

1 UNITED STATES DISTRICT COURT
2 STATE OF COLORADO
3 Civil Action No. 96-CR-68-M
4
5 UNITED STATES OF AMERICA,
6 Plaintiff,
7 vs.
8 TIMOTHY JAMES McVEIGH and TERRY LYNN NICHOLS,
9 Defendants.

10 -----
11 DEPOSITION OF FREDERIC WHITEHURST, Ph.D.
12 December 18, 1996
13 VOLUME III
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1 PURSUANT TO AGREEMENT, the deposition of
2 FREDERIC WHITEHURST, Ph.D., called for examination by
3 the Defendant, Terry Lynn Nichols, was taken at the

4 United States Courthouse, Denver, Colorado, on the
5 18th day of December, 1996, at the hour of 9:01 A.M.,
6 before Bonnie Carpenter, a Notary Public and Certified
7 Shorthand Reporter in and for the State of Colorado
8 and a Registered Professional Reporter.

9 *****

10 I N D E X

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2 FREDERIC WHITEHURST,

3 called as a witness for examination under the Rules,

4 having been previously duly sworn according to law, was

5 examined and testified on his oath as follows:

6 MR. KOHN: I just want to make a preliminary

7 remark on the record, which is, you know, we're going
8 to have to terminate this no matter what at 11:59 a.m.
9 so if it's not completed, as I said, we're willing to
10 clearly be reasonable and have Dr. Whitehurst come
11 back if that's what's necessary.

12 The second matter is, just so you know,
13 Dr. Whitehurst -- he's made the judgment that he's
14 okay to continue today, but, last night, actually, he
15 was the worst ever and I did -- I actually called
16 1-800 Hotel Doctors to get him a doctor, but no one
17 was available and then I actually made a call to get
18 him into the emergency room and he just was too sick
19 to even get of his bed to get in the car. It looks as
20 if the fever broke last night. So I was actually
21 prepared -- I was actually ready to cancel the
22 deposition this morning, but it seems as if it broke,
23 he got a couple hours' sleep so he told me he'll be
24 good until noon. So let's do it.

25 MR. HARTZLER: And you've spoken to him this

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1 morning and you're satisfied in your professional
2 judgment that he's completely competent and capable of
3 answering questions and understanding everything that
4 he hears and says?

5 MR. KOHN: He thinks he can do it and --
6 he's at 95 percent, which is good. So I think he can
7 adhere to that requirement.

8 MR. HARTZLER: Well, we're, of course --
9 let's talk -- can we just recess for a moment?

10 MR. WYATT: Certainly.

11 MR. KOHN: Okay. I just --

12 (There was a discussion off the record.)

13 MR. HARTZLER: Let me go on the record,

14 first of all, and say my concern that I expressed off

15 the record to Mr. Kohn was that none of us here want

16 to have a witness who has some illness that might

17 affect his memory, perception, ability to testify in

18 any way so that later on, there's some claim that

19 there was a misunderstanding about something that

20 occurred. I mean, obviously, if there's a

21 misunderstanding, there's a misunderstanding. I want

22 to make sure that we have a fully competent witness.

23 MR. KOHN: Just so you know, I think that is

25 knows and his demeanor and the way he's answering the

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1 question -- if I think he's slipping down, I'm just

3 keeping a fairly careful eye and I'm -- I'm sure he

4 can start it and he'll be fine until noon and if not,

5 I'm just going to cancel it the moment I have a

6 counter-indication.

7 EXAMINATION (Continued)

8 BY MR. WYATT:

10 prepare --

11 A Yes.

12 Q -- to continue?

13 A Sure.

14 Q I'm sorry. Doctor, we had closed out with

15 my questioning of you before Mr. Hartzler took over

16 with some issues regarding contamination in general
17 and we covered most of the areas concerning any
18 testing or monitoring that may have been done as to
19 personnel and as to instrumentation. We did not
20 discuss any surfaces, though.

21 With respect to tables, benches, hoods, and
22 other surfaces within the laboratory, was there any
23 mechanism in place at the FBI laboratory in the
24 explosives trace analysis area for monitoring those
25 items for contamination?

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1 A There wasn't anything that we did on a
2 regular basis.

3 Q Was there any protocol established for that
4 type of contamination monitoring?

5 A The one time that I did the -- the
6 monitoring, the test, I had a protocol. It's -- it's
7 written out. I mean, absolutely step for step.

8 Q Is that one of the protocols that would be
9 in the protocol notebook you described yesterday?

10 A No. They -- the -- the protocol, itself,
11 and -- everything that was done and the data is in
12 the -- in a notebook -- in a separate notebook. I
13 made, I think, two or three copies of them. One of
14 them, I think Mr. Burmeister has now. I believe.
15 I -- I'm not sure.

16 Q Do you know where any of those other copies
17 are?

18 MS. WILKINSON: Go ahead and answer the

19 question.

20 A I think that I sent a copy to the Inspector

21 General. I -- I've got -- you know, I have to go back

22 and look through my notes to be sure of that, though,

23 sir.

24 Q (BY MR. WYATT) One more question. Do you

25 have a copy of it?

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1 MR. KOHN: I'm going to talk to the witness.

2 (Mr. Kohn conferred with the deponent.)

3 A I -- I have to check in my office for that

4 copy.

5 Q (BY MR. WYATT) I'm not --

6 A I understand that. If I was -- if I had a

7 copy, it would be in my office.

8 Q Okay. And just so I clarify this, I'm not

9 suggesting that you have it off premises or anything

10 like that.

11 A No. No. No. No.

12 Q In consistence or compliance with FBI

13 regulations, you may keep individual files on things

14 that you work on; is that correct?

15 A In my office.

16 Q Correct. That's what I intended.

17 A Yes.

18 MS. WILKINSON: Yesterday, Dr. Whitehurst

19 mentioned two notebooks full of literature and some

20 other items. We contacted Agent Burmeister to

21 determine if those notebooks exist. He says there's

22 two different notebooks with the same material, but
23 they are all literature reviews supporting the use of
24 the flowchart or protocol for explosive residue
25 analysis, so if there's additional information

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1 Dr. Whitehurst can provide about this notebook or
2 those so we can go back and trying to determine what
3 he's talking about, we will make a copy of that
4 literature review for the defense. We would like to
5 know if there's any other information that he has, if
6 you would ask him, so if we could determine if there
7 are additional notebooks. But it was Agent
8 Burmeister's representation those notebooks include
9 one notebook which is the literature survey, two pages
10 on each side copied. The other one has a literature
11 survey with just the front page copied so the notebook
12 is thicker.

13 MR. WYATT: I want to just interpose an
14 objection to representations by Mr. Burmeister. This
15 is sworn testimony today and that's clearly an unsworn
16 statement and a representation through you and I
17 recognize you're trying to assist us in discovery, but
18 to the extent it applies in this deposition, are we
19 all in agreement that's not a sworn statement? We
20 object to that type of interjection of statements into
21 the record.

22 MS. WILKINSON: Of course. I don't think he
23 would adopt my representation of his statement. I'm
24 trying to again -- my understanding is you want some

25 of this information. I'm trying to locate it as

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1 quickly as possible and when I went back to Mr.
2 Burmeister, my understanding is I may be missing
3 something in translation, that it was just -- the
4 notebooks he is aware of are just literature reviews
5 supporting the instruments that are set forth in the
6 protocol or flowchart that we've referred to, I
7 believe, as Whitehurst 2 and the predecessors to
8 Whitehurst 2.

9 Q (BY MR. WYATT) We may come back to that in
10 a few moments. We were talking about contamination
11 and I want to continue with this while we're on this
12 issue. Was there any protocol or standard operating
13 procedure for the monitoring of possible contamination
14 with respect to the instrumentation in the trace
15 analysis lab?

16 A No.

17 Q And no studies or monitoring has been done
18 of that equipment for contamination purposes, either?
19 Would that be a correct statement?

20 A No more so than when we run blanks.

21 Q Okay. Now, you indicated to us that there
22 was one situation where a study was performed. Is
23 this the one that was performed, I believe, in the
24 summer or fall of 1995?

25 A Yes.

1 Q And that's after the collection of some
2 evidence in the Oklahoma City bombing case; correct?

3 A Yes.

4 Q And in fact, in some of your infamous
5 letters or notorious letters -- you referred to them
6 yesterday as famous letters -- there are references to
7 that study; correct?

8 MR. KOHN: I'm just going to pose an
9 objection and just state that we would just have him
10 respond to his letters.

11 MR. WYATT: I'm not trying to characterize
12 him.

13 Q (BY MR. WYATT) You mentioned that the
14 first day of this deposition.

15 A I -- I did mention the study and my letters,
16 yes.

17 Q And that's in --

18 MR. HARTZLER: We did not.

19 A I think I -- Joe, I think I did.

20 MR. HARTZLER: I just didn't understand what
21 you said.

22 MR. WYATT: I'll represent that he did and
23 I'm going to show him some of those.

24 Q (BY MR. WYATT) Other than that one study
25 and you also mentioned another study or experiment

1 that you did that was above the ceiling involving some

2 jeans and some PETN?

3 A It wasn't above the ceiling.

4 Q Okay. I'm sorry. I thought you said it was
5 above the ceiling panels.

6 A Can I explain that?

7 Q Certainly.

8 A It was a box that was stored on a -- on a
9 cabinet up high, close to the ceiling, yes.

10 Q I'm sorry. I misunderstood.

11 A Yes. And it -- it wasn't an experiment.

12 Well, it was an experiment for one type of explosive
13 and during that experiment, another one showed up
14 on -- on the box.

15 Q Okay. What was the experiment intended to
16 study?

17 A We were trying to determine the longevity of
18 the -- the material EGDN on -- on the cotton cloth.

19 Q Cotton cloth?

20 A Cotton cloth. Yes. The blue jean material.
21 We were also trying to determine if the material, the
22 EGDN -- we put all the material together in -- in the
23 same box, but in different bags. And we were trying
24 to see if the EGDN would transfer from the stuff that
25 was contaminated originally that originally had EGDN

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1 on it to the material that didn't. And we found that
2 the EGDN not only was there after four years, but
3 everything had EGDN on it that was inside that box.

4 Q Just so the record's clear and I understand

5 what we're talking about, you're telling us that
6 inside one plastic bag was some substance that was
7 contaminated with EGDN?

8 A Yes.

9 Q Some cotton substance?

10 A Yes.

11 Q There was another cotton substance which was
12 not contaminated which was in another plastic bag in
13 the same box?

14 A Yes. That's correct.

15 Q Okay. So there are two plastic bags within
16 the same box; one had a contaminant of EGDN, the other
17 one did not?

18 A Yes.

19 Q Okay. And at the conclusion of the
20 experiment, some four years later --

21 A Yes.

22 Q -- both cotton items within the plastic bags
23 were contaminated with EGDN?

24 A Yes. But the -- the contamination was not
25 on the outside of the boxes. We didn't -- it had not

1 come through the cardboard box. For whatever reason,
2 it just hadn't. The idea was is there a transference
3 and how long does it last. And there is. However, a
4 concern that we'd have from storing this thing in an
5 evidence locker wouldn't be a heightened concern

6 because it hadn't gone through a normal cardboard box
7 and it was during the time I was looking for EGDN that
8 up popped a very nice PETN peak that kind of -- you
9 know, there was no logical reason for that to be
10 there.

11 Q In which sample was the PETN? The original
12 contaminated sample or the separate sample which was
13 not?

14 A I don't remember that, sir.

15 Q Okay. And that experiment was also ongoing
16 at the time that evidence was being examined for the
17 Oklahoma City bombing case; is that correct?

18 A Yes. I believe so.

19 Q When Mr. Tigar examined you two days ago,
20 there was an issue of nitroglycerine and TNT being
21 very vaporous and emitting vapors whether the item was
22 just present in the room or not. There was no
23 discussion of EGDN in that respect. Does EGDN react
24 in a similar way?

25 A Yes. It has a higher vapor pressure, from

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1 what I understand.

2 Q And by "a higher vapor pressure," you mean
3 it emits more vapors than do NG or TNT?

4 A That's my understanding at this point.

5 Q Is PETN a very persistent or sticky item, as
6 well?

7 A I understand it to be, yes.

8 Q And that's your experience from your

9 studies?

10 A That's from my -- it was some
11 experimentation at Quantico and also Sandia National
12 Laboratory, Frank Conrad -- he's retired now from
13 Sandia National Laboratory -- published a lot of this
14 work and the concept of stickiness in the open
15 literature.

16 Q I believe that yesterday, you said you felt
17 comfortable that there was no system contamination in
18 the laboratory where the trace analysis for explosives
19 residue is done. Is that a fair characterization of
20 your testimony?

21 A Yes. That's correct.

22 Q System contamination would mean that,
23 basically, the entire lab was subject to
24 contamination; correct?

25 A Yes. You would see it as a background

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1 level.

2 Q Is there any other description or
3 explanation of what system contamination is that you
4 need to make?

5 A I don't think so.

6 Q But random contamination is something
7 entirely different?

8 A I -- I discern it to be, yes. Uh-huh.

9 Q What is your understanding of random
10 contamination?

11 A We -- we wouldn't know where it was at. I

12 mean, it would show up at random places. It wouldn't
13 necessarily -- no matter where you went -- it wouldn't
14 necessarily be in a particular area or not in a
15 particular area. It would depend upon some random
16 event, I guess. There would just be no way to judge
17 whether it was going to show up or not.

18 Q Such is the situation where the pocket of
19 your lab coat was contaminated? Would that be an
20 example of random contamination?

21 A Yes. If I had -- once I found it, I
22 expected, well, darn, you know, I work with this
23 stuff. It's -- you know, so I could expect it and it
24 was a learning process and I should have been --

25 Q Right. And I'm not even discussing the

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1 merits of that. I'm just suggesting, is that an
2 example of random contamination?

3 A Sure.

4 Q Okay. Now, I'm referring back to the survey
5 that you did in the spring or summer of 1995 or maybe
6 it's the fall of 1995 -- I don't know that a specific
7 date has been determined -- where you were allowed to
8 go in and take swabs and conduct a survey for
9 contamination. Do you know which survey I'm talking
10 about?

