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1 [The R.M.C. 803 session was called to order at 0900,
2 16 November 2017.]

3 MJ [Col SPATH]: These commissions are called to order.
4 On the prosecution side, or the government side, everybody who
5 was present at our last session are again present.

6 On the defense side, one of the detailed defense
7 counsel is present, the same one who's been present
8 throughout. No other detailed counsel are in the courtroom
9 still. And the accused is absent today.

10 Trial Counsel, do you have somebody to talk about
11 that?

12 TC [MR. MILLER]: Yes, Your Honor. Colonel Wells will
13 handle this.

14 MJ [Col SPATH]: All right. Come on up. I know it's the
15 SJA who has testified a number of times. Just take your seat.
16 I know you know you're still under oath.

17 TC [MR. MILLER]: And, Your Honor, these proceedings are
18 being transmitted consistent with your order.

19 MJ [Col SPATH]: Thanks.

20 [END OF PAGE]

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1 MAJOR, U.S. ARMY, was called as a witness for the prosecution,
2 was reminded of his oath, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the Managing Assistant Trial Counsel [COL WELLS]:

5 Q. Major, good morning.

6 A. Good morning.

7 MATC [COL WELLS]: May I approach the witness, sir?

8 MJ [Col SPATH]: You may.

9 Q. Major, I've passed to you Appellate Exhibit 375G;
10 it's three pages. Do you have three pages in front of you?

11 A. I do have three pages, sir.

12 Q. Did you use this form when you met with the accused
13 this morning?

14 A. This is the form I used.

15 Q. Can you tell us what happened when you met with the
16 accused?

17 A. The interpreter and I met with the accused this
18 morning. He was laying in his bed. I introduced myself,
19 advised him that he had a commission this morning at 0900,
20 asked him if he wanted to come. He indicated he did not want
21 to come; he wanted to come tomorrow on Friday. And I said
22 okay.

23 I asked him to come to the, to his door so I could

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1 read him the statement of understanding, again asked him if he
2 wanted me to read it in English and if then he wanted it
3 translated. And he said no; he just asked for the Arabic
4 version.

5 So I read the entire English version to him. He
6 followed along with the Arabic version. And then when I
7 completed reading the document, I asked him if he had any
8 questions. He said, "No, thank you," and asked for the
9 signature page. And then he signed page 2 there where it says
10 "Accused."

11 Q. And when you used this form, this form advises him of
12 his right to be present during these proceedings; is that
13 correct?

14 A. It does indicate that he's got the statutory right to
15 appear at each and every session of the commission, he'll be
16 notified, and that he's the only one who can waive his right
17 to attend.

18 Q. And you have appeared previously in these proceedings
19 during this time; is that correct?

20 A. That is correct.

21 Q. And he waived his right to appear at those other
22 times, correct?

23 A. That is correct.

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1 Q. And did he do the same in this occasion?

2 A. He did the same this morning; he waived his right to
3 attend the commission.

4 Q. And then on the second page there, does your
5 signature appear?

6 A. My signature appears above the word "Witness," and
7 then I dated it.

8 Q. All right. And does his signature appear?

9 A. His signature appears above the line "Accused," and
10 he dated it.

11 Q. Okay. And did you have the belief that he
12 voluntarily waived his right to appear?

13 A. It's my belief that he voluntarily waived his right
14 to attend this morning's commission.

15 Q. All right. Did you advise him or talk to him about
16 tomorrow?

17 A. After we were through with this, I advised him that
18 he needed to come tomorrow, the judge has ordered him to
19 appear tomorrow. And he said, "Okay." He said, "I want to
20 come tomorrow." So he understands.

21 MATC [COL WELLS]: Your Honor, may I approach the witness,
22 please?

23 MJ [Col SPATH]: You may.

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1 MATC [COL WELLS]: For the record, Your Honor, I've
2 retrieved Appellate Exhibit 375G from the witness, passed it
3 to the court reporters and now they've passed it to you.

4 Sir, I have no further questions.

5 MJ [Col SPATH]: Thank you. Lieutenant Piette?

6 DDC [LT PIETTE]: Nothing from the defense, Your Honor.

7 MJ [Col SPATH]: Colonel Wells?

8 MATC [COL WELLS]: Nothing further on this topic, sir.

9 MJ [Col SPATH]: All right. Let me again -- I thank you
10 for coming, as you have throughout, to testify. You can
11 depart.

12 WIT: Thanks, Judge.

13 [The witness was excused and withdrew from the witness stand.]

14 MJ [Col SPATH]: And the accused has knowingly and
15 voluntarily waived his right to be present at this pretrial
16 session, which is all this relates to, of course, it doesn't
17 relate to trial sessions, assuming we get there. But I do
18 find that he has knowingly and voluntarily absented himself
19 from this pretrial session. Thank you.

20 Again, this pretrial session relates to the basics of
21 trial work, the preadmission, which is standard, especially as
22 I looked into it again yesterday. I double checked to make
23 sure I -- what I think the law is the law is, and then to make

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1 sure that I stay current. Preadmission is accepted, widely
2 accepted, and it's the normal practice, frankly, in
3 courts-martial.

4 I cited a case yesterday, United States v. Bess, but
5 there are multiple other examples of this.

6 The defense will have every opportunity to attack, in
7 front of the court members, what weight to give these exhibits
8 if and when they're admitted. And they'll have an opportunity
9 to attack the foundation to demonstrate why they shouldn't be
10 admitted, in the normal course of events, as was laid out in
11 the scheduling orders as we got ready for this particular
12 session.

13 I note that learned counsel is still absent
14 voluntarily despite multiple orders and not being released. I
15 also notice detailed counsel remain absent, two of whom used
16 to appear, the two DoD civilians, and are refusing to appear,
17 despite orders.

18 Major Robinson, despite being cleared and on island,
19 Major Fewell, despite being cleared, maybe not on island, I'll
20 ask in a minute, and all the other detailed defense counsel,
21 and frankly all the other support either doesn't come in the
22 courtroom or sits in the back behind the glass. That's
23 everybody's choice. The one detailed defense counsel

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1 remains -- thank you -- here.

2 I got 389N from the government, it's a brief with a
3 proposed road ahead. We'll talk about that in a minute. I
4 thank you for that submission.

5 I asked for Colonel Aaron on Friday to come in, not
6 to be sworn in to testify, just to give me an update in his
7 position as Chief Defense Counsel for this case, what efforts
8 he's making to secure a second learned counsel, not the
9 learned counsel, that's Mr. Kammen, a second learned counsel,
10 if they choose to do so, which they don't have to do because
11 the accused has access to learned counsel who should be here.
12 So that's kind of the background of where we're at so far.

13 And then the government at one point -- I think it
14 was this morning, it could have come in last night, I saw this
15 this morning through my staff -- let me know that
16 Ms. Yaroshefsky is going to testify.

17 The request is to testify on Friday in the afternoon
18 instead of at 0900, which is what the subpoena, or I think the
19 agreement had originally been laid out. I know the subpoena
20 said Monday originally. I agreed with Friday at 9:00, and now
21 we've moved it to Friday at 1300, and I've agreed with that, I
22 think.

23 So I'll take any updates we have on that, but that

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1 seems to be kind of the state of where we're at, is she's
2 going to testify on Friday.

3 Colonel Wells, and I think General Martins wants to
4 be heard as well.

5 MATC [COL WELLS]: Correct, sir, on Professor
6 Yaroshefsky's availability, has the most up-to-date
7 information. But we do have all of our witnesses available
8 for the preadmission proceeding. We do have one by VTC, which
9 we'll need time to set up.

10 So with your permission, sir, I would like to invite
11 General Martins to appear before you.

12 MJ [Col SPATH]: And the VTC witness, where is that going
13 to be in your order?

14 MATC [COL WELLS]: First witness, sir.

15 MJ [Col SPATH]: First witness. So after we do this,
16 we'll take a break to get the VTC set up. Thank you. Okay.

17 General Martins.

18 CP [BG MARTINS]: Good morning, Your Honor.

19 MJ [Col SPATH]: Good morning.

20 CP [BG MARTINS]: Your Honor, I wanted to give you an
21 update on Professor Yaroshefsky as a witness, and you
22 mentioned the 0900 time. I wanted to ensure that I was
23 conveying to you as closely as possible, in the absence of a

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1 transcript, what Judge Gregory Woods requested be conveyed to
2 you. So I want to make sure we do that as tightly ----

3 MJ [Col SPATH]: And I have not read it yet, so please do.

4 CP [BG MARTINS]: May I approach?

5 MJ [Col SPATH]: You may.

6 CP [BG MARTINS]: Your Honor, we don't have a transcript.
7 I don't think we're going to get one until this evening
8 because it was a lengthy hearing. This is an excerpt of an
9 account from someone who was there, as best they could, you
10 know, record what the judge was saying. May I read it out?

