

20 Q. Where did you see it?

21 A. The initial observation of the porch area and the
steps

22 leading up to the porch area on the outside of the
house had

23 little pill-like materials, and pills being small,

spherical

24 particles. And those spherical particles resembling
ammonium

25 nitrate were removed from that porch area.

11334

Steven Burmeister - Direct

1 Q. Did you remove them?

2 A. Yes, I did.

3 Q. How did you remove them?

4 A. I was down flat on the surface, removing them with
a pair

5 of forceps, individually picking up each one and
placing it

6 into a vial.

7 Q. Showing you Government's Exhibit 247. Do you
recognize

8 that?

9 A. Yes, I do.

10 Q. How do you recognize it?

11 A. I recognize it both with my initials, laboratory
numbers

12 and designations, plus the collection vehicle itself.

13 Q. What is the collection vehicle?

14 A. The collection vehicle being the bottle itself.

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

16 Exhibit 247.

17 THE COURT: Yes. You may examine if you wish.

18 VOIR DIRE EXAMINATION

19 BY MR. TIGAR:

20 Q. Agent --

21 MR. TIGAR: May I ask from here, your Honor?

22 THE COURT: Yes. Yes.

23 BY MR. TIGAR:

24 Q. The one labeled E1 --

25 A. Uh-huh.

11335

Steven Burmeister - Voir Dire

right? 1 Q. -- has two -- two little things in it? Is that

2 A. There's two spherical particles in there, yes.

you put 3 Q. Now, how many spherical particles were there when

4 it in there? Just two?

the 5 A. No. There were quite a few that were consumed for

6 chemical analysis.

-- 7 Q. Okay. And this metal thing inside of the other jar

8 A. Uh-huh.

right? 9 Q. -- what -- the particles are all adhered to that;

10 A. There are particles adhering to that surface, yes.

you
11 Q. And did you put the metal thing in it at the time
12 collected it?
after
13 A. No. This was an elemental test that was conducted
14 the collection process.
15 Q. And what's the bag?
into the
16 A. The bottle -- yes. The bottles were then placed
17 paper bag and entered in for evidence storage.
mean, who
18 Q. And where -- where have they been since then? I
19 kept them?
20 A. These --
between
21 Q. Did all -- was all the changes that have been made
22 the time that you got this and now been under your
supervision?
specimen
23 A. I principally did the examination of these -- this
it back
24 under my care, custody, and control. I then released
has
25 over to Mr. Mills and I'm not sure as -- as to where it

11336

Steven Burmeister - Voir Dire

1 been, and I haven't conducted further examinations.
2 Q. Okay. But in terms of being able to tell us what

3 examinations were conducted on this, you would be able
to tell

4 us that -- right -- if we were to ask?

5 A. As far as chemical examinations.

6 Q. Yes.

7 MR. TIGAR: Okay. No objection, your Honor.

8 THE COURT: All right. 247 received.

9 MS. WILKINSON: Yes, your Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. WILKINSON:

12 Q. Now, I'm going to take out 247, this vial marked
E1. Is
13 this your handwriting, Mr. Burmeister?

14 A. Portions of it.

15 Q. Do you know? You can look at it. I see your
initials.

16 Are those your initials?

17 A. Yes.

18 Q. Is that your handwriting?

19 A. Yes.

20 Q. Okay. And just tell the jury what it says on
there.

21 A. It says E1, SGB, my initials, and 4-22-95, and a
series of
22 numbers, 174-0C-52160, which is an FBI file number.

23 Q. And did you put these markings on here to indicate
the date

24 when you collected this sample?

25 A. Yes.

11337

Steven Burmeister - Direct

1 Q. And what was in E1?

2 A. There were a series of spherical particles, very
similar to

3 these spherical particles that are in there now, but
several

4 more were in there.

5 Q. Did you examine some of the particles?

6 A. Yes, I did.

7 Q. Did you conduct chemical analysis of those
particles?

8 A. Yes.

9 Q. What did you determine?

10 A. The particles were identified as ammonium nitrate.

11 Q. And I believe you already told Mr. Tigar that most
of

12 the -- most of the ammonium nitrate was consumed by
your

13 testing?