11 A Yes.

12 Q Okay. And is that the general time frame?

13 A Yes. I think it was somewhere in the summer
14 of 1995. Yes. Uh-huh.

15 Q Do you recall what the results of that

16 survey were, specifically?

17 A I believe -- I believe -- I'd have to have

18 the survey in front of me. There were four places

19 where PETN were found and one place where RDX was

20 found is my memory of what the survey showed. I don't

21 know specifically, you know -- if I had the survey in

22 front of me, I could tell you.

23 Q Were there any other substances, explosive

24 residue substances that you recall finding in that

25 survey?

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1 A No.

2 Q You mentioned four places where PETN may

3 have been found. Do you recall what those places

4 were?

5 A The -- the places were associated with the

6 explosives unit. There were two areas, I believe, if

7 my memory serves me correct, where -- where there

8 was -- I think there was some residue, some

9 contamination found in the explosive units area,

10 itself, and then there was some in the basement.

11 Q I'm not sure I understood you. There were

12 two areas within the explosives residue trace analysis

13 area?

14 A Well, evidence handling area. That's --

15 that's the explosives unit, itself, and then there

16 were -- it's two or three. I -- you know, we're

17 getting into an area that, for the record, my memory

18 is not -- I'd have to pull the study out and look at
19 it.
20 Q And you believe that that study exists
21 somewhere today where you could review that to refresh
22 your recollection?
23 A Yes.
24 Q But that study would be somewhere in
25 Washington, D.C., in your office or -- and I don't

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1 mean your office.
2 A Yes. Sure. Somebody has the results of
3 that. I think that there's a misunderstanding about
4 this in that I had a technician -- two technicians
5 work on that. They were the ones that actually did
6 the collections. Are you aware of that, Mr. Wyatt?
7 Q Yes, sir. I believe you identified
8 Mr. Laslow?
9 A Mr. Laycock and Mr. Casso.
10 Q And you feel that those two individuals are
11 competent to conduct that type of collection?
12 MR. HARTZLER: Before you answer, you had --
13 this is the kind of question I was asking yesterday to
14 which you objected. Do we have an agreement that --
15 MR. WYATT: Joe, you objected to mine
16 throughout -- I wasn't objecting because I had a
17 problem with it; I was objecting because it needs to
18 be consistent if we're not going to ask that type of
19 question. But here, he's relying -- he is relying on
20 a study that he did and he selected the personnel to

21 do that study. I -- I'm not asking his expert
22 opinion. I'm asking whether he was able to rely on
23 these people.
24 MR. HARTZLER: Okay. We don't need to argue
25 this at length, but my objection was when you were

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1 eliciting his opinion as an expert about certain
2 factual situations. It really reached a peak when you
3 were showing him documents. In terms of your asking
4 him does he rely on Burmeister and others, I don't
5 think I objected to that. When I asked him about an
6 individual, you objected. In terms -- I don't have a
7 problem with him testifying about who's good and who's
8 bad in the lab --

9 MR. WYATT: That's what I'm getting --

10 MR. HARTZLER: -- so long as you
11 reciprocate.

12 MR. WYATT: I don't have a problem with
13 that, either.

14 Q (BY MR. WYATT) Did you feel comfortable
15 relying upon those two individuals to collect the
16 samples?

17 A I very closely monitored that process. Very
18 closely monitored it. And I gave them very specific
19 details in how to handle that.

20 Q So are you comfortable with the results that
21 were reached?

22 A Yes.

23 Q Where was the RDX found during that survey?

24 A I don't remember, sir.

25 Q Are there any other empirical studies of

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1 contamination at the FBI lab as it relates to trace

2 analysis of explosives that you are aware of?

3 A I have been told about two other studies.

4 Q And can you give me the general time frame

5 when those studies were conducted, if you know.

6 A I understood that -- and this may be wrong.

7 I understood that about the same time I was doing a

8 study, the explosive unit was doing a study. That may

9 be wrong, sir. Okay. That was another study that the

10 explosive unit did that I -- it's been since that time

11 where they were trying to determine how contaminated

12 an individual was who had gone to the bomb range and

13 came back. Went to the bomb range, did what he did

14 normally at the bomb range, went home, took a shower,

15 slept, came to work the next day. And that -- that

16 was a study that was done. It was not done under

17 my -- my supervision.

18 Q Okay. So you believe that the first study

19 you mentioned would have been in the same general time

20 frame, the summer of 1995?

21 A Yes.

22 Q And this second one, testing an individual

23 from the bomb range, would have been done sometime

24 after that?

25 A Yes. That's what Mr. Williams, David

1 Williams told me.

2 Q Do you know the results of either one of
3 those surveys?

4 A I was told. I haven't seen the data. I was
5 told by Mr. Williams that the technician that was sent
6 to the bomb range was checked first. Went to the bomb
7 range, came -- you know, went through the process of
8 going home, came back the next day to the lab and they
9 found a number of types of explosives on him, despite
10 having him showered and that sort of thing. Okay.
11 That's -- David Williams would have to tell you
12 specifically about that.

13 Q Did anyone tell you what those explosives
14 found on him were?

15 A He did at the time and I didn't -- I don't
16 remember. There were -- there was more than one type
17 of explosive on him.

18 Q And do you know if a report was made
19 concerning that survey?

20 A No, I don't.

21 Q And no one has told you about that?

22 A No. I -- I know -- I know the name of the
23 technician. I don't know if I can tell you that. Can
24 I say that?

25 MR. MADDOCK: Yes.

1 A Okay. It's Mr. -- Mike Fanning was the
2 technician that was involved in that study.

3 Q (BY MR. WYATT) Okay.

4 A And what they actually found on him or
5 whether they made a report, I don't know.

6 Q You also mentioned the explosives unit's
7 contemporaneous study that was done when your survey
8 was taken. Do you know the results of that study?

9 A I was told -- and I don't remember by who --
10 that a number of types of explosives were found from
11 their own sampling study.

12 Q Do you recall what those substances were?

13 A No.

14 Q Do you know if any records were kept of
15 those surveys -- or excuse me, that survey?

16 A No. I don't. The individual that did that
17 survey, I was told, was Brett Mills and that he would
18 be able to tell you that.

19 Q If I'm not mistaken -- and correct me if I
20 am -- I believe one of your letters references a
21 contamination situation which was discovered in 1989
22 or thereabouts. Does that ring a bell to you?

23 A There was a concern about contamination in a
24 case I was involved in in 1989.

25 Q Were surveys taken at that time to determine

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1 whether there was any random or system contamination
2 in the lab?

3 A No. I wasn't -- I wasn't involved in such a

4 study. And I was the person that would have done it.

5 Q Were you the person who had the concern
6 about contamination in 1989?

7 A Both I and Mr. Rudolph had such a concern.

8 Q And that's Dr. Terry Rudolph who was your
9 supervisor at the time?

10 A He had initially expressed his concern in
11 about -- late 1986.

12 Q Was that concern reported up the chain of
13 command?

14 A Yes.

15 MR. HARTZLER: Could you ask him what case
16 we're referring to so I know what we're talking about?

17 MR. WYATT: Is that appropriate?

18 MR. MADDOCK: Sure. He can answer that.

19 Q (BY MR. WYATT) What case is that, if you
20 recall?

21 A The case I was involved in where I expressed
22 concern about contamination, U.S. vs. Steven Psinakis,
23 P-s-i-n-a-k-i-s.

24 Q Do you recall what district that was in?

25 A It's in San Francisco.

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1 Q Okay. And that would be a Federal court
2 case?

3 A Yes. I know the Assistant U.S. Attorney, if
4 that's of any assistance.

5 MR. HARTZLER: Birch.

6 A Birch. Yes. Uh-huh.

7 Q (BY MR. WYATT) Did you make any
8 recommendations that a study be done at that time? Or
9 did you or Mr. Rudolph?

10 A We were involved in -- I need to answer this
11 this way: We were involved in explosive detection
12 development. We brought on the first Egis type
13 detector in 1986. We wanted to take it downtown in
14 late 1986 after the testing and Mr. Rudolph went to
15 management and said that the lab was -- was
16 contaminated, badly contaminated and we needed a clean
17 room. And nothing developed out of that. We needed a
18 clean room so that we'd -- we'd know we weren't
19 putting trace materials into the instruments. And it
20 didn't develop, so the detector was left at Quantico.

21 Q So was the concern with contamination at
22 Quantico or at headquarters or both?

23 A It was at headquarters. I think, Mr. Wyatt,
24 it's important -- it's important to see that his --
25 his concern, if we had been as contaminated as he

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1 thought we were, we were -- we were using new
2 equipment to see lots and lots -- less and less.
3 Excuse me. Less and less. If we were as concerned as
4 he thought we were, we would have seen that as a
5 system contamination. We didn't. Do you understand?
6 I mean, it wasn't -- it wasn't like Mr. Rudolph was
7 expressing a concern. We talked about this yesterday.
8 We are not contaminated all over the place. And his
9 concern was borne out of, all of a sudden, we can see

10 picogram quantities of material. It's not raw
11 explosives all over the place at that time or, you
12 know, stored in various and sundry places. We must --
13 you know, we're going to be totally contaminated.
14 That didn't turn out to be the situation.

15 Q You mentioned to Mr. Tigar that there are
16 different standards regarding quality control or
17 quality assurance in the British labs. Is that a fair
18 statement?

19 A That's what I was -- was told and that's
20 what I've seen, yes. Uh-huh.

21 Q Do you know -- and you discussed with us
22 some of the differences, such as having concrete walls
23 and separate units and you identified some of the
24 other specifics yesterday.

25 A Yes. Yes.

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1 Q Do you know why those types of quality
2 assurance requirements are made in the U.K.?

3 A It might be -- it might be the general
4 location of that laboratory. It's on a military
5 facility. It also might be a heightened awareness
6 of -- the -- the U.S. bombing crime scene problem is
7 significantly different than the bombing crime scene
8 problem in the U.K. They have a lot of types of
9 materials that would lead to a contamination issue
10 where only a very small percentage of our explosive
11 bombing crime scenes have those types of materials.
12 So you could see where if every day, you had to worry

13 about this, it would very quickly blossom and become
14 an issue. Okay?

15 Q So you're referring to thing like symtex and
16 C4 in the U.K. as opposed to items that we've
17 discussed here?

18 A Our big problem in -- in this country is
19 black powder and ammonium nitrate and dynamite and
20 things like that. That -- that may be the reason, you
21 know, that their --

22 Q You personally have expressed concerns in
23 reports that the -- that contamination studies should
24 be done at the lab; is that correct?

25 A Yes.

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1 Q What is your basis for that opinion?

2 A I think that I cannot reliably -- my
3 prosecutor, my customer, can't depend on where this
4 material came from. The experience is not that we're
5 contaminated all over and, Oh, my gosh, the world is
6 coming to an end type thing. It's we can't say
7 reliably that the material didn't come from having
8 the -- the stuff laid down on a table someplace or --
9 you know, I have experience with -- with transfer of
10 this material and you can't see it. And it's -- it
11 doesn't mean somebody's sloppy in their work. It's
12 just -- you just can't see it. If you can -- and we
13 can't say that it -- it didn't come off of -- of --
14 because we haven't -- you know, the testing -- for
15 example, you know, if we went along with what

16 Mr. Rudolph said, we would think there was system
17 contamination in the lab unless we had done our
18 swabbing and testing unless we thought our way through
19 it. So we need to -- to make our -- our -- to be able
20 to put out to our customer the best answer we can, the
21 most reliable answer we can.

22 Q Did management respond to your concerns?

23 A Yes, they did.

24 Q Do you recall what that response was?

25 A Yes. They referred to my concerns as my

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1 being a perfectionist and unrealistic.

2 Q Is that an unrealistic concern, in your

3 opinion?

4 MR. HARTZLER: I object. I mean, you've
5 asked him for his opinion about the reliability of his
6 answer and things of that sort. You're asking him now
7 to criticize management? I mean, you already got the
8 fact that he thinks this is something that should be
9 done. He's related it to management. He's indicated
10 how they responded and now you're asking him whether
11 or not their response was reasonable.

12 MR. WYATT: What was the exact question?

13 Could we read that back, please.

14 MR. KOHN: While you're reading it back, I
15 need to speak with Dr. Whitehurst for a minute.

16 (The referred-to question was read by
17 the reporter.)

18 MR. HARTZLER: I'm sorry.

19 MR. WYATT: I'll withdraw that question. I
20 don't have a problem with that.
21 MR. HARTZLER: I apologize. I misunderstood
22 the question. You --
23 MR. WYATT: You don't have an objection to
24 that question?
25 MR. HARTZLER: I thought you were asking --

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1 he used the term "unrealistic."
2 MR. WYATT: That is exactly what I was
3 suggesting.
4 MR. HARTZLER: This is so confusing.
5 Q (BY MR. WYATT) To your knowledge, is the
6 FBI laboratory accredited by any national or
7 international organizations?
8 A Not right now, sir.
9 Q Is it accredited by any scientific
10 organizations, to your knowledge?
11 A I'm not aware of any.
12 Q Simply for the record, before we move
13 this -- from this area, I mentioned your study during
14 a particular time and I was referring to the letter
15 dated July 22, 1996, which begins at Bate stamp number
16 48169. The specific reference is to Bate stamp number
17 48172. And I'll just show that to you to confirm my
18 representation for the record.
19 A How much do you wish me to --
20 Q Do you agree that that's the situation you
21 were discussing concerning your personal survey of the

22 laboratory?

23 A Yes. That's correct.

24 MR. HARTZLER: I'm sorry. May I see it?

25 A It wasn't my personal survey. It was an FBI

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1 survey.

2 Q (BY MR. WYATT) Certainly. The one

3 conducted under your supervision?

4 A Yes. That's correct.

5 Q Do you recall Randy Murch stopping you from

6 conducting further surveys after that time?

7 A Yes. He took the responsibility away from

8 me and transferred it to Mr. Burmeister.