11 MJ [Col SPATH]: Absolutely.

12 CP [BG MARTINS]: Okay. So this is an account from a
13 government representative who observed oral argument last
14 night in the case of Yaroshefsky v. Mattis in the
15 United States District Court for the Southern District of New
16 York on 15 November, evening of 15 November.

17 The account is from someone who was there watching
18 it. The judge, Judge Gregory Woods, therefore denied a TR0.
19 He did, however, in response to discussion about short notice,
20 limited prep time, and limited counsel schedules for
21 Ms. Yaroshefsky's counsel request, not an order, that the
22 government consider allowing her a timing accommodation
23 whether to December 11 or to a minimum later start time on

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1 Friday, September -- 17 November.

2 I said -- this is the observer -- I would relay that
3 request, which defense counsel -- or counsel for Yaroshefsky
4 also had already discussed with military commission
5 prosecutors who were present up there. They, the military
6 commission prosecutors, were going to provide counsel with
7 contact information. So they've since gotten ahold of us.

8 So, Your Honor, the first thing is I just wanted to
9 make sure you were getting from your fellow judge exactly as
10 close as we could tell that he said. And then I wanted to
11 give you the government's position, since we've got to do the
12 arrangements to make this happen.

13 MJ [Col SPATH]: I do. Let me ask ----

14 CP [BG MARTINS]: Sure.

15 MJ [Col SPATH]: So this is going to be 3890, I believe.
16 Let me just double check. Q, 389Q. And I'll give this to the
17 court reporters.

18 Have -- have you all been -- after seeing this, have
19 you all been engaged with -- either through you all down here
20 or other detailed members of the prosecution, Ms. Yaroshefsky,
21 through her counsel, regarding is she willing to come on
22 Friday afternoon, or would she prefer to wait?

23 CP [BG MARTINS]: We are -- we are sorting all that out.

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1 You know, obviously they may have recourse to appeal, so we
2 don't know precisely what they're going to do. We did have
3 representatives of my office there. And so they had immediate
4 discussion with counsel about the way ahead. And then it
5 ended with them ensuring there was good contact information
6 all around.

7 We have not yet this morning spoken to her counsel.
8 And I was going to kind of tell you how we envision this
9 going. We recommend -- and in light of your willingness to
10 yet again provide accommodation, because you've already
11 provided four days of accommodation -- to actually hear her
12 from the screen, from the Mark Center arrangement at 1300.

13 What we would propose, Your Honor, is -- we believe,
14 in light of the importance of the issues before you for which
15 her testimony is needed, that we not wait until the 11th, but
16 that giving her an extra -- essentially a day, because she
17 would have had, by travel itinerary, to be traveling today to
18 get to the Mark Center by 0900, that we not change the
19 subpoena; that we get appropriate assurances she's making her
20 gates to get here tomorrow morning, such that we can give you
21 early warning if we have to use other mechanisms, and we would
22 need to obviously avail ourselves of your decision-making
23 authority at that point.

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1 So what we propose is -- subpoena requires morning
2 making of gates, if you will, that we can be confirming that
3 she's on her way. And if that's happening, she shows up at
4 noon in the Mark Center for 1300 testimony, and she has an
5 extra day with counsel in light of Judge Woods' request, but
6 that we not move it to the 11th.

7 And I just wanted to make sure that you were seeing
8 it the way we're seeing it. And we'll move out to execute
9 that to ensure that however late as necessary tomorrow, right,
10 and if things change tomorrow, we may be asking you for
11 staying here as late as necessary to ensure you hear from her.

12 MJ [Col SPATH]: All right. Let me check with the
13 defense, and then I'll come back, and I have a couple
14 questions. Thank you, General Martins.

15 Lieutenant Piette.

16 DDC [LT PIETTE]: We have no position and nothing to add,
17 Your Honor.

18 MJ [Col SPATH]: All right. You did ask questions of the
19 last witness related to kind of the counsel issue. So I guess
20 question one is: Do you anticipate you're going to ask
21 questions of her?

22 DDC [LT PIETTE]: I don't anticipate that right now, Your
23 Honor.

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1 MJ [Col SPATH]: All right. And would more time be
2 helpful in that or not really?

3 DDC [LT PIETTE]: No, Your Honor. I think if we were to
4 take a position, we'd prefer this week as well.

5 MJ [Col SPATH]: All right. So I agree with kind of the
6 overall process, and that is that I appreciate Judge Woods'
7 request. And it seems eminently reasonable that, given kind
8 of the timing of the hearing yesterday, we move the testimony
9 time into the afternoon. And if that means we move it further
10 into the afternoon or early evening because of transportation
11 or anything like that, totally reasonable. We'll do that. So
12 just keep us posted.

13 If there is -- we all know there are remedies, as
14 we're well briefed, if she feels that being there tomorrow is
15 oppressive, that they certainly could communicate that to me
16 that -- you know, I don't know. If she has some professional
17 engagement or something like that, nobody has communicated
18 with the commission yet. We went to federal court.

19 So if she has something like that that is brought to
20 us through her counsel, I just ask you all to get it to me as
21 soon as you can so that we can then make an assessment and I
22 can issue an order that is appropriate and gives them time to
23 respond to that order, be it you'll be there or I'll wait

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1 until December.

2 The issues are important for sure as we continue to
3 move forward in steps that I continue to believe not only are
4 reasonable, but are entirely appropriate given the conduct of
5 the learned counsel. But I want to make sure that -- again, I
6 never issued a writ. There was no confinement. I recognize
7 there was a habeas petition filed. I was planning on
8 following my process, which is come to me and tell me why that
9 time doesn't work and we'll figure out what does work and what
10 your concerns are about the subpoena.

11 So let's see if we get any information back. It may
12 be the information back is she's on her way to testify, and
13 then we'll work with her and her counsel what time tomorrow
14 works for sure. And I -- we're very amenable here, and I can
15 be -- I can be available whenever tomorrow, clearly. I mean,
16 we're on island.

17 So, all right, I will give the court reporter Q,
18 389Q.

19 And just for counsel, I just want to make it clear.
20 I hope Colonel Aaron has heard what I am saying; I assume
21 you're communicating it to him. I'm not looking for sworn
22 testimony. I'm looking for his input, given his position.
23 Again, General Baker never made an appearance in the case and

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1 then recused himself, which is his own issues. But how the
2 defense community determines who's the chief defense counsel
3 is up to them, frankly. I'm not going to get involved in
4 that. It doesn't make a difference to me.

5 What makes a difference is that somebody is
6 performing the function of chief defense counsel and they're
7 doing what both the statute and the rules in the manual and
8 the court rules require, and that is resourcing and -- it says
9 also complying with court orders, so hopefully we'll have more
10 success with Colonel Aaron in that regard.

11 So let me ask -- so that's tomorrow. Alls I need to
12 know from him is where are we at, if anywhere, on this second
13 learned counsel. The government has presented their position
14 which is I should order the convening authority to appoint --
15 again, not lead learned counsel, but basically a standby
16 learned counsel to assist. That's their position. I'll wait
17 for a little while to see if the defense files anything. If I
18 don't hear anything as we move forward, I'm going to have to
19 do something.

20 So that, I think, helps, at least for Colonel Aaron
21 if he has any concerns. Again, it's not sworn testimony. I
22 don't know what he -- I don't care what he's talking about.
23 I'm not trying to pierce some attorney-client privilege. I'm

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1 just trying to figure out if he's making steps to do what was
2 indicated they were doing.

3 Major Robinson. Is Major Robinson still on island?

4 DDC [LT PIETTE]: Yes, Your Honor.

5 MJ [Col SPATH]: Major Fewell. Has Major Fewell come to
6 island yet?

7 DDC [LT PIETTE]: No, Your Honor.

8 MJ [Col SPATH]: Other than the two detailed DoD civilians
9 and the learned counsel, all of whom haven't been released,
10 how many other military counsel at this point have been
11 detailed to your team, lawyers as opposed to any other
12 assistants?

13 DDC [LT PIETTE]: One, so that would be four total.

14 MJ [Col SPATH]: And one who so far hasn't been cleared at
15 this point?

16 DDC [LT PIETTE]: Yes, Your Honor, that's correct.

17 MJ [Col SPATH]: And then separate from military, do you
18 have any additional civilian lawyers that have been detailed
19 to this case?

20 DDC [LT PIETTE]: No, Your Honor.

21 MJ [Col SPATH]: Okay. So just the two that currently are
22 not here?

23 DDC [LT PIETTE]: Yes, Your Honor.

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1 MJ [Col SPATH]: All right.