14 A. Yes.

15 Q. Are there just two prills or particles in here now?

16 A. Yes.

17 Q. Now, you also mentioned that you found some
nitromethane in

18 Mr. Nichols' house; is that right?

19 A. Yes.

20 Q. This was not a large quantity, was it?

21 A. It was a container. I'm not even sure of the size
of the
22 container, but it was not a large quantity of it.

23 Q. And it was clearly marked that it was for fuel for
an
24 airplane; correct?

25 MR. TIGAR: Yes, your Honor. I -- I object to
further

11338

Steven Burmeister - Direct

1 reference to this unless the container and the label
and
2 everything is brought into court.

3 MS. WILKINSON: We can do that, your Honor.
That's no
4 problem.

5 THE COURT: All right.

6 MS. WILKINSON: In fact, I'll just leave it at
that,
7 and we'll go back to it.

8 THE COURT: Okay.

9 BY MS. WILKINSON:

10 Q. Just to lay the record, Mr. Burmeister, it was
marked, was

11 it not --
12 A. Yes.
13 Q. -- as to its purpose? And it was marked as some
type of
14 fuel for a specific item; correct?
15 A. Yes.
16 Q. Not for bomb-making materials?
17 A. No. It was not.
18 Q. Okay. Did you also find other explosives in Mr.
Nichols'
19 house?
20 A. Yes.
21 Q. Did you find Primadet?
22 A. Yes, I did.
23 Q. Let me show you Government's Exhibit 141. Do you
recognize
24 this?
25 A. Yes.

11339

Steven Burmeister - Direct

1 Q. Did you see this Primadet in Mr. Nichols' house?
2 A. Yes, I did.
3 Q. Did you conduct some testing on some Primadet in
this case?
4 A. The material that's on the interior surface of the
tubing,

5 the orange tubing.

6 Q. Okay. Well, some of this Primadet was also
recovered from

7 Mr. Fortier; correct?

8 A. Yes.

9 Q. And did you compare that to this Primadet?

10 A. No.

11 Q. Okay. Did you -- have you done a visual
inspection?

12 A. Yes.

13 Q. Okay. Are they similar visually?

14 A. Yes, they are.

15 Q. All right. Now, tell the jury what kind of
chemical is

16 inside the orange shock tube of the Primadet.

17 A. Inside the orange tubing itself is a coating on the
18 interior surface, just bathing the surface itself, of a
high

19 explosive called HMX. And it's mixed in with a metal,
aluminum

20 powder. So it's a combination of those two materials
that's on

21 the interior surface of that tubing.

22 Q. So when this tubing is detonated, does an explosion
occur?

23 A. There's a very small explosion that takes place
inside the

24 tube. It's very rapid. It travels at high speeds
through that

25 tubing all the way down to the metal portion on the end

which

11340

Steven Burmeister - Direct

1 is -- if you look at the -- well, if I can draw --

2 Q. Sure. Go ahead. Draw on the computer screen.

3 A. Okay. The start of the tube being down on this
side,

4 travels through the tubing and would end up down on
this area

5 which is the actual detonator, itself, which will
explode.

6 Q. Now, after you completed the search of Mr. Nichols'
house,

7 were you asked to do other searches in the Kansas area?

8 A. Yes.

9 Q. Were you asked to go to a storage shed?

10 A. Yes, I was.

11 Q. Did you, with other members of your team, search
the

12 Herington storage shed Unit 2?

13 A. Yes.

14 Q. For -- what did you look for?

15 A. This would have been a search for explosive
residues and

16 explosives that may be inside.

17 Q. Did you conduct a visual examination of the
Herington Unit

18 2 storage shed?
19 A. A visual examination was definitely part of the
search.
20 The initial search.
21 Q. Did you find any ammonium nitrate prills?
22 A. No.
23 Q. Okay. Did you find any explosives residue in that
storage
24 shed?
25 A. No.

11341

Steven Burmeister - Direct

1 Q. All right. And if ammonium nitrate were stored in
a sealed
2 bag, would you expect to find any ammonium nitrate
prills in
3 that storage shed?
4 A. No.
5 Q. Did you conduct any other searches in the central
Kansas
6 area during that time?
7 A. Only in the Fort Riley area.
8 Q. Now, did you stay in Kansas on Monday, April 23d?
9 A. Yes.
10 Q. Let me go back one second. I'm not sure I elicited
from
11 you the date of the search of the Herington unit

storage unit

12 No. 2. What date did you conduct that search?

13 A. That would have been the 23d of April.

14 Q. Okay. And if the Primadet that we just saw -- if
some of

15 the Primadet we just saw had been stored in that
storage shed,

16 would you expect -- in the condition it was in, would
you

17 expect to find any explosives residue consistent with
HMX, the

18 chemical you told us was in the shock tube?