9 Q What were the conditions that required or

10 necessitated additional surveys after your summer of

11 1995 survey?

12 A We -- we have raw explosives come through

13 the lab all the time, not large quantities of it, but

14 just a general quality assurance concern would be

15 had -- had we been conducting these surveys all the

16 time, we'd have a reliable answer to a lot of

17 questions you've asked here. How contaminated and how

18 have we been able to handle the problem.

19 Q In that same letter, sir, you raise an issue

20 of wearing clean suits at bomb collection scenes. Do

21 you recall your reference to that?

22 A I do. Uh-huh.

23 Q What is the purpose of addressing issues of

24 clean suits at collection of a bombing scene?

25 A You have a known coming in contact with an

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1 unknown. You take the unknown to a place where you
2 analyze it and you don't have to concern yourself that
3 there's been a transfer of material from you to the
4 unknown.

5 Q And would these clean suits also be known
6 maybe as bunny suits?

7 A Sure. Uh-huh.

8 Q Are there any other references or names?

9 A I don't know. I don't know.

10 Q Do you know whether clean suits were worn at
11 the collection of evidence in Oklahoma City?

12 A I -- I don't know that. I -- I understand
13 that that didn't happen, but I don't know that for
14 sure.

15 Q What is that understanding based upon?

16 A Conversations with Mr. Burmeister and
17 looking at television shots of the crime scene.

18 Q Was Mr. Burmeister at the crime scene in
19 Oklahoma City?

20 A Yes. I think he was.

21 Q Was he there during the primary period of
22 time when collection of evidence was ongoing?

23 A I think so, but I don't know. I wasn't
24 there.

25 Q Do you know who else from the FBI lab in the

1 explosives unit -- and I use that term loosely -- was
2 sent to Oklahoma City for the collection of evidence?

3 A No. I think my understanding of that would
4 just cloud issues here. I don't know. You know, I
5 heard a number of people went. I think Ron Kelly
6 went, but other than that, I -- you know, I think it
7 would be better to find that information out from
8 someone else.

9 Q You were not sent to the Oklahoma City crime
10 scene, were you?

11 A No, I wasn't.

12 Q Do you have any opinion as to why you
13 weren't sent?

14 MR. HARTZLER: I object.

15 MR. WYATT: I think he can answer.

16 MR. HARTZLER: Again, I think you can elicit
17 facts and he already related the conversation. If he
18 has a personal opinion why he wasn't sent?

19 MR. WYATT: Yes.

20 MR. HARTZLER: No. I object to that. I
21 urge you to rephrase it and get information, factual
22 information from him. I don't think we need
23 Dr. Whitehurst to opine on why -- I mean, any of us
24 can have an opinion, but he's not here to --

25 THE DEPONENT: Mr. Hartzler, I don't think I

1 can opine in that area.

2 MR. HARTZLER: Okay.

3 THE DEPONENT: I mean --

4 MR. WYATT: That resolves the issue.

5 MR. HARTZLER: Thanks.

6 THE DEPONENT: Yeah.

7 Q (BY MR. WYATT) In early April 1995, did
8 you receive an evaluation from the FBI?

9 A My performance appraisal was given to me on
10 the 17th of April.

11 Q And do you recall that performance appraisal
12 stating that your expertise in explosives was not
13 rivaled by anyone in the FBI laboratory?

14 A Something to that effect, yes.

15 Q But you were not sent to Oklahoma City on
16 this major case?

17 A No, I wasn't.

18 Q Does the FBI have a procedure or protocol
19 for storing evidence from bomb scenes at a bomb range
20 or firing range?

21 A Not that I'm aware of. It may exist, but
22 I -- that would be something the explosive unit would
23 have to tell you about.

24 Q Is that something that's recommended?

25 A I can't see that it would be a good idea.

1 Q Why is that?

2 A Well, the bomb range has a very large
3 contamination issue associated with it and dust in the

4 air, people walking, anything, it's just -- it would
5 be -- it would introduce, in my mind, a concern. It
6 doesn't necessarily mean it was contamination, but it
7 would be the screaming concern, if you will, that raw
8 explosives and -- and -- and residue were in the same
10 addressed.

11 Q If sifting of evidence were to occur at a
12 bomb range or firing range, would that be recommended?

13 A I don't think it would be a problem if you
14 weren't looking for explosive residue.

15 Q If you are looking for explosive residue?

17 all from the surface, the ground, people just walking
18 around or sitting on the ground during breaks or --
19 you know, the -- the contamination vectors are --
20 are -- are just, you know -- they are -- they would be
21 phenomenal. Just the thought of doing something like
22 that would be -- again, you have to ask -- you know,
24 parts, that's one thing. If some of that evidence
25 goes back for residue analysis, you'd have to really

1 very closely monitor whether -- and there are ways of
2 handling those problems at bomb ranges because I've
3 done explosive blast tests where I was then going to
4 look for residue and I was able to keep my -- my
5 shrapnel up off the ground, you know, so that I didn't
6 end up with PETN and RDX in the shrapnel. It would
7 still be something where somebody would have to be
8 very, very careful. I personally wouldn't recommend

9 it.

10 Q If military personnel are permitted on an
11 explosive crime scene, does that raise any concerns of
12 possible contamination for explosive residue analysis?

13 MR. HARTZLER: I object. Pardon me. Again,

14 I let this go on for a while. You're trying to elicit
15 from him an opinion as an expert as to what is at a
16 crime scene. I have no objection to asking for
17 information he has, knowledge, past experiences. I
18 really thought that was the purpose of the deposition.
19 Clearly, the question you're asking him is the kind of
20 question you can hire an expert to opine on.

21 MR. WYATT: We'll just certify the question
22 and move on.

23 Q (BY MR. WYATT) Dr. Whitehurst, did you
24 conduct any examinations of evidence in the case
25 styled United States vs. Timothy McVeigh, the case

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1 that we're here on today?

2 A Yes, I did.

3 Q Can you tell me on what -- or what items you
4 actually sampled or tested or what work you did on the
5 case.

6 A I don't remember the specific items. I was
7 provided water solutions of material by Mr. Martz and
8 asked to conduct analyses, looking for ammonium and
9 nitrate ions on ion chromatography.

10 Q And do you recall -- do you recall if you

11 performed any examinations on substances that were
12 purportedly taken from Mr. McVeigh's clothing?

13 A I don't believe I did, sir. I don't know,
14 though.

15 Q Do you have any knowledge about any sampling
16 or testing done on Mr. McVeigh's clothing?

17 A I believe I do.

18 Q What is that knowledge?

19 A I was at a -- at a conference sort of a --
20 in the scientific analysis section conference room
21 where the assistant director, Allrich, made comments
22 about Mr. Martz finding some PETN on the clothing and
23 congratulating him on the find. So I -- it was -- I
24 was aware from conversations around the lab that
25 Mr. Martz was conducting analyses on -- on clothing

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1 items. I wasn't quite sure what they were.

2 Q I'd like to direct your attention to a June
3 2 --

4 MR. KOHN: Just one second.

5 (Mr. Kohn conferring with the deponent.)

6 (There was a recess taken from 9:45 a.m. to
7 9:47 a.m.)

8 MR. KOHN: I don't have anything to say on
9 anything. I just wanted to clarify something. So you
10 can continue asking.

11 Q (BY MR. WYATT) Did you need to reflect on
12 that answer?

13 MR. KOHN: No, sir.

14 A No.

15 Q (BY MR. WYATT) I'm going to show you a
16 couple of letters in just a moment. Dr. Whitehurst,
17 in your June 1, 1995, letter to Mr. David R.
18 Glendinning, G-l-e-n-d-i-n-n-i-n-g, you make a comment
19 concerning Roger Martz mishandling evidence from the
20 explosion crime scene in Oklahoma City. Can you
21 explain to us what you mean?

22 MR. KOHN: Can you allow the witness to look
23 at that document?

24 MR. HARTZLER: I've got it and I'll hand it
25 to him.

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1 MR. WYATT: This is a different one.

2 MR. HARTZLER: June 1.

3 MS. WILKINSON: July 1.

4 MR. WYATT: July 1. That's what I said.

5 Are you through with the other items, as well?

6 MR. HARTZLER: With that. June 2.

7 Q (BY MR. WYATT) Just for the record, this
8 letter is dated June 1, 1995 -- excuse me -- July 1,
9 1995, and has in the upper right-hand corner a number
10 77. The Bate stamp numbers are cut off of my page
11 from the photocopy. And this was a letter produced to
12 us just this last week based on the December 12
13 hearing. The first paragraph mentions what I just

14 read to you. Can you tell us --

15 MR. KOHN: Just give him a second. I want
16 him just to look it over. You're mostly interested in

17 the first paragraph?

18 MR. WYATT: Uh-huh. Yes, sir.

19 Q (BY MR. WYATT) Do you recall making the

20 statement that Roger Martz was mishandling evidence at
21 the explosion crime scene in Oklahoma City?

22 A Yes.

23 Q Could you explain to us what you meant by
24 that.

25 A The concern was that Roger wasn't doing

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1 microscopy on the evidence. If you -- when -- the
2 protocol calls for a microscopy, optical microscopy
3 for a reason. If you're looking for inorganic
4 materials or ammonium nitrate or those kinds of
5 things, the most appropriate piece of evidence to have
6 is the dissolved material. The crystal, itself. Once
7 you put it into solution, you -- you can make all
8 kinds of things in solution. Also, we have --

9 Q And is that where you talked about some
10 metathetical --

11 A Metathetical reactions. You can have the
12 ammonium nitrate in a material. If there's ammonium
13 nitrate reacting with something else in the material
14 or whatever, you want to look for unreacted crystals
15 and Roger doesn't do that. He doesn't -- he doesn't

16 have a microscope or didn't at that time even in his
17 office. All of us that work explosives depend very
18 strongly upon microscopy.

19 Q And that is part of the protocol established
20 in that unit --

21 A Sure. Sure.

22 Q -- at that time?

23 A Yes. Another problem was that Roger was
24 using water and I had a concern about the water that
25 was -- we had found contaminants in the past in it.

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1 It's high performance liquid chromatography grade
2 water. That didn't matter. We still found sometimes
3 the water was a problem. Another problem was they
4 were using a type of filter, a microfilter that hadn't
5 been quality assured with a number of years of
6 history, an Anap, A-n-a-t-o-p, type filter.

7 MR. HARTZLER: May I interrupt?

8 THE DEPONENT: Yes.

9 MR. HARTZLER: I just have lost track.

10 MR. WYATT: I'm asking him about his
11 concerns with the handling of the clothing as
12 expressed in the July 1, 1995, letter. Is that what
13 you're discussing, Dr. Whitehurst?

14 THE DEPONENT: Yes. That's what I'm
15 discussing.

16 MR. HARTZLER: Use of water and that he used
17 water in the process.

18 Q (BY MR. WYATT) Go ahead.

19 A I went over to the lab where they were
20 filtering the material and saw they were using a
21 filtration -- filters that I didn't see any --
22 perceive any quality assurance was going -- there's no
23 history to them. It was just sort of grab it and run.
24 Q You were talking about --
25 A That was my concern.

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1 Q You were talking about an Anapop filter.
2 Did -- I think we interrupted your train of thought.
3 Did you have anything more to add about that?
4 A That was a particular type of filter we'd
6 reliability in processing these kinds of materials.
7 You know, if I can explain.
8 Q Please.
9 A The filter material, itself, can absorb an
10 analyte. I mean, you know, it can -- the analyte
11 sticks to the filter material, itself.
13 A The material that you want to know if it's
14 present.
15 Q Okay. Go ahead.
16 A If you use a total new filter that you
17 haven't tested, haven't used, don't have any
18 background at all in, how do you know whether it did
20 isn't producing the analytes, the materials that you
21 think are present in the sample? Every time you touch
22 something, you have to ask what -- what is the effect
23 of that. If you black box things, if you --
24 Q By "black box," you mean just run it through

25 the machine?

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1 A Sure. Or run it through the filter or run

2 it through the process without an understanding of the
3 implications of that and that was my concern there.

4 Q You expressed concern that Mr. Martz did not
5 have the qualifications or expertise to be doing that.

6 Can you explain that.

7 A Yes, sir. In the FBI laboratory, we're
8 trained for a year to two years to qualify in our area

9 of expertise. My training was for 14 months. On
10 numerous occasions during these administrative
11 meetings concerning people's qualifications in the
12 area of explosive residue analysis, management made

13 it -- we -- you know, like, for instance, I mean,
14 World Trade, we sat around the table and Mr. Corby
15 said would everybody in this room please raise their

16 hand who's been trained in explosives. Mr. Corby, Mr.
17 Burmeister, and myself raised our hands. Mr. Martz,
18 Mr. Lasswell and a bunch of other people were there.
19 Nobody else raised his hands. He didn't have the
20 background experience in explosives residue testing

21 and training. And the FBI does not consider him,
22 according to procedure that we followed in the past,
23 qualified.

24 Q I'm going to now show you the letter dated
25 June 2, 1996, beginning at Bate stamp 448882. I

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1 previously handed this to counsel for their
2 examination.

3 MR. HARTZLER: When you do that, can you
4 hand me back the last letter so I can just look at
5 something?

6 MR. WYATT: Sure.

7 Q (BY MR. WYATT) On page 11 --

8 MR. KOHN: If we could see that.

9 Q (BY MR. WYATT) On page 11 in a letter
10 which begins at Bate stamp 44892, you reference --

11 MS. WILKINSON: Begins at what page?

12 MR. WYATT: 44892. It's page 11 of the
13 letter.

14 Q (BY MR. WYATT) You reference Mr. McVeigh's
15 clothing and possibilities of contamination. The
16 letter speaks for itself. And you reference Roger
17 Martz's processing of that evidence. What I'd like to
18 ask you is what is your basis for the representations
19 made on page 11 of this letter?