2 We had some e-mail exchange, again, through my staff,
3 my lead attorney who assists me with all of this, and counsel
4 for both sides. And it was just Lieutenant Piette, I think,
5 with good reason, was just curious about what I might want to
6 talk to his client about.

7 And so -- so everyone knows what that exchange was
8 about, he was curious basically about the subject matter, and
9 then just voiced some concerns about can he get the questions
10 ahead of time.

11 And my staff responded that we weren't going to send
12 the questions ahead of time. It's not because of any
13 reticence; it's just I don't have them scripted.

14 It is a simple -- I recognize there's a language
15 barrier and a translator, but that occurs certainly in other
16 courtrooms. It is a question of, frankly, who he wants on his
17 team, based on his currently comprised team.

18 That doesn't end the inquiry, we all know that. But
19 the one voice I haven't heard about Mr. Kammen is
20 Mr. al Nashiri. And again, that doesn't necessarily mean
21 Mr. Kammen gets excused; we know that. But we haven't even
22 heard. I take silence as assent frequently. It makes sense.
23 But that's all I'm going to ask.

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1 Again, I'm not going to ask if you've talked to him.
2 I don't want to know what you've said to him. None of that
3 matters. I just want to know what his opinion on this is.
4 Does he want him or not?

5 And then the same with Ms. Eliades and Ms. Spears, as
6 both of them have appeared in the court and have clearly
7 formed attorney-client relationships. Does he want them or
8 doesn't he? And again, that doesn't necessarily end at that
9 answer, but I think it's a fair inquiry, because I can always
10 find good cause on the record to excuse counsel, as I think
11 the rule envisions. But we're still working on that.

12 So hopefully that helps. So it wasn't a matter of I
13 don't want to share. It's just a matter of I haven't scripted
14 them out, because it's a pretty standard set of questions I
15 ask in other cases where somebody wants to fire counsel. Do
16 you want him or don't you? Do you want to release him or
17 don't you? Okay. And that's it.

18 So all right. I think that's it. I know we have a
19 witness. So I know it takes a little while to get the VTC
20 going. Let's say 15 minutes. If it's going to be longer than
21 that, let the bailiff know. If it's going to be shorter, let
22 the bailiff know, we'll start.

23 Colonel Wells, you want to add something?

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1 MATC [COL WELLS]: Sir, just to confirm, the witness is
2 available and the VTC is set up right now.

3 MJ [Col SPATH]: Oh, well perfect. Then why don't we
4 press through this witness.

5 TC [MR. MILLER]: Ma'am, would you stand and raise your
6 right hand, please.

7 MJ [Col SPATH]: Who's the witness?

8 TC [MR. MILLER]: Oh. It is Kelly VanArsdale, Your Honor.

9 MJ [Col SPATH]: Thank you. Okay. Sorry about that.

10 TC [MR. MILLER]: I'm sorry, Your Honor.

11 MJ [Col SPATH]: That's okay. I just want to make sure I
12 know who it is.

13 KELLY VANARSDALE, civilian, was called as a witness for the
14 prosecution, was sworn, and testified as follows:

15 **DIRECT EXAMINATION**

16 **Questions by the Trial Counsel [MR. MILLER]:**

17 Q. State your name for the record, please.

18 A. It's Kelly VanArsdale.

19 Q. And you are the same Kelly VanArsdale that testified
20 previously in this commission?

21 A. Yes, sir, I am.

22 Q. And did that occur back in March of this year?

23 A. Yes, it did.

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1 Q. Are you still employed by the FBI?

2 A. I am.

3 Q. In the same capacity?

4 A. Yes, sir.

5 Q. And if you could, just refresh for the court, please,
6 what your present position is and what your duties and
7 responsibilities are.

8 A. I am currently a supervisory special agent bomb
9 technician for the FBI Laboratory Explosives Unit.

10 Q. And you participated, did you not, as a lab person in
11 the processing of evidence from the United States COLE; is
12 that correct?

13 A. Yes.

14 Q. And I believe you previously provided testimony
15 regarding the lab procedures and the intake process; is that
16 correct?

17 A. Yes, I did.

18 Q. I want to ask you just briefly, if we could, just to
19 refresh, again, the parties. I've placed on the ELM0 --

20 TC [MR. MILLER]: Permission to use the ELM0, Your Honor?

21 MJ [Col SPATH]: Yes, please.

22 Q. I have placed on the ELM0 Prosecution Exhibit for
23 Identification -- Prosecution Exhibit 72 for Identification.

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1 And in this -- on this exhibit is what they call a Q tab; is
2 that correct?

3 A. I cannot see the image currently.

4 MJ [Col SPATH]: Give us just a second.

5 WIT: Yep.

6 MJ [Col SPATH]: We'll figure out why.

7 [Pause.]

8 WIT: There it is.

9 Q. Do you see it?

10 A. I do, sir.

11 Q. All right. And in the corner of the photograph
12 there's a FBI -- what are called laboratory tag that has a Q
13 number, Q496, then another number, then KV. Could you, again,
14 briefly explain to the court what that is and what it
15 signifies?

16 A. Yes. We refer to that as a Q tab. That is an
17 identification tab that we use mainly when we photograph
18 evidence. On the left-hand side of the tab is the Q number,
19 Q496. That's a specific item-identifying number.

20 In the middle is 001103007, that's the FBI laboratory
21 number. So a submission that comes into the laboratory is
22 assigned a laboratory number, that specific number for that
23 specific day, and then we have the items that are included in

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1 that laboratory number that get their own individual item
2 number.

3 So the initials over on the right-hand side are
4 actually referred to as symbols, KV, and those are the symbols
5 for the examiner on the case which was Mark Whitworth.

6 Q. As for the middle number, the 001103007 number, I
7 take it the 00 indicates the year?

8 A. So the format for that laboratory number is 00, which
9 would represent the year number, so 2000. The next two
10 digits, the 11 is November. The next two digits is the day,
11 so 03. And 007 is the submission number into the laboratory
12 for that particular day.

13 Q. So it would start with 001 and then go up to however
14 many submissions that you received, correct?

15 A. For the last three numbers, correct.

16 Q. Yes.

17 A. Yes.

18 Q. Now again, briefly, you received evidence in the
19 United States COLE case; is that correct?

20 A. Yes, sir.

21 Q. And how did you receive that evidence? I think you
22 indicated it was in various ways?

23 A. Yes. We received evidence in various ways in that

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1 case. Sometimes we went up and picked it up personally.
2 Sometimes it was delivered to the lab. Sometimes it came in
3 through our evidence control center.

4 Q. I'm going to show you a series of chain of custody
5 forms, what are commonly called green sheets. Are you
6 familiar with the green sheets?

7 A. Yes, I am.

8 Q. And you've had the ability to review those before
9 coming to court here today; is that correct?

10 A. Yes, I did.

11 Q. And for purposes of today's hearing and interest of
12 brevity, can we assume that unless specifically exempted, that
13 all of these reflect that you received the evidence on
14 November the 3rd of 2000 at 1:30 p.m.?

15 A. I received evidence that day. I'm not sure if you
16 have any other green sheet forms with you, but ones that I
17 reviewed have had evidence received on that particular day.

18 Q. I guess my question is, other than -- unless
19 specifically identified or exempted, can we agree that all of
20 these are going to reflect that you received this on November
21 the 3rd of 2000 at 1:30 p.m.?

22 A. Yes, sir.

23 Q. All right. And can we also agree that unless

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1 specifically identified or exempted, that they all came in
2 under the lab number 001103, and then whatever the number of
3 the submission was?

4 A. They would have all come in under the 007 because
5 they all came in on that same day.

6 Q. All right.

7 A. So the only thing that's going to vary is that Q
8 number.

9 Q. All right. So we're going to agree, unless I
10 specifically mention it, it came in under that lab number and
11 came in at that time and that date?

12 A. Yes, sir.

13 Q. All right. We're going to go through these now one
14 by one.

15 A. Okay. Okay.

16 Q. I'm placing on the ELM0 Prosecution Exhibit 5C. Do
17 you recognize that, ma'am?

18 A. I do, sir.

19 Q. And is that your signature on the fourth line?

20 A. Yes, it is.

21 Q. And does it reflect that you received evidence with
22 the 1B number, 1B683, item number DK03-117?

23 A. Yes, sir.

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1 Q. I'm going to place on the ELM0 Prosecution Exhibit 7C
2 for Identification. Do you recognize your signature on the
3 fourth line, ma'am?