19 A. I would not expect to find it, no.

20 Q. Why is that?

21 A. It's a commercial product that's packaged up and
typically

22 would not be depositing the interior explosive, so it's
-- it's

23 in its sealed condition.

24 Q. Okay. Now, on April 23d, did you stay in Kansas?

25 A. Yes.

11342

Steven Burmeister - Direct

1 Q. On April 24th, were you still in Kansas?

2 A. Yes, I was.

3 Q. And at some point, were you called away from the
Kansas

4 area?

5 A. Yes.

D.C.?
6 Q. Were you directed to travel back to Washington,

7 A. Yes, I was.

8 Q. Why was that?

New York
9 A. My direction was that a trial was ensuing in the

10 area --

11 MR. TIGAR: Objection, your Honor. Relevance.

12 THE COURT: Sustained.

13 BY MS. WILKINSON:

14 Q. Mr. Burmeister, were you stopped from -- from
conducting

15 additional tests in Kansas and in Oklahoma City because
of

16 other duties?

17 A. Yes.

18 Q. Okay. And did you leave Kansas to go engage in
those other

19 duties?

20 A. Yes.

21 Q. Now, did you return to the FBI Laboratory in late
April?

22 A. Yes, I did.

23 Q. And is that when you received Government's Exhibit
664?

24 A. Yes.

25 Q. What date was that?

11343

Steven Burmeister – Direct

1 A. 664 was presented to me on the 28th of April.

2 Q. Did you examine it?

3 A. Initially, I did, yes.

4 Q. Okay. Can you tell the jury the steps that you
take

5 normally in examining a piece of evidence from a
bombing crime

6 scene when it comes into your laboratory.

7 A. Well, initially, the steps begin before I actually
take the

8 item out of the bag or box or however the container
arrived to

9 me in; that is, I will initially clean the area that
I'm

10 working with, using a two-solvent method. Basically,
Cloroxing

11 the area, which is a material that will break down any
types of

12 residues that are left behind, and next following it
with a

13 solvent such as acetone or methanol, whatever I happen
to have

14 available to me.

15 The next step is to place a piece of
disposable paper

16 down on the examination area; and at that point, I'm
ready to

17 actually examine the particular specimen itself.
18 Q. What type of gloves do you wear when you're doing
that?
19 A. During that entire process, I'm wearing disposable
rubber
20 gloves. And the practice that I use is a practice of
two
21 rubber gloves where I'll put on a pair of rubber gloves
and a
22 second pair over top of it.
23 Q. What's the purpose of the second pair of rubber
gloves?
24 A. The first pair of rubber gloves is my working pair
of
25 rubber gloves. I can move things around. Once I'm
ready to

11344

Steven Burmeister – Direct

1 work with the particular specimen itself, I will don
the second
2 pair of gloves. It's my second outer wrapper of
protection.
3 Q. And do you use that second pair of gloves for just
the item
4 that you're examining?
5 A. Yes.
6 Q. Did you follow those steps prior to examining
Government's
7 Exhibit 664?

8 A. Yes, I did.

9 Q. And after you cleaned your table and laid out the
paper,
10 did you retrieve Government's Exhibit 664?
11 A. Yes, I did.

12 Q. Was it still in the sealed bag when you were
conducting
13 those preparatory steps?
14 A. Yes, it was sealed.

15 Q. And did you put on your second pair of gloves prior
to
16 opening the bag?
17 A. Yes, I did.

18 Q. Then what did you do?
19 A. I removed the item itself and placed it underneath
a
20 microscope and began the initial phase of my actual
21 examination.

22 Q. Now, when you're looking at an item such as this
under the
23 microscope, what are you looking for?
24 A. The initial examination, the microscopic and visual
25 examination is to look for particles of unconsumed
material or

11345

Steven Burmeister - Direct

physically 1 any particle that to me is something that I can

2 remove and test further.

664, 3 Q. Did you examine what we'll refer to as the front of

4 the side that has the red and yellow paint?

5 A. Yes, I did.

6 Q. Did you also examine the back of 664?

7 A. Yes.

what 8 Q. Okay. And did you know from your visual inspection

9 this surface is on the back of 664?

10 A. Yes. I did.

11 Q. What type of material is it?

12 A. It's a wood-like, fiberglass-type material.

exemplar 13 Q. Have you compared Government's Exhibit 664 to an

14 of the Ryder truck box?