20 MR. KOHN: And when you say page 11, you're
21 talking about the second paragraph. There's --

22 MR. WYATT: Yes. The second paragraph.

23 MR. KOHN: Okay.

24 MR. WYATT: What would be probably the
25 bottom ten lines of the letter.

1 MR. KOHN: I would like the record to
2 reflect that all the memos that have been shown to
3 Dr. Whitehurst in the course of this deposition are
4 the ones that were produced in discovery which contain
5 certain materials that were deleted so Dr. Whitehurst
6 is not being shown his original memos. And I just
7 want the record to reflect that just in case there's
9 some way, could trigger another memory.

10 Q (BY MR. WYATT) Have you had sufficient
11 time to review the document?

12 A I read the statement.

13 Q What is the basis for your statements?

14 A My -- my concern there was -- was I was

16 Q By "this," you mean the prosecution?

17 A Suppose we go through with this process and
18 at the end of this process, we end up in the same
19 situation we have in others. And it just -- you know,
20 my perspective there was the -- the revelation, the
21 tragedy, the whatever.

23 here.

24 Q (BY MR. WYATT) And just so the record is
25 clear, because this has not been admitted as an

1 exhibit, your concern here specifically states, quote,
2 and we realize that the traces of PETN, NG, EGDN and

3 whatever on McVeigh's clothing could very well have
4 been contamination placed on the clothing by FBI
5 personnel. And I'm ending the quote there. It goes
6 further. Do you agree that I've read that properly?

7 A Yes. That's correct.

8 Q And those are the concerns you're talking
9 about in your testimony?

10 A I was concerned that these issues would not
11 be addressed, yes. Uh-huh.

12 Q In that same paragraph, you said -- and I'll
13 quote -- and it becomes known that Roger Martz
14 processed this evidence. Roger Martz who had no
15 testing -- who had no training, testing, qualification
16 in this area or even recognition by the FBI that he
17 was trained in this area of expertise. Are you
18 referring to examination for traces of PETN, NG, EGDN
19 on clothing?

20 A Yes.

21 Q If Mr. Martz had been qualified in these
22 areas pursuant to FBI directives or regulations, would
23 there be some document showing that qualifications?

25 would have qualified him comes under the heading of

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1 something called forensic chemist and they put a lot

3 there are forensic chemists in the areas of chemistry/

4 toxicology, arson analysis, explosives, plastics,

5 tapes, whatever. In order to qualify under any one of
6 those sub-areas, that's the area we -- we train in. I

7 mean, we're doing that with people right now as they

8 come on line.

10 opinion that he, Mr. Martz, had no training, testing,

11 or qualification in this area or even recognition by

12 the FBI that he was trained in this area of expertise?

13 A He recognized -- I've heard it in meetings.

14 I think if you were to interview my -- my former unit

15 chief, James Corby, he would tell you the same thing.

16 I was in that conference with the section chief in

17 which the section chief made note that these people

18 would never -- it was Mr. Kearny -- would not conduct

19 residue analysis anymore until they were qualified

20 according to our -- our procedures and protocols.

21 It's -- it's a -- it is sort of a process where it --

22 it hasn't happened and it's recognized and it's spoken

23 about openly among management and I hear the

24 conversations.

25 Q On page 12 of the June 2, 1996, letter,

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1 beginning at Bate stamp number 44892, you make a

2 statement -- and I'm just directing you to just this

3 one statement right now -- "and it becomes known that

4 personnel from the explosives unit handled this

5 evidence in areas that we have been shown to be

6 contaminated." It appears that you were talking about

7 evidence in the Oklahoma City bombing case when you

8 look at the previous paragraph from page 11.

9 A Yes. Yes.

10 Q What do you mean by this McVeigh evidence

11 "being handled in areas where we have been shown to be

12 contaminated"?

13 A What I was referring to was that the test
14 from that summer. From the testing that we have gone
15 through.

16 Q And that was -- that testing was going on
17 contemporaneous to the testing in the McVeigh case?

18 A Well, I -- I did the -- the swipes during
19 that -- during that same time, yes.

20 Q Then you make a statement -- and I'll read
21 it into the record, as well -- "it becomes known that
22 when McVeigh was arrested, none of the arresting
23 officers wore overclothing and it becomes known that
24 when McVeigh's clothing was searched, his pants
25 pockets were reached into by law enforcement

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1 personnel, law enforcement officers who shoot guns
2 containing ammunition containing nitroglycerin. His
3 earplugs were handled as evidence and his knife and
4 knife sheath were seized and handled. That those
5 items of evidence were not handled by personnel in
6 overclothing or with gloves that were changed
7 frequently to avoid cross-contamination." Are you
8 building another scenario there or are you basing that
9 on fact?

10 A I'm -- I am basing that on conversations I
11 had and it's a scenario that I'm -- I'm -- you know, I
12 listen to the news. I saw what was in the newspaper.
13 I believe Mr. McVeigh was -- was apprehended by local

14 law enforcement. It's understandable to me that they
15 wouldn't be wearing bunny suits out on the highway.
16 The contamination issue is something that, in my
17 opinion, we have tried to suppress and keep under
18 wraps and I had a concern that it wouldn't be brought
19 out. That's all.

20 Q That "we" tried to suppress.

21 A Yes.

22 Q Meaning the FBI?

23 A I don't think the FBI, sir. I think -- I

24 think that I have seen the attempt to suppress this --

25 this kind of information in conversations for a long

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1 time.

2 Q Do you recognize that as a pattern of trying
3 to suppress this very type of information?

4 A That's why I wrote it on the paper, sir.

5 Q So you do recognize that as a pattern that
6 you have observed?

7 A Comments about -- please stop me if I go too
8 far, Mr. Maddock.

9 MR. MADDOCK: Please.

10 A Comments about contamination issues
11 generally revolve around the issue is defense counsel
12 being able to get ahold of this information.

13 That's -- that's the issue. It's the --

14 Q (BY MR. WYATT) It's a discovery problem?

15 A Yes. I -- I have a big issue with that

16 personally. I -- I think it's there, so what, put it
17 on the table, but I had to -- I'm not very proud of
18 it, but I had to trick my section chief into balling
19 up a fist and pounding on a table and ordering me to
20 do a contamination study so when I went into the
21 explosive unit area with my technician that I wouldn't
22 run into Mr. Thurman's or somebody's rage that would
23 overcome me, but not the section chief. The section
25 going to happen. And he told me and I --

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1 Q Who is that section chief?

3 Q Mr. Kearny?

4 A -- Kearny, yes -- on a couple of occasions
5 before and I knew that he hadn't really made up his
6 mind that as soon as I walked into -- I'd run into
7 what I'd run into before. Concerns about this kind of
8 information being available for discovery. In fact,
10 for me, Mr. Casso, even wrote documentation which
11 expresses his concern that there's some sort of legal
12 implications. This is a man without any science or
13 legal background at all. What about the discovery
14 implications or whatever?

15 Q Now, before we lose track of that thought,
16 as a special agent of the FBI -- you are a special
17 agent; correct?

18 A Yes.

19 Q Supervisory special agent?

20 A Yes.

21 Q Are you familiar with what Brady material

22 is?

23 A Yes, I am.

24 Q And you have also completed a legal

25 education at Georgetown University; correct?

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1 A That's correct.

2 Q Did you study criminal law there?

3 A Yes, I did.

4 Q Do you perceive this issue at page Bate

5 stamp number 44893 to be a Brady issue?

6 A Yes, I do.

7 Q I'm sorry I interrupted you. Did you have

8 any other comments concerning this ongoing suppression

9 of this type of material set forth in that paragraph?

10 MR. HARTZLER: I object to your

11 characterization. I don't know that he said

12 "ongoing."

13 A Yes. I do, too. I object to "ongoing

14 suppression."

15 Q (BY MR. WYATT) All right. Let me rephrase

16 that. To the pattern of suppression.

17 MR. HARTZLER: That's your word that you

18 tried to lead him into twice and he didn't accept it.

19 He didn't accept that term.

20 Q (BY MR. WYATT) Is that a fair

21 characterization?

22 A No.

23 MR. KOHN: Yeah. I actually want to raise

24 an objection which I think inferences of a pattern of

25 suppression are for the lawyers to argue. I'd prefer

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1 if my client would just be questioned about the facts
2 and those inferences can be drawn by the appropriate
3 authority.

4 Q (BY MR. WYATT) Have you seen this type of
5 issue arise in other cases in which you have been
6 involved?

7 (Mr. Jones enters the conference room.)

8 A I've seen this type of issue raised with
9 alternative explanations of the data. You know, it
10 was articulated to me, That will hurt the prosecutor
11 and help the defense. Or -- contamination issue study
12 or the things that there are -- it really boils down
13 to are there alternative explanations for this data.
14 As a scientist, I need to explore them. If I cannot
15 disqualify them, I can't just -- in my mind, I think
16 there's a Brady issue here. I'm not an attorney, sir.
17 I'm not an expert in that. But I think from my
18 training at the Academy, at Quantico, back in '82, I
19 should just put it on the table. And just put it on
20 the table. We can't -- molecules don't come labeled
21 this came from a bomb, this came from the atmosphere.
22 You just have to settle for that. Don't make me label
23 them. If I don't have the data, don't make me label
24 them. That's the kind of thing that -- you know, I
25 reached the point where I'm almost in tears, my gosh,

1 we're going to -- we're going to do this and if these
2 issues are not addressed, it'll be obvious what
3 happened. But they are being addressed. Okay? But I
4 have seen this. It's probably why some -- some people
5 might call me a troublemaker or call me a troublemaker

6 or whatever. The issues are there. As a scientist,
7 they are there. I'm sure Dr. Lloyd could tell you the
8 same thing. They are just there. Our tests are not

9 specific tests. They see within a range and if we
10 can't get any more specific, we shouldn't be required
11 to throw things out without an explanation for why we
12 threw them out. That's just good science.

13 MR. KOHN: Hold on. One second. Fred, I
14 need to chat with you.

15 (There was a recess taken from 10:09 a.m. to
16 10:10 a.m.)

17 MR. WYATT: May we continue?

18 MR. KOHN: Sure.

19 Q (BY MR. WYATT) Still staying with this
20 same page, which is page 12 of your letter and Bates
21 stamp number 44892, I want to look at the last
22 sentence of the carry-over paragraph from page 11.
23 That sentence reads, "And it becomes known that many
24 of the evidence handling personnel at the crime scene
25 were bomb technicians, individuals who worked

1 regularly with raw explosives." Again, that's

2 referring to the McVeigh case, isn't it?

3 A Yes.

4 Q Do you have a basis in fact for that

5 statement?

6 A I understood that many individuals of the

7 explosives unit went to the bombing crime scene.

8 Q And did those individuals handle raw

9 explosives?

10 A Yes, they do. I've seen them handle raw
11 explosives.

12 MR. WYATT: I'm sorry. Could you read back

13 that answer.

15 the reporter.)

16 Q (BY MR. WYATT) Is that something that

17 those people would do on a regular basis?

18 A During my time with them, that's what they

19 did.

20 Q Why do you raise that issue in this letter

22 MR. HARTZLER: I prefer that you just ask

23 him the facts.

24 MR. WYATT: Or Mr. Mellado. I can ask him
25 why he raised the issue.

1 MR. HARTZLER: I believe he's already

2 answered that, but go ahead.

3 Q (BY MR. WYATT) As to that sentence we've

5 the same as the previous?

6 A I believed it was a Brady issue that the

7 prosecutors were probably not being made aware of.

8 Q Okay. You mentioned that water was used by

9 Mr. Martz in the examination of some evidence in the

10 McVeigh case. Do you recall what items of evidence

12 A No, I don't.

13 Q Do you know if it was the clothing?

14 A No, I don't.

15 Q Do you know if -- if anyone other than Roger

16 Martz performed an examination of Mr. McVeigh's

17 clothing?

19 Mr. Martz. It was processing evidence. He doesn't

20 work with the FBI anymore.

21 Q Can you identify that individual?

22 A No. He went off to chiropractic school is

23 all I remember of him. I don't remember his name.

24 Q You don't remember his name?

25 A Yes. Martz would know.

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1 Q Would that be reflected in Mr. Martz's lab

2 notes?

3 A I don't know.

4 Q Would Mr. Martz maintain lab notes when

5 conducting this type of examination?

6 A I don't know. I would imagine that he

7 would, but I don't know, sir.

8 Q Is that required by any laboratory procedure

9 or protocol?

10 A I haven't seen it in a written protocol, but

11 I'm not aware of any examiners that don't maintain

12 notes.

13 Q And is that based on the generally-accepted

14 scientific practice? That people maintain the lab

15 notes?

16 A I -- you know, I'm a scientist and that's

17 what we do as scientists, we keep our notes.

18 Q That's the generally-accepted standard?

19 A In my experience, yes. Uh-huh.

21 science, as well? That standard?

22 A Well, sure. I mean, we're scientists.

23 Uh-huh.

24 Q I'm now going to show you your -- your

25 December 9, 1995, letter to Special Agent Robert

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1 Mellado and I'm looking at the last page of the letter

2 and I have shown this letter to counsel, as well. I'm

3 simply going to ask you about one sentence. And that

4 sentence reads, "so I was part of the investigation

6 "So I was part of the investigation team and would

7 have had to have come forward anyhow to question why

8 Roger Martz was handling explosives residue evidence

9 when he does not have the qualifications to direct the

10 analyses of that evidence and has a history of

11 mishandling such evidence." If you can look at this

12 letter, are you referring to the Oklahoma City bombing

13 case?

14 A Yes.

15 Q Now, you've already addressed the

16 qualifications issue. We've gone over that today and

18 though, the statement that Mr. Martz has a history of

19 mishandling such evidence. Can you expound on that,

20 please.

21 A Yes. There have been explosives cases in

22 the past that I had concerns about that Martz was

23 associated with that I have written to the Inspector

25 talking about.

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1 Q But you specifically referenced mishandling

3 A Yes.

4 Q What do you mean by "mishandling of

5 evidence"?

6 A Not properly following the explosives

7 protocol.

8 Q And is that statement based upon your own

9 observation of his failure or omission to follow

10 protocol?

11 A On his statements to me. And on reviews

12 of -- of some of his work.