4 A. I do.

5 Q. And does it reflect that you received evidence marked
6 1B601, DK01-106?

7 A. Yes.

8 Q. Placing on the ELM0 Prosecution Exhibit 9C, ask you
9 if you recognize your signature on the fourth -- excuse me, on
10 the fourth line?

11 A. I do.

12 Q. And does it reflect that you received evidence marked
13 1B638, item number DK01-143.

14 A. Yes, it does.

15 Q. Placing on the ELM0 Prosecution Exhibit numbered 10C.
16 Ma'am, do you recognize your signature on the fourth line?

17 A. I do.

18 Q. And does it reflect you received evidence marked
19 1B680, DK03 item 114?

20 A. It does.

21 Q. Placing on the ELM0 Prosecution Exhibit numbered 14C
22 for Identification. Do you recognize your signature on the
23 fourth line, ma'am?

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1 A. I do.

2 Q. And does it reflect that you received evidence with
3 the 1B number of 656, DK02-120?

4 A. Yes, it does.

5 Q. Placing on the ELM0 Prosecution Exhibit numbered 15C
6 for Identification. Do you recognize your signature on the
7 fourth line?

8 A. I do.

9 Q. And does it reflect that you received evidence 1B560
10 with a DK number of DK05-135?

11 A. It does.

12 Q. Placing on the ELM0 Prosecution Exhibit 16D for
13 Identification. Do you recognize your signature on the fourth
14 line?

15 A. I do.

16 Q. And does it indicate that you received evidence with
17 the 1B number of 561 and a DK number of DK05-136?

18 A. Yes, it does.

19 Q. Placing on the ELM0 Prosecution Exhibit 17C. Do you
20 recognize your signature on the fourth line, ma'am?

21 A. I do.

22 Q. And does it reflect that you received evidence marked
23 1B663 and item number DK02-128?

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1 A. Yes, it does.

2 Q. Placing on the ELM0 Prosecution Exhibit 19C for
3 Identification. Do you recognize your signature on the fourth
4 line?

5 A. I do.

6 Q. And does it reflect that you received evidence marked
7 1B697, DK03-136?

8 A. It does.

9 Q. Placing on the ELM0 Prosecution Exhibit 23C. Do you
10 recognize your signature on the fourth line, ma'am?

11 A. I do.

12 Q. And does it reflect that you received evidence 1B536
13 with a DK number of DK05-101?

14 A. Yes, sir.

15 Q. Ma'am, I'm placing on the ELM0 Prosecution
16 Exhibit 25D for Identification. Do you recognize your
17 signature on the fourth line?

18 A. I do.

19 Q. And does it reflect that you received evidence marked
20 1B731, item RP-105?

21 A. Yes, it does.

22 Q. Placing on the ELM0 Prosecution Exhibit numbered 26C.
23 Do you recognize your signature on the fourth line, ma'am?

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1 A. I do.

2 Q. And does it reflect that you received evidence marked
3 1B802, item numbered MDK-115?

4 A. Yes, it does.

5 Q. Placing on the ELM0 Prosecution Exhibit 27C for
6 Identification. Do you recognize your signature on the fourth
7 line?

8 A. I do.

9 Q. And does it reflect that you received evidence marked
10 1B824 and item number MDK-138?

11 A. Yes, it does.

12 Q. Placing on the ELM0 Prosecution Exhibit 28C for
13 Identification. Do you recognize your signature on the fourth
14 line, ma'am?

15 A. I do.

16 Q. And does it reflect that you received evidence 1B817
17 with an item number MDK-129?

18 A. It does.

19 Q. Placing on the ELM0, ma'am, Prosecution Exhibit
20 numbered 29C for Identification. Do you recognize your
21 signature on the fourth line?

22 A. I do.

23 Q. And does it reflect that you received evidence marked

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1 1B819, MDK number 131?

2 A. It does.

3 Q. Placing on the ELM0 Prosecution Exhibit 30D for
4 Identification. Do you recognize your signature on the fourth
5 line, ma'am?

6 A. I do.

7 Q. And does it reflect that you received evidence 1B810,
8 MDK-123?

9 A. Yes.

10 Q. Placing on the ELM0 Prosecution Exhibit 31C for
11 Identification. Do you recognize your signature on the fourth
12 line, ma'am?

13 A. I do.

14 Q. And does it reflect that you received evidence marked
15 1B812, item number MDK-132?

16 A. Yes, sir.

17 Q. I'm placing on the ELM0 Prosecution Exhibit 31C for
18 Identification, ma'am. Does it reflect that -- do you
19 recognize your signature on the fourth line?

20 A. I do.

21 Q. And at the time -- just, again, for the record,
22 you're VanArsdale now. You were ----

23 A. I was Baribeau then, yes.

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1 Q. All right. Does it reflect that you received
2 evidence marked 1B637, DK number DK-0142 [sic]?

3 A. DK01-142, yes.

4 Q. All right. Placing on the ELM0 Prosecution
5 Exhibit 35D for Identification. Do you recognize your
6 signature, ma'am?

7 A. I do.

8 Q. Does it show that you received evidence marked 1B666
9 and item number DK02-130?

10 A. Yes, sir.

11 Q. Placing on the ELM0 Prosecution Exhibit 36C. Ask you
12 if you recognize your signature on the fourth line, ma'am?

13 A. I do.

14 Q. And does it reflect that you took possession of
15 evidence marked 1B658 with an item number of DK02-11 -- dash
16 122?

17 A. Yes, sir.

18 Q. Placing on the ELM0 Prosecution Exhibit 37C for
19 Identification. Do you recognize your signature on the fourth
20 line, ma'am?

21 A. I do.

22 Q. And does it reflect that you received evidence marked
23 1B699, item number DK03-138?

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1 A. Yes, sir.

2 Q. Placing on the ELM0, ma'am, Prosecution Exhibit
3 numbered 39C for Identification. Do you recognize your
4 signature on the fourth line?

5 A. I do.

6 Q. And does it reflect that you received evidence marked
7 1B766 and an item number of DK04-134?

8 A. Yes.

9 Q. Placing on the ELM0 Prosecution Exhibit numbered 40C
10 for Identification. Do you recognize your signature on the
11 fourth line, ma'am?

12 A. Yes, I do.

13 Q. And does it reflect that you received evidence 1B767
14 with an item number of DK04-135?

15 A. Yes, sir.

16 Q. Placing on the ELM0 Prosecution Exhibit 42E, as in
17 Edward, for Identification. Do you recognize your signature
18 on the fourth line, ma'am?

19 A. Yes, I do.

20 Q. And does it reflect that you received evidence marked
21 1B837, item number T0B-130?

22 A. Yes, sir.

23 Q. I'm placing on the ELM0 Prosecution Exhibit numbered

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1 43C for Identification. Do you recognize your signature on
2 the fourth line?

3 A. I do.

4 Q. And does it indicate that you received evidence 1B677
5 with an item number of DK03-109?

6 A. Yes, sir.

7 Q. Now I'm placing on the ELMO Prosecution Exhibit
8 numbered 47D for Identification, D as in David. Do you
9 recognize your signature on the fourth line?

10 A. I do.

11 Q. And does it indicate that you received evidence
12 marked 1B741, item number DK04-105?

13 A. Yes, sir.

14 Q. Ma'am, I'm placing on the ELMO Prosecution
15 Exhibit 48D for Identification. Do you recognize your
16 signature on the fourth line?

17 A. I do.

18 Q. And does it indicate that you received evidence
19 marked 1B863, item number W132?

20 A. It does.

21 Q. Ma'am, I'm placing on the ELMO Prosecution Exhibit
22 numbered 63C for Identification. Do you recognize your
23 signature on the fourth line?

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1 A. Yes, I do.

2 Q. And does it indicate that you received evidence
3 marked 1B788 with an item number of MDK -- actually I can't
4 make it out, so I'll just leave it at 1B788; is that correct?

5 A. Yes, sir.

6 Q. I'm going to place on the ELM0 Prosecution Exhibit
7 numbered 66C for Identification. Do you recognize your
8 signature on the fourth line, ma'am?

9 A. I do.

10 Q. And does it indicate that you received evidence
11 marked 1B696 with a DK number of DK03-135?

12 A. Yes, it does.

13 Q. Now I'm going to place on the ELM0 Prosecution
14 Exhibit 67 -- 67C for Identification. Do you recognize your
15 signature on the fourth line?

16 A. I do.

17 Q. And does it indicate that you received evidence
18 marked 1B765 with an item number of DK04-133?

19 A. Yes, it does.

20 Q. I'm going to ask you to look at Prosecution
21 Exhibit 70C for Identification, which I'm placing on the ELM0.
22 Ma'am, do you recognize your signature on the fourth line?