15 A. Yes, I have.

Government's 16 MS. WILKINSON: Your Honor, we'd offer

17 663 for demonstrative purposes.

18 Mr. Tigar is willing to let it go in.

Honor. 19 MR. TIGAR: We want it in for everything, your

20 THE COURT: Agreeable to you?

21 MS. WILKINSON: Of course.

22 THE COURT: 663 is received.

23 BY MS. WILKINSON:

24 Q. Now, Mr. Burmeister, let's start with your visual

25 examination. Explain to the jury the differences.
Tell them

11346

Steven Burmeister - Direct

1 what 663 is, first of all.

2 A. 66 -- I'm sorry, 663 -- 663 is a side portion, a
cutout of

3 the -- the side panel of a Ryder truck. Both the
interior and

4 the exterior are exemplar surfaces, as well as the
thickness of

5 the item is also the same.

6 Q. Did you compare 664 to 663?

7 A. Yes, I did.

8 Q. What did you note?

9 A. Well, the initial notation that the thickness is --
the

10 first observation: There's definitely a layer removed.
This

11 particular layer on the interior, the white -- white
and black

12 layer that you see here is definitely not shown on this

13 particular exhibit. The exterior surface is similar.

14 Q. And how is it similar?

15 A. Well, it's the same or similar color scheme and
similar

16 texture-type surface.

17 Q. Looking at 664, do you see this weaved area here?

18 A. Yes.

19 Q. Do you know what that is?

20 A. I don't know the chemical for -- chemical substance
for it,

21 but it's consistent, in my mind, with fiberglass-type
material

22 that I've seen.

23 Q. And does 663, this portion of the Morgan box of the
Ryder

24 truck, have fiberglass in it?

25 A. It's consistent with a fiberglass surface, yes.

11347

Steven Burmeister - Direct

1 Q. Now, obviously, 664 is a lot thinner than 663; is
that

2 right?

3 A. Absolutely.

4 Q. Okay. And what does that tell you about what
happened to

5 664?

6 A. 664 took place -- a tremendous amount of trauma
took place

7 on 664, enough to sheer off a substantial layer of that

8 particular material.

664 and 9 Q. And does that tell you anything about the back of
10 its ability to retain any kind of residue or
explosives?

11 A. It would serve as a surface to adhere explosive
material
12 penetrating or coming in contact with that particular
surface.

13 Q. Why don't you hold that and you can keep both of
those up
14 there. I'll take this back.

15 Turning to the wood side of 664. Did you view
that
16 under the microscope?

17 A. Yes, I did.

18 Q. And when you first saw it, did you see anything on
the
19 surface?

20 A. A distant visual examination, there were some
particles of
21 spots that were white in color on the surface material
spread
22 across in a -- a varied deposit.

23 Q. And without conducting a microscopic examination or
24 chemical examination, could you tell what those white
particles
25 were?

11348

Steven Burmeister - Direct

1 A. No.

2 Q. When you put it under the microscope, did you see
more
3 particles?

4 A. Yes, I did.

5 Q. What did you see when you first looked through the
6 microscope on the wood side of Government's Exhibit
664?

7 A. Well, principally, what I -- I ended up doing was
going
8 sequentially back and forth -- sequentially going in a
-- in a
9 linear manner across the surface, looking for -- for
individual

10 particles that could actually be seen or physically
removed off
11 of the surface.

12 Q. Did you see a lot of particles?

13 A. Yes.

14 Q. How do you know which ones to remove for chemical
analysis
15 and which ones to leave there?

16 A. What I usually do is remove a particular particle
and
17 conduct a preliminary chemical test on that particular
particle
18 to determine whether or not it is a -- an oxidizer-type
19 material.

20 Q. And why do you do that?

21 A. It's a way of screening hundreds and hundreds of
different
22 particles. I -- I use that as the preliminary method.
23 Q. Okay. Could there be other particles on there that
have
24 nothing to do with explosives?
25 A. Yes.

11349

Steven Burmeister - Direct

1 Q. And do you have to use your experience and judgment
to
2 determine which particles to analyze?
3 A. Yes.
4 Q. All right. At a certain point, did you take off
particles
5 and conduct the preliminary tests you've just described
for the
6 jury?
7 A. Yes. There were several --
8 Q. And what were your results?
9 A. Several of the particles that I removed had no
response to
10 the particular chemical test. There was one particular
area
11 that particles were removed and I had a very strong
response
12 from the chemical test.
13 Q. All right. Without getting too technical for us,

tell us

14 what that first initial chemical test was called.