13 Q In these three letters that I've just shown

14 to you, there's obviously some criticism or concern of

15 Mr. Martz's handling of evidence in the Oklahoma City

16 bombing case or that's what it appears to me to be. I

17 don't want to mischaracterize what you said in the

18 letter. I'm just trying to elicit your statements.

19 Is it fair for me to assume that if Roger Martz
20 performed an examination or analyses of evidence in
21 this case, that some other scientist that may have
22 reviewed or performed other examinations would have to
23 rely on Mr. Martz's testing? The earlier testing?
24 A That's confusing to me. Can you say that a
25 different way?

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1 Q If Mr. Martz was the first person to examine
2 a particular item and render an opinion or results,
3 would a second scientist who reviewed or re-examined

5 A Not necessarily on his work. They would
6 have to rely on the fact that he didn't contaminate
7 the evidence or mishandle the evidence in some way.

8 Q Can they rely on the fact that he did not
9 mishandle or contaminate the evidence?

10 A I don't personally think that they could
12 don't think that Mr. Martz has a heightened awareness
13 of the contamination issue with explosives. So that
14 he wouldn't know where he put his hand down. He
15 wouldn't know if he visited the explosive unit and
16 leaned up against the table and talked to somebody,
17 that he might need to go clean his hand or something
19 particular piece of evidence because a contamination
20 issue is one of those things you can't see. That's
21 where the issue is.

22 And if, for instance, PETN were present on a
23 item in crystal, I mean, you could see the stuff.
24 Just a lot of it. That wouldn't -- that would not be

25 a -- if there were that much crystal PETN in any area

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1 in the lab, it would be cleaned up. It would be --
2 if -- you know, if his notes reflect the fact that he
3 saw nothing on a surface, if Mr. Martz's notes reflect
4 he saw nothing on a surface and he extracted something
5 from that surface, I would have a concern because
6 Mr. Martz is one of those managers that I dealt with
7 and considered my contamination concerns as
8 perfectionism. So, you know, I would have a concern
9 that maybe he wouldn't know if he contaminated it or
10 not.

11 You start acting in a different way when you
12 deal with evidence without even thinking about it as
13 part of what you are. You know, it's part of your --
14 your kind of internalized procedure. And Mr. Martz
15 doesn't have that kind of experience, in my opinion.
16 Do you see what I'm saying, sir?

17 Q Yes, sir.

18 A Okay.

19 Q You mentioned -- when Mr. Tigar was
20 examining you on Monday, you mentioned that you don't
21 like to use, quote, one-liners, in quotes, in your
22 reports. Can you explain to me what you meant by
23 that.

24 A Yes. I would like to give a reviewer of my
25 report an index -- I'd like to give them a nice total

1 laid-out report, but, you know, at this point, I
2 worked -- when I was in case work where I could give
3 them an index of the instrumentation I used, a
4 paragraph of what I actually found and then a
5 paragraph that says what -- what that meant to me. A
6 one-liner would say something like physical chemical
7 analyses are consistent with the presence of. But it
8 doesn't really give the reviewer of the work, the
9 ability to really kind of get their hands into what it
11 of trouble and flipping pages and -- do you know?
12 Where I was working to was progressing to
13 the point where my report explained -- well, it's
14 where Mr. Burmeister is at right now, you know, and
15 his notes are -- are just, you know -- he notes
16 everything, almost, from what I've read of his
18 one-liner and for three or four years, I wrote
19 one-liners because that's the way I was trained. But
20 I really don't have a concern if somebody reviews my
21 report and sees that I'm in error. I would like it to
22 be found -- or that my interpretation is not the only
23 interpretation. I'd like it to be found and I'd like
25 found and what I think about what I found.

1 Q So in your training through the FBI, were
2 you trained to use one-liners in lab reports?
3 A I was trained by my training agent to use

4 one-liners and specifically, the reason was not to
5 give defense counsel anything to get hold of.

6 Q And was that a reason that was given to you
7 by your training agent?

8 A Yes, it was.

9 Q Who was that training agent?

10 A Dr. Terry Rudolph. Supervisory special
11 agent Terry Rudolph.

12 Q Do you know whether there is a similar
13 pattern to recommend one-liners in other units within
14 the lab?

15 MR. HARTZLER: I object to the implication
16 that there was a pattern of any sort.

17 MR. WYATT: I asked if he knows.

18 A I wrote a -- a paper called Flagging the
19 Defense in which I discuss that issue and one of my
20 colleagues and I discussed it and his issue -- his
21 unit chief wanted them to write one-liners. And the
22 reasoning that the colleague told me -- I had heard
23 this many times -- the reason the colleague told me
24 was that just in pretrial conference, that we could
25 tell the prosecutor the whole story, but if you put

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1 the one-liners in there, it wouldn't flag -- if you
2 put the whole thing in the report, it wouldn't flag
3 the defense to weaknesses in the argument. Again, it
4 was an exercise that I went through, trying to
5 understand the implications of that and, you know,
6 going to law school and understanding better Giglio

7 obligations and that kind of thing and the practical
8 implications of that. So there's -- you know, there's
9 even documentation to the effect of it's not something
10 that's gone through our pre-publication clearance, I
11 can't present it in our forum.

12 Q (BY MR. WYATT) That was what I was going
13 to ask. That paper has not been published?

14 A No. No. No. No.

15 Q Does that paper cite examples of this being
16 done?

17 A No. No. It -- it was to address the issue
18 of one-liner reports is what it was.

19 Q Who was that -- who was the intended
20 audience for that paper?

21 A The intended audience was my colleague that
22 had talked to me and, ultimately, I made the paper
23 into something called -- it was another paper about
24 forensic fraud and it became a subsection of that
25 paper, which hasn't gone forward, either. It's -- you

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1 know, it talks about wide-ranging problems with
2 forensic fraud. But the --

3 MR. KOHN: Excuse me.

4 A -- audience --

5 MR. KOHN: Fred. Stop.

6 MR. MADDOCK: Can we go off the record for a
7 second here?

8 THE DEPONENT: Yes.

9 MR. HARTZLER: May I suggest -- it's 10:30.

10 Is that okay --

11 MR. KOHN: We'll do a 20-minute break.

12 (There was a recess taken from 10:26 a.m. to

13 10:49 a.m.)

14 (Mr. Jones is no longer present.)

15 A Are we on the record?

16 Q (BY MR. WYATT) We are, yes, sir.

17 A Can I make a couple points to clear up some

18 things I said before we go any further? Do you

19 object? You indicated a pattern. I know there was an

20 objection about that. And I think -- you would be

21 misinformed to think that there is a pattern. By and

22 large, most of the people I work with feel as strongly

23 about these things as I do. We're talking about some

24 isolated individuals so it's not this overall pattern.

25 Okay? Another thing in the mishandling of evidence

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1 that I -- the statements I made about Martz

2 mishandling the evidence, I don't think you understood

3 that and I really didn't put it out. You'd have to

4 look at the data. I believe that we did test the

5 water to find out if there was material in it. Okay.

6 And you'd have to look at my data to find out if that

7 were true.

8 Q By "material," you mean --

9 A We tested to see -- you know, to test the

10 water. To run a blank of the water to find out if it

11 was -- if it was a contaminated sample. Okay. So

12 it's -- it -- there's an issue there. That doesn't

13 mean that there's a fact there. It's the same thing
14 with the contamination. You'd have to look at the
15 data to find out. Okay?

16 Q You mentioned that there were certain people
17 that your comments about this suppression of evidence
18 related to as opposed to a pattern. You said that you
19 were referring to a specific group of people. Can you
20 identify those people?

21 A I've seen the issue with various people in
22 the explosive unit and with Mr. Martz and with my
23 training agent.

24 Q Can you identify those in the explosives
25 unit?

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1 A The people that expressed those concerns
2 are -- or whatever are --

3 Q Just to clarify before we go any further,
4 are you saying that these are people who share your
5 concerns?

6 A No. No.

8 suppression?

9 A Where I've seen -- where I've seen either my
10 reports changed or someone has come to me and said,
11 you know, the defense might find out or whatever, you
12 need a one-liner. Whatever. Mr. Thurman has altered
13 my reports. Mr. -- Mr. Williams altered my reports.

15 Q Okay. We know what you're talking about.

16 A Yes.

17 Q Which people were those?

18 A Those are the ones I just named then.

19 Q Okay.

20 A Mr. Higgins in the explosive unit has done
21 the same thing. My training agent had those concerns
22 about my reports. The conversation I had just before
23 we went off the record -- off the record about the --
24 the documents that I was talking about, the things I
25 had written were referring to Mr. Martz and -- and

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1 one-liners there. That sort of -- the kind of -- the
2 kind of -- to the best of my recollection --
3 recollection --

4 MR. KOHN: Excuse me.

5 (Mr. Kohn conferring with the deponent.)

6 A A lot of these ideas are expressed, of
7 course, in my letters.

8 Q (BY MR. WYATT) In the sampling in the
9 explosives -- or in the trace analysis lab for
10 explosives residue, is the retention time of the
11 standards measured?

12 A Yes.

13 Q I'm assuming that has something to do with
14 the equipment?

15 A With the chromatography, yes. Uh-huh.

16 Q And is that retention time also mentioned
17 for the samples?

18 A Yes.

19 Q What is the degree of variation on the
20 retention time that's -- that's allowed or permitted?

21 A Right now, it's subjective, sir.

22 Q There's no set protocol on what those
23 retention limits should be?
24 A In -- in one of the situations where we have
25 ion chromatography, the retention times vary according

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1 to the matrix. In other words, they -- they vary
2 according to what you also pick up with the water. It
3 depends upon the acidity of the material that you're
4 dealing with or things that are in the water and I
5 actually would run what's referred to as a standard
6 edition. Run the sample and then with the retention
7 times approximately what the retention time is, you
8 know, within a -- you know, a few seconds or parts of
9 seconds, run a standard edition of that material. If
10 I thought it was nitrate, I would put some known
11 nitrate in over the top of it.

12 Q You referred to that as the ion
13 chromatography, I believe, that is applied there?

14 A That particular situation, yes.

15 Q Is that situation also applied -- the
16 variation to the GC techniques?

17 A No. In fact, it's -- it's one of the -- I
18 guess the word would be failings of the lab. We deal
19 with so many substances, when we put through a GC mass
20 spec, very often, most often, we don't have standards.
21 And the GC is simply used as a separation tool. GC
22 mass spec, in itself, is a two-dimensional tool. It's
23 got a very specific detector. So it's two orthogonal
24 techniques stuck together. We just don't have the

25 standards that -- you know. A lot of the standards

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1 are there, but, until recently, in fact, explosive
2 standards were not commercially available. You had to
3 get them from extracting them from materials. And so
4 we depended upon them -- the mass spec, and used the
5 separation, the GC as a separator and then to depend
6 upon the mass spec for an initial -- initial
7 hypothesis as to what we had and then go to an
8 orthogonal tool.

9 Q When did the commercially-available
10 standards become available? You said recently.

11 A They were available as -- about in the
12 summer of 19 -- maybe the -- maybe the spring of 1994.

13 Q Okay. And have those been used by the FBI
14 since the commercially --

15 A They were used while I was there and I guess
16 until at least 1995, I used them myself.

17 Q You don't know what the practice is today
18 with respect --

19 A I'm sure they -- I'm sure Mr. Burmeister
20 uses them, but I haven't, you know, gone specifically
21 and looked.

22 Q Is there any standard or any protocol for
23 the variation in GCECDC techniques? And I want to ask
24 the same question as to GC chem.

25 A Excuse me?

1 Q Okay. Is there a procedure at the lab that
2 you're aware of for measuring or limiting the
3 variations when using the EC -- excuse me -- the GCECD
4 technique?

5 A Again, I'm talking about the retention time.

6 Q And I see that you're not responding so

7 I'm --

8 A No. Confused.

9 Q I'm not asking a good question.

10 A Uh-huh.

11 Q Are there any control limits set on the
12 retention times used when operating the GCECD?

13 A No. What we've generally done is put in --

14 instead of concerning ourselves with a window of --

15 of -- we've put in standard editions. If we have a

16 material and we -- we suspect because it's within a

17 particular range, it might be substance X, we put a

18 standard edition of substance X in and see if the peak

19 grows. Okay.

20 Q And with the GC chem technique, the same
21 question. How do you handle the variations on the
22 retention time?

23 A There's -- the part of the program that goes

24 with that unit, you put in a very -- a window. Okay.

25 I mean, it's -- you know, if the peak comes out within

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1 this, it'll call it a peak. That -- that window size
2 is something established by the operator. During my
3 tenure, Monica Knuckles was operating the instrument

4 and had gone to the Thermetics school. She would be
5 the more appropriate person to tell you what the size
6 was of the window. I don't know how that's
7 established.

8 Q So is that programmed by each operator or by
9 the person who first programs the machine and then
10 it's just there forever?

11 A No. There was -- with that particular
12 instrument, there was a -- an operator that used the
13 instrument that was trained in how to use it and how
14 to go through it and work with all the -- you know,
15 the computer algorithms or whatever and that was

17 remembers, she'd be able to tell you that.

18 Q I'm somewhat confused about the availability
19 of protocol to people from different sections of the
20 FBI lab, but still all employees of the FBI lab. What
21 I'm saying is there might be crossover from the
22 materials analysis unit to the chem/tox unit, to

24 assigned to the FBI laboratory given access to the

25 protocols for any of those different units within the

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2 A In the materials analysis unit, there were a
3 number of protocols that were out on public access for
4 anyone that wanted to peruse through them.

5 Q By "public access," you mean within the lab?

6 A Yes. I'm saying -- somebody from the
7 chemistry/toxicology unit could come over to the
8 materials analysis unit and bring out the folder and
9 look through it to review protocol, if they wanted to.

10 I -- when -- for instance, I was an explosives analyst
11 and went into paint, I went over and got the paint
12 analysis protocol to study through the protocol.

13 Q On occasion, you might see protocols
14 reference C chem/tox protocol if you're in the
15 material analysis unit. Would there be something like
16 that ever listed in a protocol where cross-reference
17 is?