23 A. I do.

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1 Q. And does it indicate that you received evidence
2 marked 1B535 with a DK number of DK05-100?

3 A. Yes, it does.

4 Q. Ma'am, I'm placing on the ELM0 what has been marked
5 as Prosecution Exhibit Number 71C for Identification. Do you
6 recognize your signature on the fourth line?

7 A. I do.

8 Q. And does it have a -- and does it indicate that you
9 received evidence marked 1B537 with a DK number of DK05-102?

10 A. Yes, it does.

11 Q. All right. I'm going to show you what has been
12 marked as Prosecution Exhibit 72C for Identification. Do you
13 recognize your signature on the fourth line, ma'am?

14 A. Yes, I do.

15 Q. All right. And does it indicate that you received
16 evidence 1B549 with a DK number of DK05-117?

17 A. Yes, it does.

18 Q. I'm placing on the ELM0 Prosecution Exhibit 76C for
19 Identification. Do you recognize your signature on line four,
20 ma'am?

21 A. I do.

22 Q. And does it indicate that you received evidence
23 marked 1B882 with an item number of W111?

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1 A. Yes, it does.

2 Q. I'm placing on the ELM0 Prosecution Exhibit 77C for
3 Identification and ask you if you recognize your signature on
4 the fourth line?

5 A. I do.

6 Q. And does it indicate that you received evidence
7 marked 1B950 with an item number of W118?

8 A. Yes, it does.

9 Q. Placing on the ELM0, ma'am, Prosecution Exhibit 77C
10 for Identification. Do you recognize your signature on the
11 fourth line?

12 A. I do.

13 Q. And does it indicate that you received evidence
14 marked 1B612, item number DK01-115?

15 A. Yes, it does.

16 Q. That's it. Oh, excuse me, this will be 78C. Let me
17 do this again.

18 Prosecution Exhibit 78C, does it indicate that you
19 received evidence marked 1B612 with an item number of
20 DK01-115?

21 A. Yes, sir, it does.

22 Q. And you recognize your signature on the fourth line
23 of that item, correct, of this chain of custody?

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1 A. Yes.

2 Q. All right. Thank you.

3 Placing on the ELM0 Prosecution Exhibit 85C for
4 Identification. Do you recognize your signature on the fourth
5 line, ma'am?

6 A. I do.

7 Q. And does it reflect that you received evidence marked
8 1B648 with a DK number of DK02-109?

9 A. Yes, it does.

10 Q. Placing on the ELM0 Prosecution Exhibit Number 86C
11 for Identification. 86C. Do you recognize your signature on
12 the fourth line, ma'am?

13 A. Yes, sir, I do.

14 Q. And does it reflect, Agent, that you received
15 evidence 1B650 with a DK number of DK02-111?

16 A. Yes, sir.

17 Q. Agent, I'm placing on the ELM0 Prosecution
18 Exhibit 89C for Identification. Do you recognize your
19 signature, ma'am, on the fourth line?

20 A. Yes, sir, I do.

21 Q. And does it indicate that you received evidence 1B698
22 with a DK number of 03-137?

23 A. Yes, sir.

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1 Q. Placing on the ELM0 Prosecution Exhibit 91C for
2 Identification. Do you recognize your signature on the fourth
3 line there?

4 A. Yes, I do.

5 Q. And does it indicate that you received evidence
6 marked 1B715 with an item number of DK03-155?

7 A. Yes, sir.

8 Q. Agent, I'm placing on the ELM0 Prosecution Exhibit
9 Number 70 -- oh, no, excuse me, Prosecution Exhibit 99C,
10 Charlie, for Identification. Do you recognize your signature
11 on the fourth line, ma'am?

12 A. Yes, sir, I do.

13 Q. And does it indicate that you received evidence with
14 the marking 1B803 and an item number of MDK-116?

15 A. Yes.

16 Q. I'm placing on the ELM0 Prosecution Exhibit 100C for
17 Identification. Do you recognize your signature on the fourth
18 line, ma'am?

19 A. Yes, I do.

20 Q. And does it indicate that you received evidence
21 marked 1B805, item number MDK-118?

22 A. Yes, sir.

23 Q. Placing on the ELM0 Prosecution Exhibit 105C for

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1 Identification. Do you recognize your signature, ma'am?

2 A. Yes, I do.

3 Q. And that's on the fourth line; is that correct?

4 A. Correct. Yes.

5 Q. And it shows that you received item -- evidence
6 marked item number 1B823, MDK number 137, correct?

7 A. Yes, sir, it does.

8 Q. Placing on the ELM0 Prosecution Exhibit 105C for
9 Identification. Do you recognize your signature on the fourth
10 line?

11 A. Yes, sir, I do.

12 Q. And does it indicate that you received evidence
13 marked 1B466, DK00-100?

14 A. It does, yes.

15 [Conferred with courtroom personnel.]

16 Q. I'm going to show you what has been marked as
17 Prosecution Exhibit 101C for Identification. Do you recognize
18 that, ma'am?

19 A. I do.

20 Q. Is that your signature on the fourth line?

21 A. Yes, it is.

22 Q. And does it indicate that you received item number
23 MDK-137, 1B number 823?

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1 A. Yes, it does.

2 Q. I'm going to show you Prosecution Exhibit 108 for
3 Identification. Make sure these aren't sticking together, I'm
4 sorry. Prosecution Exhibit 108C for Identification, do you
5 recognize your signature on the fourth line, ma'am?

6 A. Yes, sir, I do.

7 Q. And does it indicate that you received evidence
8 marked 1B818 with an item number of MDK-130?

9 A. Yes, it does.

10 Q. Placing on the ELM0 what has been marked as
11 Prosecution Exhibit 109C for Identification. Do you recognize
12 your signature on the fourth line?

13 A. Yes, sir, I do.

14 Q. And does it indicate that you received evidence
15 marked 1B626, item number DK01-129?

16 A. Yes, it does.

17 Q. I'm placing on the ELM0, Agent, Prosecution
18 Exhibit 110C for Identification. Ask you if you recognize
19 your signature on the fourth line?

20 A. Yes, I do.

21 Q. Does it indicate that you received evidence marked
22 1B662, item number DK02-127?

23 A. Yes, sir.

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1 Q. Placing on the ELM0 what has been -- what is
2 Prosecution Exhibit 1 -- 111C for Identification. Ask you if
3 you recognize your signature on the fourth line?

4 A. Yes, sir, I do.

5 Q. And does it indicate that you received evidence
6 marked 1B686?

7 A. Yes, it does.

8 Q. Placing on the ELM0, Agent, Prosecution Exhibit 112C
9 for Identification. Do you recognize your signature on the
10 fourth line?

11 A. Yes, I do.

12 Q. And does it indicate that you received evidence
13 marked 1B685, DK03-120?

14 A. Yes, sir.

15 Q. Ma'am, I'm placing on the ELM0 Prosecution
16 Exhibit 113C for Identification. Ask you if you recognize
17 your signature on the fourth line?

18 A. Yes, sir, I do.

19 Q. Does it indicate that you received evidence marked
20 1B694, DK03-132?

21 A. Yes, it does.

22 Q. I'm going to place on the ELM0 Prosecution
23 Exhibit 115C for Identification and ask you if you recognize

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1 your signature on the fourth line ----

2 A. Yes, sir, I do.

3 Q. ---- of this form? And does it indicate that you
4 received evidence marked 1B762 with an item number of
5 DK04-130?

6 A. Yes, sir.

7 Q. Placing on the ELM0 Prosecution Exhibit 116C for
8 Identification. Do you recognize your signature on the fourth
9 line?

10 A. Yes, I do.

11 Q. And does it indicate that you received evidence
12 marked 1B763, item number DK04-131?

13 A. Yes, sir, it does.

14 Q. Placing on the ELM0 Prosecution Exhibit 117C for
15 Identification. Do you recognize your signature on the fourth
16 line?

17 A. Yes, I do.

18 Q. And does it indicate that you received evidence
19 marked 1B563 with an item number of GA109?

20 A. Yes, sir, it does.

21 Q. Placing on the ELM0 Prosecution Exhibit numbered --
22 or Prosecution Exhibit 119C for Identification. Do you
23 recognize your signature on the fourth line?

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1 A. I do.

2 Q. And does it indicate that you received evidence
3 marked 1B806, MDK-119?

4 A. Yes, sir, it does.

5 Q. Placing on the ELM0 Prosecution Exhibit 120C for
6 Identification. Does it indicate -- excuse me. First, do you
7 recognize your signature on the fourth line?

8 A. Yes, I do.

9 Q. And does it indicate that you received evidence
10 marked 1B813 with an item number of MDK-133?

11 A. Yes, it does.

12 Q. Placing before you -- or on the ELM0, Prosecution
13 Exhibit 121C for Identification. Do you recognize your
14 signature on the fourth line?