15 A. Okay. It's a material -- it's a chemical called

16 diphenylamine. The diphenylamine chemical, when it
comes in

17 contact with an oxidizer, typically, something like an
ammonium

18 nitrate or potassium chlorate -- these are strong
oxidizer

19 materials. It will turn this clear solution into a
deep blue,

20 and that deep blue indication is an indicator that
there's a

21 positive response.

22 Q. When you got that positive response, that blue
color, did

23 you cause any photographs to be taken of Government's
Exhibit

24 664?

25 A. Yes. At that point, I wanted to capture it at that
point

11350

Steven Burmeister - Direct

1 in time; and so several photographs were taken in the
area that

2 these particles were removed from.

3 Q. Do you recall how many pictures you took?

4 A. Oh, probably over five. Maybe more than that.
Quite a few

5 photos were taken.

6 Q. Why did you take so many?

7 A. I wanted to capture it -- I was very excited about
the

8 particular finding of preliminary, and I wanted to
capture it

9 in time. I wanted to represent it both in color and
also black

10 and white.

11 Q. And have you brought some of those -- not all of
those --

12 but some of those to court today to share with the
jury?

13 A. Yes.

14 MS. WILKINSON: Your Honor, may I step forward
to get

15 the photographs?

16 THE COURT: Yes.

17 BY MS. WILKINSON:

18 Q. Agent Burmeister, can you look at these
photographs? I'm

19 going to start with 831. Do you recognize that?

20 A. Yes, I do.

21 Q. Is that one of the photographs you took of
Government's

22 Exhibit 664?

23 A. Yes, it is.

24 Q. All right. Did you take these photographs
yourself?

25 A. Yes, I did.

11351

Steven Burmeister – Direct

1 Q. And is Government's Exhibit 830 another one of the
2 photographs that you took?

3 A. Yes.

4 Q. Do you recognize it?

5 A. Yes, I do.

6 Q. How do you recognize it?

7 A. I recognize the surface and the particular
particles that
8 are on it.

9 Q. How about Government's Exhibit 832? Is that
another of a
10 series?

11 A. Yes.

12 Q. Is this a different magnification from the prior
two
13 photographs you've just discussed?

14 A. It's a different magnification, and it's also in
black and
15 white.

16 Q. What about 835? Do you recognize that?

17 A. Yes, I do.

18 Q. Is that another one of those photographs?

19 A. Yes.

20 Q. Did you take this photograph?

21 A. Yes, I did.

22 Q. And on this photograph, do you indicate the Q
number of

23 Government's 664?

24 A. Yes, I do.

25 Q. What is the Q number?

11352

Steven Burmeister - Direct

1 A. It's Q507.

2 Q. And finally, Government's Exhibit 834. Do you
recognize

3 that?

4 A. Yes, I do.

5 Q. Is that a photograph of the entirety of
Government's

6 Exhibit 664?

7 A. Yes.

8 Q. And do you have the Q number up at the top of that
9 photograph?

10 A. Yes, I do.

11 Q. What is the Q number?

12 A. Q507.

13 Q. And do these photographs show what you saw under
the

14 microscope that day?

15 A. Yes.

16 MS. WILKINSON: Your Honor, we'd offer 831,
830, 832,

17 835, and 834.

18 MR. TIGAR: May I inquire briefly, your Honor?

19 THE COURT: Yes, sir.

20 MS. WILKINSON: Would you mind, Mr. Tigar,
just

21 keeping them in that order?

22 MR. TIGAR: I wouldn't mind at all.

23 MS. WILKINSON: Thank you.

24 VOIR DIRE EXAMINATION

25 BY MR. TIGAR:

11353

Steven Burmeister - Voir Dire

1 Q. Now, I'm going to show you first 834. Okay. Now,
can --

2 can -- this is the whole thing; right? One side of the
whole

3 thing; correct?

4 A. Yes. One side of the entire --

5 Q. Of the entire specimen?

6 A. Right.

7 Q. Now, then, I'm going to move to 835; and I want to
ask what

8 part of the specimen are we looking at here.

We're 9 A. This is a -- we're now magnifying the original one.

particles 10 moving closer to the surface, into the area that the

11 were observed.