18 A I've not seen that. The protocols were
19 developed very quickly in the last two years. I've
20 been out of a lot of materials analysis since then.
21 What Mr. Burmeister has done in explosives, it may be
22 much more sophisticated than what we'd been able to
23 develop up until 1994.

24 Q But in your experience, you wouldn't be
25 precluded from examining the protocols in a different

1 unit, different from the one you're assigned to?

2 A I have no experience with having to try and

3 access those.

4 Q You mentioned the paint situation.

5 A Yes. But I can't imagine that anybody

6 would -- you know, if I were to ask what the protocol

7 was, I have no experience with somebody saying, no,

8 you can't see it.

9 Q To your knowledge, are the protocols in the

10 materials analysis unit or the chem/tox unit

11 classified?

12 A Not to my knowledge. They are -- the paint

13 protocol, I wrote. And the explosives protocol for

14 the residue analysis would not have a classification

15 stuck to it.

16 Q What are the primary components or

17 ingredients of a blasting cap?

18 A Well, there's the shell that it's in. It's

19 aluminum or brass, to the best of my knowledge.

20 Copper. Excuse me. There's a base charge which is

21 PETN or RDX or tetryl.

22 Q Or what?

23 A T-e-t-r-y-l. I believe tetryl is used in

24 those. There is a primary explosive which is set off

25 by two wires coming into the end of this cylinder that

1 are a plug that keeps the inside of the cylinder dry.
2 Two wires come through the plug into the cylinder and
3 they -- they -- they -- well, they end up as bare wire
4 someplace in the cylinder. Up at the far end of the
5 cylinder. And the -- the wire will have a small --
6 very, very, very small wire going between the two of
7 them. When you apply current, that heats that. And
8 there's some material around that wire that will be
9 set off by heat and that could be, you know, potassium
10 chlorate-based material or whatever.

11 Q This is the main charge?

12 A No.

13 Q I'm sorry.

14 A It's set off by heat. It would be something
15 that starts the -- the chain going. Okay. And then
16 there's -- that's a -- you know, it's a -- a heat-
17 sensitive explosive and there could be a delay
18 mechanism that's in the blasting cap so that whatever
20 amount of time before the main charge, the -- the base
21 charge goes off. There's a -- a blast train, if you
22 will. An explosive train that goes off.
23 Q I want to preface the next question for
24 Mr. Maddock's reasons as well as any. I am not
25 inquiring of any information of what was observed,

1 what was studied, what was inquired of. I don't want

2 to know if you know who -- what personnel from the FBI
3 laboratory observed in any way the summer or fall 1996

5 representative, Mr. Rob Nigh, also attended, but was
6 not given access to the same areas where the FBI
7 agents were. Do you know who attended that or
8 observed it?

9 MR. MADDOCK: Can I just take a time-out on
10 that question?

11 (There was a discussion off the record.)

12 MS. WILKINSON: You're only asking about FBI
13 personnel?

14 MR. WYATT: At this point, that's all I'm
15 asking.

16 MR. MADDOCK: Go outside.

17 MR. WYATT: I'm going to ask that question,
18 too. I'm going to ask just the identity.

19 (There was a recess taken from 11:07 a.m. to
20 11:08 a.m.)

21 MR. MADDOCK: He can answer the question.

22 A I don't know.

23 Q (BY MR. WYATT) Is there a protocol that
24 you are aware of for crime-scene processing in
25 explosives cases that establishes a sign-in list for

1 personnel arriving to participate in the collection of
2 evidence?

3 A I have never been involved with such a list
4 at the crime scenes I went to so I don't know that
5 there is one.

6 Q Are you familiar with a substance known as
7 Tovex Blastrite?

8 A I'm -- I'm familiar with the expression
9 Tovex. I don't know -- I have not heard the
10 expression Blastrite before. I know what Tovex is.

11 Q Do you know what the -- and I don't know
12 that active ingredient is the right thing, but the
13 explosive ingredients are in Tovex?

14 A I -- it's been a long time since I dealt
15 with this, but I remember the Tovex was an ammonium
16 nitrate aluminum-based gel explosive. Slurry type
17 explosive.

18 Q And that would be what's called a water gel
19 maybe?

20 A Yes. Again, my memory fades.

21 Q I'm just using a generic term.

22 A Yes. I have taught about Tovex in my
23 explosives classes I taught at Quantico, but it's been
24 quite a while ago now.

25 Q You brought me back to something I wanted to

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1 ask you from Mr. Tigar's examination. You talked
2 about in the Oklahoma City case, there was a finding
3 of ammonium and nitrates in a single crystal on some
4 particular piece of wood.

5 A Yes.

6 Q Do you recall that testimony? The finding
7 of ammonium and nitrate in the same crystal does not
8 automatically reach the conclusion that an ANFO bomb

9 was used?

10 A Not -- in my opinion, it doesn't.

11 Q Why is that?

12 A Well, from what I understand of the

13 explosives -- most of the explosives -- industrial-

14 based explosives in this country are based upon

15 ammonium nitrate. Fertilizer -- fertilizers with

16 ammonium nitrate in them and it gets down simply to

17 the fact that ammonium ions don't have a little label

18 attached to them -- and I don't mean this

19 flippantly -- that say this one came from a bomb, this

20 one came from -- I also know from my study in

21 environmental analysis that ammonium nitrate falls out

22 of the sky. It just falls out of the sky. It's made

23 in the atmosphere. It's not made in -- I would

24 imagine in the crystalline size that I've seen, but I

25 don't have any experience with that. Those crystals

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1 were much larger in -- in my memory, than 50 microns

2 in size. But even so, there are many, many, many

3 explosives that are made in this country that have

4 ammonium nitrate in them.

5 Q Okay. I got off on a tangent. I probably

6 should have finished the previous question first.

7 Is -- relating again to Tovex --

8 A Excuse me. Go ahead.

9 Q -- is PETN an item you would expect to find

10 in Tovex?

11 MR. HARTZLER: Pardon me? Before you

12 answer, I haven't objected to these. I thought you
13 were somehow testing his knowledge. Are you just
14 eliciting expert information?

15 MR. WYATT: Not eliciting expert knowledge.
16 To my knowledge, Tovex is a proprietary substance. I
17 want to know if PETN or EGDN is in it. I don't want
18 to know the percentage or anything like that. If you
19 know.

20 A It could be. I have some training at -- at
21 Atlas Explosives in Tamaqua in which I went for a
22 conference one or two days in which one of the groups
23 there were saying that -- this was back about seven or
24 eight years ago, that they were in the process of
25 putting about 3 or 4 percent PETN in their explosive

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1 like their slurry or whatever in order to sensitize
2 it. Now, whether it ever went into Tovex is not
3 something I'm aware of, but I don't think it's
4 something we can discount.

5 Q Does Atlas manufacture Tovex?

6 A I don't remember that.

7 MR. MADDOCK: Can we go off the record just
8 a minute? I want to clarify something.

10 11:14 a.m.)

11 MR. WYATT: May he answer?

12 MR. MADDOCK: Yes.

13 A Can you repeat the question?

14 Q (BY MR. WYATT) I believe that I was just
15 simply -- I was just simply asking you whether Tovex

17 A Not to my knowledge, but I don't think you
18 can discount it.

19 Q Okay. Now, you gave an expanded answer on
20 the PETN. Do you have any knowledge in that regard to
21 the EGDN?

22 A No. No, I don't.

24 an analysis was for inorganic or organic explosives,
25 you might need a bifurcated analysis. What did you

1 mean by that?

2 A What I was talking about is if you don't --
3 if you don't know what's in the explosive and we know
4 explosives have both inorganics and organics, so we
5 have to treat them with different analytical schemes,

7 do a water extract to pull the inorganic out, the
8 ammonium nitrate. We do an acetone extraction to pull
9 out the organic. Or it could be an ether extraction.
10 In our laboratories, it's an acetone extraction.

11 Q Does the protocol call for an acetone
12 extraction?

14 Q Not the ether extraction?

15 A That's correct.

16 Q You also mentioned to Mr. Tigar that with an
17 ANFO bomb, you don't necessarily need a booster. What
18 did you mean by that?

19 A With an ammonium nitrate-based bomb, I --
20 I'm -- if I said ANFO, I'm wracking my brain right now
21 for whether I need to -- I understand there are
22 ammonium nitrate-based and I mentioned those to
23 Mr. Tigar. Ammonium nitrate based with hydrocarbon

24 fuel materials that don't need a booster that can
25 become cap sensitive is my understanding. You grind

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1 the ammonium -- what you need is a very intimate
2 mixture of the fuel and the oxydizer. And so you need
3 a very finely ground ammonium nitrate with, say,
4 confectioner's sugar or a very fine aluminum or
5 whatever. And I understand those materials become cap
6 sensitive. It's not an ANFO bomb, though.

7 Q Okay. Now, sir, I've handed you what is --
8 it's not marked as an exhibit, but we refer to it as a
9 lab report which is serial number 160 --

10 A Yes.

11 Q -- dated September 5, 1995.

12 A Uh-huh.

13 Q I believe that it consists of 28 pages.

14 MS. WILKINSON: Mr. Wyatt, could we just
15 make it clear for the record, the reason we're not
16 objecting to Dr. Whitehurst seeing this is because
17 he's previously seen it in his official capacity when
18 Agent Williams showed it to him.

19 Q (BY MR. WYATT) Is this the report that is
20 referenced --

21 MR. KOHN: If the witness is shown a
22 document, I would like it to have a deposition exhibit
23 number, even if you're not going to bind it in. I
24 just think it makes for the record --

25 MR. HARTZLER: I think we've used letters to

1 refresh his recollection. If that's all you're --
2 that's what you're doing, referring to a particular
3 sentence or something, we all have the exhibits so
4 it's not -- I don't know that it needs to become a
5 part of the record.

6 MR. WYATT: I agree with you there. No.
7 I'm going to ask him some questions about the document
8 that are related to his letters.

9 MR. HARTZLER: If I may, Mr. Kohn, I don't
10 know that it really becomes an exhibit for the
11 deposition if you're merely asking him for
12 interpretation or something. We have his letters
13 analyzing this report. We all have the report.

14 MR. KOHN: You see no need for this to be
15 marked with a deposition exhibit number?

16 MR. HARTZLER: It may, depending on what the
17 questions are. From what I hear, it sounds like it
18 doesn't need to.

19 MR. WYATT: At this point, I don't see any
20 need for it. The parties are clear.

21 MR. HARTZLER: It's --

22 MR. KOHN: I just want to just state I may
23 just -- if it's not going to be marked, I want a
24 little better identification. It is a 28-page exhibit
25 dated September 5, 1995. The cover page says 2 SAC

1 Oklahoma City. Reference C specimen list. There's a
2 number on it, 174 A-OC-56120, re Okbom. And in the
3 last page, on page 28, it ends with a subsection named
4 "disposition of specimens." And I'll -- the specific
5 document being reviewed is -- has Bate stamps on --

6 MR. WYATT: Those are defense Bate stamps.

7 MR. KOHN: So those are defense Bate stamps
8 in the bottom right-hand corner. In the top
9 right-hand corner, someone put in by hand a little
10 number insignia and a 160.

11 MR. WYATT: That's an insignia put there by
12 me, Bob Wyatt, and I don't have an objection to
13 marking this as a deposition exhibit. Let's just mark
14 it. I'll just need to make a copy of it. These
15 exhibits are sealed anyway. These exhibits are
16 sealed. Let's just mark it.

17 MR. HARTZLER: Okay. Well, it adds to the
18 paperwork. I -- if you're just asking questions, much
19 like we had the letters, we're not going to include
20 the letters in the record of the deposition. We've
21 got a pretty clean transcript. My suggestion is that
22 unless, for some reason, we need it to be an exhibit,
23 as you would with a map or those charts you had --

24 MR. KOHN: For my purposes, I've identified
25 it enough so it's just up to you.

1 MR. WYATT: Okay.

2 Q (BY MR. WYATT) Is this a copy of the
3 report that was shown to you by Mr. Williams, a report
4 concerning the Okbom investigation?

5 A I remember a report of September 5, 1994,
6 that I reviewed. Of course, it's a rather long
7 report. I can't say absolutely everything is the same
8 unless -- if it hasn't been changed since then, it's
9 the same report.

10 Q Do you know whether the report he showed you
11 was a final report submitted, I guess, through his
12 unit chief?

13 A I believe it was because he gave it to me
14 much after this date. I guess if -- if -- in fact,
15 you know, in reviewing the notes the other day, I
16 thought it might have been in October that he got it,
17 but I'm not sure that the exact date. I would have to
18 compare this report to the final report or whatever he
19 says is the final report. But my understanding when
20 he gave it to me and I looked at the date was that it
21 was -- you know, it had already been sent out. When
22 I -- when I was working cases, if the date was over
23 two days old before it had gone out, we had to bring
24 it back. That's what Mr. Corby required me to do.

25 Q Do you recall if that report that you saw

1 was in excess of 20 pages?

2 A No. I don't recall that offhand.

3 Q Okay. Well, you have referenced in some of
4 your letters -- the Whitehurst letters, your concerns
5 with this report. Do you agree with that?

6 A Yes. I have. Uh-huh.

7 Q And is this report, as you understand it,
8 authored by Mr. Williams?

9 A Yes. The report that he handed me, he said
10 was his report.

11 Q And there are examiner symbols on there
12 which would identify that; correct?

13 A I guess so. I don't know his symbols.

14 Q Okay. Regardless of whether this item

15 serial number 160, is the report, can you advise us

16 what your concerns were with Mr. Williams' report that
17 you saw.

18 A After reading it over initially, I advised
19 Mr. Williams that I thought the report was biased and
20 he asked me how -- you know, and I explained initially
21 that I didn't think the ammonium nitrate was

22 necessarily totally only consistent with ammonium

23 nitrate fuel oil. We had a very short conversation
24 about it. And then we had things to do. And so I
25 told him I'd get back with him about it. And we were

1 never able to get together, really, you know,
2 constructively after that. And the concerns are
3 expressed in my letters which I sent after I reviewed

4 the report.