15 A. Yes, I do.

16 Q. Does it indicate, ma'am, that you received evidence
17 marked 1B811, item number MDK-125?

18 A. Yes, it does.

19 Q. Placing on the ELM0 Prosecution Exhibit 122C for
20 Identification and ask you if you recognize your signature on
21 the fifth line of that form?

22 A. Yes, sir, I do.

23 Q. And does it indicate that you received evidence

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1 marked 1B721, item number DK03-161?

2 A. Yes, sir, it does.

3 Q. Placing on the ELM0 Prosecution Exhibit 123C for
4 Identification. Do you recognize your signature on the fourth
5 line, ma'am?

6 A. Yes, I do.

7 Q. And, Agent, does it indicate that you received
8 evidence marked 1B664, item number DK02-131?

9 A. Yes, sir, it does.

10 Q. Placing before you Prosecution Exhibit 125C for
11 Identification. Do you recognize your signature on the fourth
12 line?

13 A. Yes, sir.

14 Q. Does it indicate that you received evidence marked
15 1B558, item number DK05-133?

16 A. Yes, it does.

17 Q. Placing before you Prosecution Exhibit 126C, ma'am,
18 for Identification. Do you recognize your signature on the
19 fourth line?

20 A. Yes, sir, I do.

21 Q. And does it indicate that you received evidence
22 marked 1B738 [sic] with a number of K06-106 [sic]?

23 A. Yes, sir.

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1 Q. Placing before you -- or placing on the ELM0
2 Prosecution Exhibit 129C for Identification. Do you recognize
3 your signature on the fourth line?

4 A. Yes, sir, I do.

5 Q. Does it indicate that you received evidence marked
6 1B733, item number RP-102?

7 A. Yes, sir, it does.

8 Q. Placing on the ELM0, ma'am, Prosecution Exhibit 130C
9 for Identification. Agent, do you recognize your signature on
10 the fourth line?

11 A. Yes, I do.

12 Q. And does it indicate that you received evidence
13 1B809, item number MDK-122?

14 A. Yes, it does.

15 Q. Placing before you Prosecution Exhibit 131C for
16 Identification on the ELM0. Do you recognize your signature
17 on the fourth line?

18 A. Yes, I do.

19 Q. Does it indicate that you received evidence marked
20 1B815, item number MDK-127?

21 A. Yes, it does.

22 Q. Placing on the ELM0 Prosecution Exhibit 132C for
23 Identification. Do you recognize your signature on the fourth

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1 line?

2 A. Yes, sir, I do.

3 Q. And does it indicate that you received evidence
4 marked 1B816, item number MDK-128?

5 A. Yes, it does.

6 Q. Placing on the ELM0 Prosecution Exhibit 134C for
7 Identification. Do you recognize your signature on the fourth
8 line?

9 A. I do.

10 Q. And does it indicate that you received evidence
11 marked 1B627, item number DK01-130?

12 A. Yes, it does.

13 Q. Placing on the ELM0 Prosecution Exhibit 135C for
14 Identification. Ask you if you recognize your signature on
15 the fourth line, ma'am?

16 A. Yes, I do.

17 Q. Does it indicate that you received evidence marked
18 1B629, item number DK01-133?

19 A. Yes, it does.

20 Q. Placing on the ELM0 Prosecution Exhibit 136C for
21 Identification. Do you recognize your signature on the fourth
22 line?

23 A. Yes, sir, I do.

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1 Q. And does it indicate that you received evidence item
2 number DK01-139 and a 1B number of 1B634?

3 A. Yes, sir, it does.

4 Q. Placing on the ELM0 Prosecution Exhibit 137C for
5 Identification. Do you recognize your signature on the fourth
6 line?

7 A. I do.

8 Q. And does it indicate that you received evidence 1B647
9 with a DK number of DK02-108?

10 A. Yes, it does.

11 Q. Placing on the ELM0 Prosecution Exhibit 138C for
12 Identification. Do you recognize your signature on the fourth
13 line, Agent?

14 A. Yes, I do.

15 Q. Does it indicate that you received evidence marked
16 1B652 with a DK number of DK02-114?

17 A. Yes, it does.

18 Q. Placing on the ELM0 Prosecution Exhibit 139C for
19 Identification. Do you recognize your signature on the fourth
20 line?

21 A. I do.

22 Q. And does it indicate that you received evidence 1B643
23 with an item number of DK02-104?

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1 A. Yes, sir.

2 Q. Placing on the ELM0 Prosecution Exhibit 142C for
3 Identification, 142C for Identification. Do you recognize
4 your signature on the fourth line?

5 A. Yes, sir, I do.

6 Q. And does it indicate that you received evidence
7 marked 1B582, item number, looks like GA110?

8 A. Yes, sir.

9 Q. Placing before you Prosecution Exhibit 149C for
10 Identification. Do you recognize your signature on the fourth
11 line?

12 A. Yes, sir, I do.

13 Q. Does it indicate that you received evidence with a
14 1 -- excuse me, item number of DK05-131?

15 A. Yes, sir, it does.

16 Q. Placing before you Prosecution Exhibit 150C for
17 Identification. Do you recognize your signature on the fourth
18 line?

19 A. Yes, sir, I do.

20 Q. Does it indicate that you received evidence marked
21 1B779 with an item number of DK05-129?

22 A. Yes, it does.

23 Q. Placing on the ELM0 Prosecution Exhibit 153C for

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1 Identification. Agent, do you recognize your signature on the
2 fourth line?

3 A. I do.

4 Q. And does it -- does it indicate that you received
5 evidence marked 1B804 and -- 1804 [sic] and an MDK number of
6 MDK-117?

7 A. Yes, sir, it does.

8 Q. Placing before you on the ELM0, Agent, Prosecution
9 Exhibit 154C for Identification. Do you recognize your
10 signature on the fourth line?

11 A. Yes, sir, I do.

12 Q. Does it indicate that you received evidence marked
13 1B789, item number MDK-102?

14 A. Yes, it does.

15 Q. Placing before you, ma'am, Prosecution Exhibit 156C
16 for Identification. Do you recognize your signature on the
17 fourth line?

18 A. Yes, sir, I do.

19 Q. And does it indicate that you received evidence
20 marked 1B919 with a DK number of DK04-125?

21 A. Yes, sir, it does.

22 Q. Placing before you Prosecution Exhibit for
23 Identification -- Prosecution Exhibit 157D for Identification.

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1 Do you recognize your signature on the fourth line?

2 A. Yes, sir, I do.

3 Q. And does it indicate that you received evidence
4 marked 1B760 with an item number of DK04-124?

5 A. Yes, it does.

6 Q. Now, when is the -- we've seen a series of
7 photographs which indicate -- which contain rulers with a Q
8 tab on it. Are you familiar with that process?

9 A. Yes, sir, I am.

10 Q. And when is that photograph taken?

11 A. So depending on the evidence that's submitted,
12 typically when it comes into the laboratory we will inventory
13 what we have, perform a check-in procedure. And if it's not
14 going to other units that might be affected by it, we will
15 photograph it then. However, some of the exams, such as
16 explosive residue, we're not going to want to take that item
17 out of packaging, so we will wait to photograph it with a
18 ruler and a Q tab until after it comes back from that other
19 unit.

20 Q. I'm going to show you first Prosecution Exhibit 72C
21 for Identification. Do you recognize your signature on the
22 fourth line?

23 A. Yes, sir, I do.

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1 Q. And it indicates that you took into your custody or
2 the lab's custody at that time, Prosecution Exhibit 1B544
3 [sic] with a DK number of DK05-111, correct?

4 A. Yes, sir.

5 Q. All right. Now, I am placing on the ELM0 Prosecution
6 Exhibit 72 for Identification, previously -- I think
7 previously offered. And there is a Q tab on that exhibit; is
8 that correct?

9 A. Yes, sir, there is.

10 Q. All right. And what is the Q tab -- what is the Q
11 number on that?

12 A. So the Q number on that one is Q496.

13 Q. And then it has sort of another identifier which you
14 have spoken about, and what is that?

15 A. That's the FBI laboratory number, the 001103007.

16 Q. All right. And the Q number, the 496 -- no. It has
17 a 1B number, also; is that correct?

18 A. Correct, yes.

19 Q. All right. And that 1B number is consistent with the
20 number -- oh, I'm sorry -- is consistent with the number on
21 your chain of custody form; is that correct? If I show it to
22 you ----

23 A. So the 1B number and the chain of custody form are

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1 both field documents, so the 1B number is assigned by the
2 field. And yes, those two are the same on the chain of
3 custody as well as on the evidence.