12 Q. All right. And what portion of it is that?

particular 13 A. Oh, I would say it's the -- if we elevate this

14 item as north and south, east and west, it would be the

15 northeast quadrant of --

now, 664, 16 Q. The northeast. So I'm going to take the object

now? 17 and turn it. We're looking at up -- where I'm pointing

18 The -- up in the --

19 A. It would be this northeast quadrant.

correct? 20 Q. That quadrant there. And that's what this is;

21 A. Yes.

of the 22 Q. That's for -- for reference, that's the flip side

23 red part? Right?

24 A. Yes.

what 25 Q. Okay. And then 832 is just zeroing in on some of

1 you've had in 835; is that right? With more
magnification?

2 A. We're moving closer to the surface.

3 Q. Same portion. It's the flip side of the red side;
right?

4 A. This wooden side, yes.

5 Q. Yes. The wooden side. And when I say "the flip
side of

6 the red side," I mean that if we lay this down with the
7 evidence sticker at the top -- right -- we're seeing
something

8 that's more or less on the other side of where the
evidence

9 sticker is located; is that correct? Please just go
ahead and

10 verify.

11 MS. WILKINSON: Your Honor, perhaps Agent
Burmeister

12 could hold it up to this photograph so he can compare
it

13 himself. I think it's a little difficult.

14 MR. TIGAR: I'm just trying to find out where
these

15 are from, your Honor, on this specimen.

16 THE COURT: I understand.

17 THE WITNESS: It's -- it's not directly on the
18 opposite side of the evidence -- Government Exhibit 664
label.

19 It's slightly askew of that.

20 BY MR. TIGAR:

21 Q. All right.
22 A. It's not exactly.
23 Q. Slightly how -- how far would you say? Would you
-- about
24 here? I'm pointing.
25 A. Let's see. It'll be a pretty good estimate. It
would be

11355

Steven Burmeister - Voir Dire

1 about an inch away.
2 Q. Okay. But you are able to tell us that. That is
to say,
3 if I would ask more questions, you know where that is
in
4 relationship to the sticker; correct?
5 A. On the flip side?
6 Q. Yes.
7 A. On the flip side. I would have to have the object
to make
8 the comparison, but I would be able to.
9 Q. So you can do that for us.
10 A. Yes.
11 Q. Okay. And these pictures here are color versions
of that
12 same area, the flip side of the red side; correct?
13 A. On --

14 Q. On Q -- the red side of 664.

15 A. It's the wooden side of --

16 Q. Right.

17 A. -- Government Exhibit 664.

18 Q. Yes. But opposite the part which on the nonwood
side is
19 colored red; correct?

20 A. Yes.

21 MR. TIGAR: Okay. No objection, your Honor.

22 THE COURT: All right. The exhibits are
received.

23 But I think we'll recess here.

24 MS. WILKINSON: Okay.

25 THE COURT: And the reason is that I think it
will --

11356

1 all of us will better evaluate the testimony to be
given here

2 if we take it all at once, the direct and the cross,
since

3 we're getting into a technical area.

4 So you can step down now, Agent Burmeister.
We'll

5 hear from you on Monday.

6 MR. TIGAR: Excuse me. Were those received
then? I

7 didn't hear the Judge. I was crossing the room.

8 THE COURT: Yes.

9 MR. TIGAR: Thank you, your Honor.

10 THE COURT: Yes. And, members of the jury,
I'm -- I

11 will excuse you early now, as I said, because I think
we can --

12 we're getting into an area of chemical testimony here,
opinion--

13 type testimony; and I think it's best understood by, as
I said,

14 hearing the direct testimony and the cross-examination.
We

15 won't be able to do all of that by 1:00, so it's better
to take

16 it all at one time, when we're all fresh on Monday
morning,

17 which I trust we all will be, because I'm going to
excuse you

18 now until Monday morning, so that you may have the
weekend

19 respite.

20 And of course, during this time, you will
continue to

21 do as you've been doing, recognizing that we have not
completed

22 the trial, of course, and that a good deal more
evidence will

23 be heard in the case. So you must keep open minds,
avoiding

24 discussion about the case or anything connected with it
with

to be 25 all other persons, including other jurors, and continue

11357

listen to 1 very cautious and careful as you watch television,
like, to 2 the radio, read magazines, books, newspapers, and the
relate to the 3 stay away from anything that could in any respect
talking 4 issues in the case. And again, you know, I'm not just
I'm 5 about whatever might be out there about this trial.
get 6 talking about the whole subject matter. We're about to
don't 7 into an area of chemical analysis, for example. Now, I
books over 8 suppose many of you have in mind reading chemistry
able to 9 the weekend; but if you did, don't. We want you to be
in the 10 decide this case on the basis of what is given to you
11 evidence. I'm sure you understand that.

members of 12 And with that caution -- or those cautions,
resume 13 the jury, we'll excuse you now until Monday, when we'll
14 at 8:45. I hope you have a pleasant weekend.