5 Q I have those letters here in my pile and

6 that's what I'm looking for you.

7 MS. WILKINSON: You gave us these before.

8 MR. WYATT: It may be.

9 MR. HARTZLER: This is -- no.

10 MS. WILKINSON: 1-9-96 letter.

11 MR. WYATT: I believe so.

12 MR. HARTZLER: This is the 7-1-91.

13 MS. WILKINSON: 9-8-96. A big long one

14 where it analyzes -- this isn't it.

15 THE DEPONENT: Mr. Wyatt, can I take a quick

16 break while you do that?

17 MR. WYATT: Certainly.

18 (There was a recess taken from 11:24 a.m. to

19 11:27 a.m.)

20 Q (BY MR. WYATT) Anyway, to continue, while

21 we're looking for the letter, the -- you mentioned

22 that there was a bias.

23 A Yes, sir.

24 Q What is that bias?

25 A I felt that he had written a report in order

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1 to establish guilt. That he had not included

2 alternative explanations for the data.

3 Q And is your critique or criticism of that

4 limited to the failure or omission of alternative

5 explanations?

6 A No. There are some issues that I raised

7 about -- for instance, I had a concern that he
8 described some objects as aluminum -- 40 to 50 objects
9 as aluminum. I inquired as to whether an elemental
10 analysis had been done. I couldn't find that it had
11 been done. There was a reference to explosive damage
12 to tire parts. I'm not aware of any -- any empirical
13 evidence that we've got, any testing we've got,
14 describing explosive damage to styrene butadiene
15 components of rubbers. I had a concern about it.

16 Q You're talking about the tire, not the
17 wheel?

18 A The tire, itself. The rubber is made of a
19 particular type of polymer and that's what I was just
20 saying.

21 Q Okay.

22 A I just -- I looked through the report and,
23 you know, questioned items through there.

24 Q Do you recall any other items that you
25 critiqued or criticized?

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1 A I did have a concern about the -- the
2 velocity of detonation number that came out. I -- I
3 couldn't -- I couldn't see how someone could narrow
4 down the velocity of detonation to that specific a
5 number. I had a concern that he was expressing
6 opinions about standard construction of, oh, road
7 material in front of a building. Mr. Williams is not
8 a civil engineer. I -- you know, I had that concern.

9 Q You indicated that you were not able to

10 discuss that at length with Mr. Williams. And you
11 mentioned that you referenced these items in your
12 letters. Did you -- other than the letters, did you
13 report your critique or criticism of that lab report
14 to anyone else in the laboratory or in the chain of
15 command?

16 A I talked to Mr. Corby, my unit chief, about
17 it.

19 A We -- we looked over it and I explained to
20 him that it appeared to me as if we were going to get
21 in trouble. A lot of people were angry about the
22 report and a lot of senior agents were discussing it
23 and were upset that it had gone out. And Mr. Corby
24 was -- it was just before he retired -- two or three

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1 together with Mr. Williams and we'd just sit down and
2 discuss the issues to try and resolve them.

4 concerned with the report. Who are those other
5 people?

6 A Mr. Kelso, who is the chief of our evidence
7 response team, was in the bomb data center for many,
8 many years.

9 Q Do you recall what his concern was?

10 A Velocity of detonation was his concern.

11 Q Any other individuals?

12 A Special Agent Patrick Welch, who was in the
13 bomb data center for many years.

14 Q What was his concern?

15 A It was the velocity of detonation issue.

16 Q Anyone else?

17 A I discussed it with Mr. Burmeister. I'm not
18 sure of his specific concerns with it. He expressed
19 that he had some concerns with the report. I also
20 talked about the report with Mr. Tobin. Bill Tobin is
21 our chief metallurgist and he had concerns about the
22 metallurgy. Mr. Corby. I talked about it to
23 Mr. Rudolph, Terry Rudolph, who doubted seriously that
24 you could specify the velocity of detonation from
25 blast damage estimates. Offhand, that's what I

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1 remember right now. There was a -- a bit of talk
2 around the lab about it.

3 Q And would that have been among those same
4 individuals you talked about or others?

5 A Those are the individuals I can remember
6 right now.

7 Q Do your letters sufficiently outline your
8 concerns to -- do they identify the concerns in
9 sufficient detail that we would know what problems
10 there might be with that report, if any?

11 A Yes. I believe -- I believe -- I believe
12 so. I think that something that maybe you're not, but
13 you should be, aware of is these are my concerns and
14 there may be alternative explanations for something
15 being reasonable. It was the data I had. I saw
16 people angry about the thing and knew they wouldn't go
17 forward or felt they wouldn't go forward with their
18 anger or their positions. And I wrote what I could.

19 Again, you know, for the record, there may be
20 alternative explanations that I didn't have available
21 for me, sir, but my letter is -- is very specific.
22 Q Okay. Were those letters written -- excuse
23 me. Let me strike that.
24 Your letters address very specific issues.
25 Each letter does. Are those written contemporaneous

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1 to your discovery of whatever the issue is in the
2 letter, if you recall?
3 A Not -- you know, I can discover an issue,
4 but then I have to validate my hypothesis as to what
5 it means. I have -- you know, someone may come to me
6 and say, Oh, this is a problem. Well, okay. But, you
7 know, I'd like to find that out someplace else. For
8 instance, you know, I had one instance where in 1991,
9 I had somebody tell me about whatever. It wasn't
10 until 1995 before I heard it for the fourth time and I
11 said, There's just too much here. I can't ignore
12 this. It isn't sour grapes or political agenda.
13 There's a basis. I need to say something. It
14 wouldn't be necessarily the minute somebody comes with
15 a rumor or whatever.
16 Q What I'm trying to find out, I guess, is
17 whether these incidents that you address are
18 contemporaneous to the information you are providing
19 and if you find out that information and validate it,
20 is it contemporaneous with that validation?
21 A Once I feel as if I can responsibly go

22 forward -- you know, Mr. Wyatt, it's no longer my
23 position to decide what the information is for. I
24 have to present it. I'm required by regulation to
25 report any indication. I just have to responsibly

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1 determine whether it is a good indication. And so
2 I -- I don't just take it and run with it, you know.
3 That would be foolish. You know, there are -- there
4 are personal feelings people interject and all that
5 sort of stuff. So, again, you -- there might be a
6 time line along which I've been told something, but
7 I'm not going to put it on paper because I don't
8 really -- I haven't validated that thing. Once the
9 validation comes, I go forward.

10 Q You mentioned the phrase -- and I believe
11 you said it's one that you coined -- deposition
12 homogeneity problem?

13 A Homogeneity, yes.

14 Q Could you describe what that is.

15 A Yes. Using this as an example, there's a
16 type of explosive which is a mixture of ammonium
17 nitrate and TNT. When that bomb blows up, you might
18 have the TNT show up in one place and the ammonium
19 nitrate show up in another. We don't have any
20 empirical data to address that at this point. One way
21 of addressing that would be to blow up a bomb in the
22 middle of a big round sphere and take swabs and I was
23 trying to get that research going with the national
24 labs. You know, when I was sent out of explosives.

25 But at one crime scene, I found TNT or someone found

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1 TNT in one place and found PETN and RDX in another.
2 So the deposition, where the residue deposits may not
3 be homogeneous. Do you know? So if a person picked
4 up residue and picked up a -- an object that had TNT
5 in it, he couldn't say that that wasn't an ammonium
6 nitrate TNT device. He just couldn't. He could say,
7 you know, barring no contamination issues, you know,
8 it's highly likely that the device had TNT in it.
9 That was something that came to our attention very
10 strongly in about 1992, 1993, so we started having to
11 consider this part of our expertise.

12 Q You mentioned in one of your letters -- and
13 I can look for it if we need to -- that some equipment
14 was sent to the Okbom scene that was either inoperable
15 or didn't work properly. I don't recall the exact
16 term. But do you recall the reference?

17 A Yes, I do.

18 Q Can you explain to us what that reference
19 was.

20 A Yes. I was talking about the Berringer ion
21 mobility spectrometry equipment. Our experience with
22 the instrument, we did like we do most instruments, we
23 bring in one line and we test it and we use it as a --
24 a parallel type of a technique until we can trust it.
25 During that parallel process with the -- with the

1 Berringer, it turned out to be a very good narcotics
2 detector but not a very good explosives detector. And
3 in fact, there is a recent paper by Ronan Hiley from
4 Maurice Marshall's group which is in the public domain
5 which addresses this very issue, that they have tested
6 the IMS and found that it gives just too many false --
7 false readings. Their problem is -- is that you have
8 a very complex matrix and you don't know what's going
9 on in the matrix with the analyte, the material you're
10 actually trying to detect. We had determined that the
11 IMS was probably not the appropriate instrument to
12 take to a crime scene. We -- we were -- we wanted to
13 send the Egis Thermetics GC chemiluminescence detector
14 just because of the GC column to separate all the
15 stuff in, you know, the matrix, but the IMS went.

16 Q Is the -- which GC machine was that?

17 A The Egis, GC chem.

18 Q Is the GC chem instrumentation or instrument
19 such that would be capable of transportation to a bomb
20 scene or is there a portable unit in the lab?

21 A We do have -- it's 450 pounds of unit. But
22 it's got wheels on it. It was built to be portable.
23 It's just a very big rig. It would have to go on a
24 truck. Or go in a big airplane.

25 Q You've indicated in some of the transcripts

1 that we have seen and have been provided to us --
2 these are transcripts of your own testimony, either
3 OIG or O.J. Simpson, that pressure was put on you at
4 the lab to do certain things that you objected to.

5 What kind of pressure are you referring to?

6 A Sometimes it amounted to pointing a finger
7 in my face. You know -- you know, change this or
8 else. The expression the other day which I remember
9 very well, only once with that, but replace me with a
10 bright high school kid. The alteration of my reports.
11 The -- you know, to begin with, within the first 90
12 days of my tenure in that laboratory, my training
13 agent taught that me I'd perjure myself in a court of
14 law.

15 Q He taught you?

16 A Yes. It is as phenomenal to you as it is to
17 me, but he taught me that and he said before you
18 embarrass the FBI in a court of law, you'll perjure
19 yourself. We all do it. I -- I had gone to him
20 because I was concerned about how filthy, you know --
21 he was in a room that had a name -- nameplate on the
22 door that said "garbage pit" and I had a concern about
23 trace analysis in such an environment and that's what
24 he told me. You know, I reported that. He also
25 explained to me in examples sort of like being in

1 school and this is the law and this is the way you
2 follow it. He gave me an example of how he'd done it
3 himself and I reported that to my management. The

4 fact that nothing -- nothing resolved -- resulted from
5 that left me kind of what's going on here. You know,
6 there's some issues that I've got here that if they
7 won't even treat my formal training to commit perjury
8 seriously, how can I raise issues of things like
9 contamination or whatever. You know, I've heard that
10 question before and I'm trying now to nail down all of

12 when I get my report and somebody's marked out, take
13 out, you know, these statements and they were
14 alternative explanations for the data.
15 And I felt as if my -- my being forced into
16 psychotherapy was a pressure that was -- you know, it
17 was really vulgar from my point of view, but I felt as

19 going to try and make me say what they wanted me to
20 say or just get rid of me.

21 Q Was there a protocol for the transportation
22 of machinery to a bomb site?

23 A Not that I'm aware of, sir.

24 MR. KOHN: One second. Wait.

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1 Q (BY MR. WYATT) Is there something that
2 needs to be clarified?

3 A Mr. Wyatt, you know -- there may be some

4 other instances that I haven't brought up in this, but
5 those are the kinds of instances I'm talking about.

6 The kinds of pressures I'm referring to.

7 Q Did -- when you presented these concerns to
8 your supervisor, Mr. Corby, did he support you?

9 A Yes, sir.

10 Q And would he pass those concerns on up the
11 chain of command?

12 A Yes, sir, he did.

13 MR. HARTZLER: Can we help?

14 MR. WYATT: No. There's a document I'm
15 looking for.

16 MS. WILKINSON: Could it be these two,
17 Mr. Wyatt?

18 MR. WYATT: No, it's not. It's on yellow
19 paper.

20 By agreement with Mr. Hartzler, he was going
21 to take the last ten minutes and we have reached that
22 point, but the -- the defense for Mr. McVeigh reserves
23 the right to complete the deposition. My guess is
24 that in the absence of additional material being
25 provided to us, we could complete it in about an hour

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1 at the most, unless there's cross-examination that
2 needs follow-up.

3 MR. WOODS: We have some follow-up.

4 MR. WYATT: But with that understanding,
5 that we were going to try and continue the deposition
6 and that you all have additional questions.

7 MR. HARTZLER: I appreciate that.

8 MR. WYATT: I pass the witness.

9 MR. HARTZLER: I'm sorry we have to bring
10 you back for an hour.

11 MR. WOODS: Well, you said you had half a
12 day or so.

13 MR. HARTZLER: No. I will -- I wouldn't
14 think that we would take half a day.

15 EXAMINATION

16 BY MR. HARTZLER:

17 Q Dr. Whitehurst, have you conducted any
18 studies regarding the seepage of PETN in and out of
19 plastic or plastic bags?

20 A No, I have not, sir.

21 Q Do you know of any such studies that have
22 been conducted?

23 A No, I don't know of any specific studies.

24 Q And does PETN produce vapors of the same
25 sort as are produced with nitroglycerine, for example?

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1 A No, sir. In fact, it's like a rock. You
2 know, in the detection business, we say it just
3 doesn't breathe. It sits there. That's why it's so
4 difficult to detect.

5 Q Is the same true of ammonium nitrate?

6 A No. Ammonium nitrate could break down and
7 put off ammonium vapors, but I -- you know, it's --
8 it's a crystalline material and I can't see that --
9 you know, that it's going to vaporize all over the

10 room.

11 Q So the potential for seepage of PETN from
12 one item in a plastic bag into other item in a plastic
13 bag is, at least as far as you're concerned, not a
14 significant contamination issue?