4 Q. All right. I want to show you Prosecution
5 Exhibit 72A for Identification, and that's the ruler. And I
6 had spoken to you about this prior to your testimony here
7 today, correct?

8 A. Yes, sir, you did.

9 Q. All right. Were you able to determine whether or
10 not -- that is a different case number or lab number, that
11 0010230036, correct?

12 A. Yes, it is.

13 Q. Correct?

14 A. Yes.

15 Q. Is that an incorrect number?

16 A. It is, sir, yes.

17 Q. All right. So the correct number should be the
18 number that's contained on the bag, is that correct, 01 ----

19 A. Correct.

20 Q. ---- 00103007, correct?

21 A. Yes.

22 Q. All right. And for the record, the Q number on the
23 ruler is the correct Q number, 496?

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1 A. The Q number is correct, yes. The lab number is
2 incorrect.

3 Q. All right. I show you the -- placing before you
4 Prosecution Exhibit 158C for Identification. Do you recognize
5 your signature on that form, ma'am?

6 A. Yes, sir, I do.

7 Q. Indicates that you took custody of Prosecution
8 Exhibit 1B557 [sic], item number DK05-127; is that correct?

9 A. Yes, sir, it does.

10 Q. Same series of questions. I'm going to show you a
11 picture of Prosecution Exhibit 158B for Identification. It
12 shows the correct lab number at the top, 001103007; is that
13 correct?

14 A. Yes, sir, it is.

15 Q. All right. And the DK number matches from the form;
16 is that correct?

17 A. Yes, sir, it does.

18 Q. I show you Prosecution Exhibit 158A for
19 Identification. Again, correct Q number but the wrong lab
20 number?

21 A. Correct, yes.

22 Q. All right. So the correct lab number would be the
23 number that's contained actually on the bag?

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1 A. Yes, sir.

2 Q. All right. Lastly, showing you Prosecution
3 Exhibit 159C. Do you recognize your signature on the fourth
4 line?

5 A. Yes, sir, I do.

6 Q. And does it indicate that you received in evidence or
7 you received, took possession of evidence 1B554 with a DK
8 number of DK05-123?

9 A. Yes, sir.

10 Q. I show you prosecution 159B for Identification.
11 That's the actual evidence bag. Do you recognize the number
12 at the top?

13 A. Yes, sir, I do.

14 Q. And is that the correct lab number?

15 A. Yes, sir, it is.

16 Q. I show you Prosecution Exhibit numbered 159A for
17 Identification. Again, it has a different lab number. It has
18 001023036; is that incorrect?

19 A. It is an incorrect laboratory number, yes.

20 Q. The correct number would be the one that's actually
21 contained on the bag, 001103007?

22 A. Yes. The lab number and Q number that are written on
23 the bag are written on there when the item is first received

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1 in the laboratory when the inventory process is conducted. So
2 the number for the lab and the Q number are correct that are
3 on the bag.

4 Q. All right. So the one on the ruler is done at
5 sometime later on?

6 A. Sometimes. If it's going to another unit, such as
7 like Explosive Chemistry or something like that, the bag and
8 the evidence -- the evidence isn't removed from the bag. So
9 once that unit completes their exam, it comes back to our
10 unit, and that's when a photograph would be taken.

11 So that photograph could have been taken, you know, a
12 couple years after the evidence was actually received in the
13 laboratory. So the accurate information would be the Q number
14 and the laboratory number that's written on the evidence bag.

15 Q. And the correct Q number is the Q number on both the
16 bag and the ruler, which is Q505, correct?

17 A. Yes, sir. Yes.

18 Q. I think I did ask you -- just to be sure again -- as
19 to Prosecution Exhibit 195C, I think you did identify your
20 signature on that?

21 A. Yes, sir, it is.

22 Q. And you did receive that evidence 1B554, DK05-123?

23 A. Yes, sir, I did.

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1 Q. All right. So the record is clear, as to Prosecution
2 Exhibit numbered 35C for Identification, do you recognize your
3 signature on the fourth line?

4 A. Yes, sir, I do.

5 Q. Indicate -- I think I do remember this one because of
6 the number, you received ----

7 A. Yeah.

8 Q. ---- Exhibit [sic] 1B666?

9 A. Yes, sir.

10 Q. All right. And it has a DK number of DK05-130?

11 A. Yes, sir.

12 Q. I think, again for clarification -- oh. Something
13 about this one I'm having trouble with. This is Prosecution
14 159C for Identification. Your signature is on the fourth
15 line, correct?

16 A. Yes, sir, it is.

17 Q. And a 1B number of 1B554 -- evidence you received,
18 rather, marked 1B554 with an item number of DK05-123?

19 A. Yes, sir.

20 TC [MR. MILLER]: All right. We're good. Now we're good.
21 Thank you, Your Honor. I have no further questions.

22 MJ [Col SPATH]: Defense Counsel?

23 DDC [LT PIETTE]: Defense takes no position.

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1 MJ [Col SPATH]: All right. I assume I don't need to
2 comment for the record any longer on both the rulings and my
3 strong belief that the defense is taking a position
4 voluntarily.

5 Ma'am, I know you testified here personally last
6 time, and I gave you an order not to discuss your testimony
7 until the matter is resolved. As you can tell, the matter is
8 still not resolved. We're still working through the
9 preadmission of evidence.

10 WIT: Yes sir.

11 MJ [Col SPATH]: So the order is still in place. Do you
12 remember the order?

13 WIT: I do, sir, yes.

14 MJ [Col SPATH]: Okay. Please keep that in mind. I don't
15 know yet how much longer it's going to take to resolve this
16 based on the lack of cross-examination. Likely you know there
17 are other things going on still ----

18 WIT: Yes.

19 MJ [Col SPATH]: ---- that we're working through.

20 So again, I appreciate your testimony and you taking
21 the time to come to the Mark Center and testify by VTC. They
22 will disconnect the feed. Thank you again.

23 WIT: Thank you very much.

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1 [The witness was warned, temporarily excused, and the VTC was
2 terminated.]

3 MJ [Col SPATH]: Before we take your next witness, we've
4 been here a little over an hour. We'll take 15, and we'll
5 come back with your second witness. We're in recess.

6 [The R.M.C. 803 session recessed at 1010, 16 November 2017.]

7 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1026,
2 16 November 2017.]

3 MJ [Col SPATH]: The commission is called to order. All
4 the parties who were present before the break are again
5 present.

6 Defense Counsel [sic], call your next witness.

7 TC [MR. MILLER]: Thank you, Your Honor. Government calls
8 Special Agent William Davitch.

9 MJ [Col SPATH]: Hold on one second.

10 DDC [LT PIETTE]: I'm sorry, Your Honor, real quick. If I
11 could make a quick record before we start.

12 Earlier you had mentioned that some of our people sit
13 back behind the glass in the gallery. And I just wanted to
14 point out, just so it's on the record and the court is aware,
15 that the reason for that is the security has imposed what I
16 understand to be a new condition for escorting our DVO, our
17 defense victim outreach person. And so that's why the person
18 from our team is sitting back there with our DVO.

19 MJ [Col SPATH]: All right. You are welcome to ask, too,
20 if there is relief you want. I have certainly assisted with
21 things like that in the past. But I have seen some defense
22 community move in and out back there.

23 And again, I haven't gone through, because I don't

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1 think I can, all of the ex parte assistance the defense team
2 has been provided, because I can't share it with the
3 government; but I know how much assistance the defense team
4 has, plus all of the non ex parte assistance I've ordered.

5 My frustration remains, you know I have interpreted
6 this law to mean the government has tried to give you learned
7 counsel, and I believe they've done so to the greatest extent
8 practicable, which means the risk you take on your client's
9 behalf is you ignore a ruling from the court that I believe
10 your client has assistance by learned counsel to the greatest
11 extent practicable, and you are engaging in a strategy that
12 other appellate courts have said is risky.

13 There's no court members here. You're not going to
14 prejudice a court member. You were here for Mr. Kammen's and
15 Ms. Eliades' and every other counsel's cross-examination, or
16 you can read their cross-examination of these foundational
17 witnesses. It is not a surprise what their attack may have
18 been.

19 And I said it, I'll say it again, I have empathy. It
20 doesn't go a long way, I realize, I mean -- but there's
21 nothing I can do except try to impress upon you and your
22 defense community that the voluntary abandonment of a role by
23 a civilian defense counsel, learned counsel, is risky for your

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1 client. And then the defense community not making an effort
2 to give your client more assistance in the room? Appears to
3 be a very strategic decision, and it remains concerning.