15 (Jury out at 12:35 p.m.)

16 THE COURT: I'm at your suggestion here -- not
exactly
17 your pleasure, but your suggestion as to the time of
our
18 recess. We have Mr. Kelley coming at -- I think he's
to be
19 here at 1:30, but -- and of course, we have this other
matter
20 that arose this morning. And then we have some matters
that
21 involve things that have to be done in chambers.

22 MR. TIGAR: Yes, your Honor.

23 THE COURT: You wish to make a suggestion --

24 MR. TIGAR: Well --

25 THE COURT: -- Mr. Tigar?

11358

1 MR. TIGAR: It is now 12:30, your Honor. May
we have
2 1:45?
3 THE COURT: That's fine. To deal --
4 MR. TIGAR: To deal with whatever matters are
going to
5 be dealt with in open court. And I understand there's
some
6 evidentiary rulings that were to be discussed in
chambers.

7 THE COURT: Right.

Honor -- 8 MR. TIGAR: And perhaps whatever order your

9 THE COURT: Well, I'd rather do the open

court, of 10 course, because that involves people who are here other

than 11 counsel.

12 MR. TIGAR: Yes, your Honor. If we could have

till a 13 quarter to 2, your Honor, then we'd be well fortified

for the 14 afternoon.

15 THE COURT: Do you have any objection to our

taking up 16 Mr. Kelley's motion first?

17 MR. MACKEY: That's Mr. Kelley regarding the

Democrat 18 Gazette?

19 THE COURT: Yes.

20 MR. MACKEY: No, that would be fine, your

Honor. 21 MR. TIGAR: Your Honor, I'm sorry. I was

thinking of 22 a different Mr. Kelly. I understand that -- that Mr.

Ronald 23 Kelly is coming back.

24 THE COURT: Well, we have him, too.

25 MR. TIGAR: And something we'll deal with in

open

1 court; is that correct, your Honor?

2 THE COURT: Expect to, yes. I thought we
would wait
3 on him to get this -- not that lawyers are preferred
ahead of
4 other people, but I think we ought to get that motion
out of
5 the way.

6 MR. TIGAR: Yes, your Honor.

7 THE COURT: That's his only involvement.

8 Is that agreeable to the Government?

9 MR. MACKEY: It is, your Honor.

10 THE COURT: Okay. So we'll recess -- yes, Mr.
Mackey.

11 MR. MACKEY: Yes. I received five additional
defense
12 motions this morning. I'll do my best to be ready this
13 afternoon. There's a good deal of material.

14 THE COURT: All of them deal with matters
which may or
15 may not come into evidence, which is the criterion that
is used
16 for the nonpublic hearings.

17 MR. TIGAR: That's right, Judge. We are --
they are
18 all very short. We filed them under a blanket sealing
motion,

19 is my recollection, precisely for that reason.
20 THE COURT: Yes. Which I signed at the
recess. So
21 we'll go as far as we can, Mr. Mackey. I'm not going
to
22 disadvantage you or the other side, either, in taking
things
23 that you haven't had a chance to look at. I haven't
looked at
24 all of them yet, either. But -- but here in open
court, we'll
25 recess till 1:45.

11360

1 (Recess at 12:39 p.m.)

2 * * * * *

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4 PLAINTIFF'S EXHIBITS

Withdrawn 5 Exhibit Offered Received Refused Reserved

6 247 11334 11336

7 663 11345 11345

8 664 11292 11292

9 664A-664B 11293 11294

10 826 11323 11324

11 827 11321 11322

12 830-832 11352 11355

13 834-835 11352 11355

14 2117 11271 11271

15 * * * * *

16 REPORTER'S CERTIFICATE

17 I certify that the foregoing is a correct transcript from

Dated 18 the record of proceedings in the above-entitled matter.

19 at Denver, Colorado, this 28th day of November, 1997.

20

21

Carpenter

Bonnie

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23

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25