15 A It's not a contamination issue at all that
16 I'm aware of.

17 Q When you conducted your study of the
18 laboratory for contamination in the summer -- I
19 thought it was the summer of '95, summer or fall of
20 '95?

21 A Uh-huh.

22 Q How many swabs were taken; do you recall?

23 A I think it was 50 to 75, sir. We'll have to
24 look at the study, but there were quite a number of
25 swabs taken.

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1 Q Were any swabs taken in the area of the
2 carpeting?

3 A I don't remember that.

4 Q With respect to the Oklahoma City crime
5 scene, of course, we all know that you were not
6 detailed there; correct?

7 A Uh-huh.

8 Q And that was a yes. The -- your
9 observations, I believe, are based on what you had
10 observed on television, you said?

11 A Of the crime scene, yes. Uh-huh.

12 Q That's what I meant. So --

13 MR. WYATT: I -- I would object and
14 challenge the record. I think he said some other
15 things in addition to that. But that's my sole
16 objection.

17 Q (BY MR. HARTZLER) Sure. Maybe I should
18 have said your visual observations, obviously, were
19 exclusively based on television viewing?

20 A And photographs, I think, I've seen.

21 Q Okay.

22 A You know --

23 Q Okay. But you have no firsthand knowledge
24 of the procedures that were used at the Oklahoma City
25 crime scene?

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1 A No. No, I don't.

2 Q And that goes both to the question of
3 labeling; is that correct? You don't --

4 A Yes. That's correct.

5 Q Or the transportation?

6 A That's correct.

7 Q Of the item -- same with the storage.

8 Storage of the items?

9 A I -- I did not see them. That's correct.

10 Q And the actual collection?

11 A That's correct. I didn't see -- no

12 firsthand knowledge.

13 Q So, for example, you don't even know if the
14 teflon cans that you had recommended were used at the

15 Oklahoma City bomb scene?

16 A No, I don't.

17 Q From what you did observe in the laboratory
18 with Mr. Burmeister, do you have any concerns about
19 the manner in which he handled that particular item
20 that you observed with him?

21 A Absolutely none.

22 Q Do you have any concerns about the training,
23 qualification, or abilities of Ron Kelly?

24 MR. WYATT: And I don't -- my only objection
25 is can I ask him similar questions that you all will

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1 not object to?

2 MR. HARTZLER: That was our agreement this
3 morning.

4 MR. WYATT: Okay. Just so the record is
5 clear.

6 MR. HARTZLER: I thought you had asked him
7 those questions.

8 MR. WYATT: As to some people, but I avoided
9 a lot. But okay. As long as that's by agreement.

10 That is by agreement; correct?

11 MR. HARTZLER: Sure.

12 A May I answer that?

13 Q (BY MR. HARTZLER) Sure.

14 A Yes. I think -- I've seen his work over the
15 ten-year period of time and I think that he lacks a
16 certain maturity which probably is based upon
17 experience as opposed to anything else. It's a

18 scientific maturity.

19 Q Do you have any concerns about his training,
20 qualifications or ability to collect evidence?

21 A I wouldn't. I haven't seen him collect
22 evidence, but I wouldn't.

23 Q Do you have any concerns about the training,
24 qualifications or ability of Brett Mills?

25 A None whatsoever.

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1 Q If you were to list the top residue analysts
2 in the world and limit it to, let's say, ten, would
3 Steve Burmeister make that list?

4 A Yes.

5 Q And where would you place him, rank him on
6 that list? Top half, bottom half?

7 A Bottom half.

8 Q You said that -- this is -- pardon me -- you
9 said in reference to a letter that was shown you this
10 morning dated June 2, 1995, that you had raised issues
11 of contamination on McVeigh's clothing because you
12 were concerned that the issues would not be addressed.

13 A Yes.

14 Q Do you recall that?

15 A Yes.

16 Q Are you satisfied that they are being
17 addressed?

18 A Yes, I am.

19 Q You indicated also in reference, perhaps
20 that same letter, that there were bomb techs, I

21 believe, at the scene of the Oklahoma City bombing who
22 had handled explosives. Did I understand that
23 correctly?
24 MR. KOHN: Dr. Whitehurst, if you need to
25 look at that --

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1 A Yes. I understand the reference there is in
2 that -- is in a suppose, what if, hypothetical,
3 whatever. Bomb techs do handle explosives and that's
4 what I'm saying.

5 Q (BY MR. HARTZLER) Right.

6 A That's what they do for a living.

7 Q And I assume that the risk of contamination
8 from -- or potential contamination is that the
9 explosives that they have handled might somehow be
10 transferred onto evidence they collect? I mean, I'm
11 presuming that that's the theoretical concern; is that
12 right?

13 A That's correct.

14 Q Are you aware of any findings of explosives
15 residue in this case other than the one item that you
16 observed with Mr. Burmeister from the crime scene?

17 A From Oklahoma City?

18 Q Yeah. Yes.

19 A No, I'm not. The only thing I'm aware of is
20 ammonium nitrate from there.

21 Q On that single piece --

22 A That's --

23 Q -- that you observed?

24 A Yes. That's all I'm aware of.

25 Q You said -- actually, this morning, that

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1 when you make a discovery and I'm assuming you mean

2 when you observe something that you -- that appears to

3 be facts or information, then you reach a hypothesis

4 and you have to validate that hypothesis. Did I

5 understand that to be the method you were describing?

6 A Yes. Scientific method.

7 Q Scientific method?

8 A Yes. Uh-huh.

9 Q And would it be -- well, let me ask you,

10 based on your observations from television and

11 information you were collecting on the day of the

12 Oklahoma City bombing, did you have a hypothesis?

13 A About what?

14 Q About the cause of the bomb.

15 A About what the explosive was?

16 Q There you go.

17 A No.

18 Q You did not?

19 A No.

20 Q You didn't -- you didn't -- well, soon

21 thereafter, did you develop a hypothesis it was likely

22 to be an ANFO bomb?

23 A No, sir. I don't -- I don't remember that.

24 I -- I objected to that in the -- in the presentation

25 of Mr. Martz to myself.

1 Q That's really what I'm asking you about.

2 You notice in that letter, I believe Mr. Martz had

3 indicated to you that he thought it was probably an

4 ANFO bomb?

5 A Possibly an ANFO bomb is what I wrote.

6 Q Okay. And my -- my question is: Was that

7 an unreasonable hypothesis to attempt to validate?

8 A Any hypothesis isn't unreasonable to attempt

9 to test.

10 MR. WYATT: Is or isn't?

11 THE DEPONENT: It isn't unreasonable to

12 attempt to test.

13 MR. WYATT: I just couldn't tell if you said

14 is or isn't.

15 Q (BY MR. HARTZLER) But you're saying you,

16 yourself, did not reach that same hypothesis?

17 MR. WYATT: Asked and answered. I object to

18 that.

19 A Yes. I can -- I -- I need to follow this

20 very carefully with you. I should attempt to test the

21 hypothesis. Okay?

22 Q (BY MR. HARTZLER) Certainly.

23 A If you have a hypothesis, I will attempt to

24 test it.

25 Q Yes. Well, did you as a -- as an educated

1 observer of this scene reach any kind of even a
2 tentative hypothesis as to what the likely explosive
3 charge was?

4 A I don't remember that. I don't know --
5 sitting here right now, I don't know how that I could.
6 There was a big hole in the ground.

7 Q Sure.

8 A And I know that -- my own personal feeling
9 is there are a lot of different explosives out there
10 that can cause the same thing and to come up and pick
11 one of them and -- well, would you test this one is --
12 well, okay. Fine. But I can't ultimately give you a
13 yes or no answer to that. I can't. I can give you a
14 possibly -- you know, a possibly type situation as
15 long as you let me give you the rest of the answer.
16 Well, if there's ammonium nitrate, there's certainly
17 ammonium nitrate in ammonium nitrate fuel oil.
18 However, there's ammonium nitrate in dynamites,
19 slurry, fertilizer, on and on and on.

20 Q I think you may be answering past the first
21 couple of days.

22 A Yes.

23 Q I'm just talking about your observation from
24 the laboratory wherever you were and the information
25 you were collecting.

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1 A Yes. That's correct.

2 Q And did you not hypothesize that this was an

3 ANFO bomb?

4 A No. Why? I don't remember that, Joe.

5 Q Okay. Is it not fair to say that there are
6 certain explosives that are more difficult to get in
7 this country than ANFO?

8 A Certainly, PYX or DATB or TATB or -- I could
9 keep naming these until this afternoon. Yes.

10 Q Even a large quantity of TNT?

11 A I -- I would imagine it would cost somebody
12 a bit more to get it on the black market.

13 Q And the same would be true of dynamite?

14 A I'm not sure about that, really. I -- I
15 have an understanding there's a large amount of
16 explosives stolen in this country annually and the ATF
17 keeps records on those.

18 Q Well, I'll just ask you directly. Help me
19 out here. I thought during our meeting on Saturday,
20 you said when you looked at the television scene,
21 you -- maybe I'm using the wrong word, but your hunch,
22 your notion, your hypothesis, was that, big crater,
23 United States, probably a good thought would be an
24 ANFO bomb and that's something we ought to pursue?

25 MR. KOHN: I want to state for the record, I

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1 don't remember him making that statement. I want that
2 on the record.

3 MR. WOODS: You were present, also.

4 MR. KOHN: I do not remember that.

5 A I don't remember that. I'm sorry.

6 Q (BY MR. HARTZLER) I'm not asking in a way
7 to challenge you.

8 A I understand that, but I real -- you know, I
9 was -- you know, very frankly, I was upset that we
10 would just decide it was an ANFO bomb because somebody
11 had found ammonium nitrate had been purchased by a
12 suspect.

13 Q Yes. Obviously, if that was decided, my
14 question is would that be an unreasonable hypothesis
15 with someone in experience in bombs?

16 A No. It's not unreasonable.

17 MR. WYATT: I know it's 12:00. Could I ask
18 one yes, no question?

19 MR. KOHN: One more and we have to break.

20 MR. WYATT: One yes, no question.

21 RE-EXAMINATION

22 BY MR. WYATT:

23 Q Do you know or have you heard whether two
24 representatives from Israel to the Oklahoma City bomb
25 scene to examine --

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1 A I don't know anything about that.

2 MR. WYATT: Okay.

3 MR. KOHN: Okay.

4 MR. WYATT: I'm not saying my questioning is
5 over, but I recognize we have to break because of your
6 schedule.

7 MR. KOHN: Thank you for pointing that out.

8 ... WHEREUPON, the deposition was adjourned

9 at 12:00 p.m.

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3 FREDERIC WHITEHURST, Ph.D.

4 SUBSCRIBED AND SWORN to before me this

5 ____ day of _____, 1996.

6 My Commission expires:

7

8 _____
Notary Public

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6 December 24, 1996

7
8 Frederic Whitehurst, Ph.D.
9 c/o Stephen M. Kohn, Esq.
10 Kohn, Kohn & Colapinto
11 323 P Street NW
12 Washington, DC 20007

13 RE: USA vs. McVeigh and Nichols

14 Dear Dr. Whitehurst:

15 Please find enclosed a reduced copy of your
16 transcript taken in the above cause. We are providing
17 this for your convenience to read and sign. If you
18 would prefer to read the full-sized transcript, it
19 will be necessary for you to come to our office to do
20 so.

21 Please read your copy of the deposition and

15 if you find any changes necessary, please make them on
16 the correction sheets provided. Be sure that you sign
17 each correction sheet that you may use. Then sign the
18 original signature page before a notary public and
19 return the signature page and the correction sheets to
20 me at the above address.

21 I request that you comply with the above
22 within thirty days. Thank you for your assistance and
23 cooperation and if you have any questions concerning
24 the above, please feel free to contact me.

25 Yours truly,

26
27 Bonnie Carpenter, CSR, RPR

28 Trial Date: March 31, 1997

29

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7 Michael Tigar, Esq.
8 1120 Lincoln Street
9 Suite 1308
10 Denver, CO 80202

11 Re: USA vs. McVeigh & Nichols
12 Case No. 96-CR-68-M
13 United States District Court
14 District of Colorado

15 Dear Mr. Tigar:

16 Attached is the original deposition of
17 FREDERIC WHITEHURST, Ph.D., Volume III, taken in the
18 above cause.

19 Deposition not signed _____
20 Deposition signed by the deponent _____
21 Correction sheet(s) included therein,
22 and copy(ies) of same forwarded to
23 interested counsel _____
24 Signature waived _____

25 Please retain the original copy of the
deposition UNOPENED in your possession until such time

17 as it is required by any party in a hearing or trial
of the above cause.

18 Yours truly,
19

20 Bonnie Carpenter, CSR, RPR

21 Trial Date: March 31, 1997

22
23 RECEIVED BY _____ DATE _____

24

25

592

1 CERTIFICATE
STATE OF COLORADO)
2) ss
CITY & COUNTY OF DENVER)
3

I, Bonnie Carpenter, Notary Public of
4 the State of Colorado, duly appointed to take the
deposition of the above-named Deponent, do hereby
5 certify that previous to the commencement of the
examination of the said above-named Deponent, he was
6 first by me duly sworn to testify the truth, the
whole truth and nothing but the truth touching and
7 concerning the matters in controversy between the
parties hereto, so far as he should be interrogated
8 concerning the same;

9 That said deposition was stenographically
reported by me at the time and place heretofore set
10 forth, and was reduced to typewritten form under my
supervision as per the foregoing;

11 That the foregoing is a true and
12 correct transcript of my shorthand notes then and
there taken;

13 That after the deposition was transcribed,
14 the same was submitted by letter to the Deponent for
reading and signing, a copy of which is hereto
15 annexed;

16 That I am not kin or in anywise
associated with any of the parties to said cause of
17 action or their counsel and that I am not interested
in the event thereof;

18
19 IN WITNESS WHEREOF, I have hereunto
set my hand and seal this _____ day of _____.

1996.

20

My Commission Expires: 9-16-99.

21

22

Bonnie Carpenter

23

Notary Public

999-18th Street

24

Suite 1230

Denver, CO 80202

25