4 There's nothing I can do except watch it unfold and
5 make sure that I ensure your client's due process rights are
6 protected to the best extent I can. I've even wondered if
7 that means I should ask some questions.

8 But I know this is the basic block-and-tackling of
9 any trial lawyer, the admission of real evidence. But that's
10 where we're at as we move forward. So I appreciate that.

11 If you want some assistance in that issue with the
12 DVO, happy to help; or more paralegal support; or again,
13 having your client meet another lawyer. The frustration is
14 that I can't -- I continue to hear in filings these
15 intrusions. The frustration is I can't share the details that
16 we know about the lack of evidence in this particular case and
17 what issue it does relate to. There's nothing I can do about
18 that right now, because we're in a classified environment and
19 I'm not the classification authority.

20 It's also why I wanted Ms. Yaroshefsky here, frankly,
21 because what she was told appears different than the universe
22 that learned counsel knew at the time. And I recognize his
23 name is on that letter, not yours.

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1 But all right. Mr. Miller, call your witness.

2 TC [MR. MILLER]: Thank you, Your Honor. The government
3 calls Special Agent William Davitch.

4 Stand up and be sworn. Remain standing and be sworn.

5 WILLIAM J. DAVITCH, civilian, was called as a witness for the
6 prosecution, was sworn, and testified as follows:

7 **DIRECT EXAMINATION**

8 Questions by the Trial Counsel [MR. MILLER]:

9 Q. Would you state your name for the record, please.

10 A. William J. Davitch.

11 Q. And you are a special agent with the FBI; is that
12 correct?

13 A. That's correct.

14 Q. And you are the same Special Agent William Davitch
15 who testified previously at this commission, I believe, in
16 March of this year; is that correct?

17 A. That's correct.

18 Q. Just by way of summary, you were one of the members
19 of the Uzbek training team that reported to Aden to assist in
20 the COLE investigation, correct?

21 A. That's correct.

22 Q. Now, I think you indicated you are still employed by
23 the FBI; is that correct?

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1 A. Yes, sir, I am.

2 Q. And in what capacity?

3 A. I'm the unit chief of the Render Safe Program Unit in
4 the Critical Incident Response Group for the FBI.

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

6 A. Almost 30 years.

7 Q. I want to direct your attention back to October of
8 2000. You indicated in your prior testimony that you traveled
9 to Aden Harbor, to Aden, to assist in the evidence recovery at
10 the COLE, correct?

11 A. Correct.

12 Q. Now, prior to going to Aden, did you lay over at
13 Ramstein?

14 A. I did.

15 Q. All right. And were there other members of the team
16 or other members who were going to assist in the COLE
17 investigation present at Ramstein?

18 A. There were.

19 Q. Do you know a special agent named Elizabeth Rosato?

20 A. I do.

21 Q. And how do you know Agent Rosato?

22 A. She and I were both assigned to the New York FBI
23 office at that time and were familiar with one another. I was

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1 a bomb technician in the New York office and Agent Rosato was
2 on the Evidence Response Team, so we had occasion to do
3 training events together and work together on investigative
4 evidence recovery matters.

5 Q. While at Ramstein on this layover, how long did you
6 remain in Germany, if you can recall?

7 A. It seemed like less than 24 hours. We got in in the
8 evening, and I think we departed the following day, so
9 somewhere 24 hours or less.

10 Q. Did all of the members that landed at Ramstein
11 continue on to Yemen?

12 A. They did not. A fair portion of the team that came
13 from the U.S. and then the team that I was with that came from
14 Uzbekistan to Germany, some stayed in Germany, and the
15 following day a portion of the group went down to Aden.

16 Q. Do you know why some remained behind in Germany?

17 A. I believe two reasons. One reason was they were
18 limiting the number of personnel that could go into country;
19 they were trying to set a certain amount of people. And then,
20 also, there were other investigative activities going on in
21 Germany.

22 Q. While you were in Germany, did you have occasion to
23 have a discussion with Agent Rosato regarding evidence

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1 collection?

2 A. I did.

3 Q. And what was that conversation concerning?

4 A. Agent Rosato found me as I was arriving there, and
5 she had been given a task to collect swabbing evidence of some
6 of the injured or individuals that were on the COLE that
7 either were at the hospital or their clothing was there. And
8 she asked me my recommendation as to how to most appropriately
9 swab some of the items there, specifically the belt buckles of
10 some of the sailors.

11 Q. Did she indicate whether or not she had swabbing kits
12 to use?

13 A. She did -- she indicated that she didn't have that,
14 and that her questions primarily were related to how could she
15 get the appropriate items there locally to conduct the
16 swabbing of those items.

17 Q. And why would she direct those questions to you, if
18 you know?

19 A. Again, based on our prior relationship, based on my
20 background as a bomb technician being familiar with bombing
21 crime scene evidence, she knew that I would have the -- an
22 answer as to what the most appropriate residue collection
23 methods were.

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1 Q. And what did you tell her?

2 A. I told her that she could try either there on the
3 base or at some location to try and procure cotton swabs,
4 solvent; and then evidence containers to place the swabs in,
5 if she was able to find all of those items there locally,
6 cotton swabs, evidence containers, and then maybe some type of
7 solvent as well. But a dry swab would work. But if she was
8 able to find either distilled water or alcohol, isopropyl
9 alcohol, that that could be used as well.

10 Q. I'm going to ask you to put a little more detail and
11 explain for us. If one is going to swab a surface for
12 whatever that you're looking for -- let's say bomb residue --
13 you indicated a dry swab. Could you explain to the court
14 exactly how the process would work?

15 A. So when you attempt to collect trace residue or
16 explosive residue off of a surface, you're trying to take a
17 swab typically, run it across the surface of whatever you're
18 trying to collect from and gather material on that swab based
19 on intimate contact with that surface and then place that
20 piece of evidence into a container to be examined later.

21 So one of the processes to ensure that there's no
22 contamination is to do two particular things with the items
23 that you're going to use to collect the evidence or the

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1 residue with. First, you would -- you would take a blank
2 sample of the cotton swab and the container by placing that
3 item in a blank, which ensures that the item that you're using
4 to collect isn't already contaminated.

5 Q. Let me stop you there. So if I have cotton balls, I
6 take one of the cotton balls and I put it in a container?

7 A. That's correct.

8 Q. And I put that aside as a blank?

9 A. That's correct.

10 Q. And then what do I do?

11 A. Then the next thing that you do is attempt to
12 determine that you weren't the source of the explosive
13 residue, so you take a control sample. So you -- if you're --
14 in this case you're typically gloved, maybe wearing some sort
15 of other protective equipment and then you swab yourself, your
16 gloves, your body. And then you take that control and place
17 it the same way as you did the blank, into a container, to
18 determine that you aren't the source of the explosive residue.

19 Q. What do I do next?

20 A. Then finally you take those same materials that you
21 used to collect the blank and the control, and you then swab
22 or collect off of the surface that you're attempting to
23 collect the residue from. In this case, we were discussing

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1 her doing that with a belt buckle.

2 Q. What you told her -- or the items you told her to
3 compile and how to compile them, is that comparable to an
4 actual pre-made kit?

5 A. It is. The only -- only difference between the two
6 is the pre-made kit comes with all of the supplies, typically
7 purchased from some forensic manufacturing company versus
8 buying the supplies piecemeal.

9 Q. You did not actually assist her in any swabbing that
10 she may have done, did you?

11 A. I did not. I just made the recommendations as to
12 what she could do to assemble the kit, and then she went off,
13 and I then departed the following day for Aden.

14 Q. Now, you previously testified before His Honor about
15 the items that you actually seized in Yemen. I want to talk
16 to you about whether or not you actually transported any items
17 out of Yemen.

18 Did you transport any of the evidence out of Yemen?

19 A. I did.

20 Q. How did it come that you were going to be one of
21 those individuals?

22 A. We had several discussions during the time that we
23 were there. I think, based on, one, the fact that I had

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1 previously worked in the FBI Laboratory, I had experience
2 handling this type of evidence. I had also been gone already
3 for two weeks because of the Uzbekistan trip.

4 And they were looking for someone to do that initial
5 delivery of evidence from Yemen back to the FBI Laboratory to
6 begin the process of actual conducting forensic examinations
7 at the FBI Lab, and so I volunteered and said I would be happy
8 to be the one to take these items back that we had gone
9 through to determine the most appropriate items that would be
10 valuable to begin examinations on.

11 Q. From -- first off, from whom did you get the
12 evidence?

13 A. Well, the evidence that was there, there was -- we
14 spent a period of time; my recollection is it was the night
15 before we departed. And we had both the administrative task
16 of collecting the evidence logs that we had established as
17 part of the chain of custody, and then we also went through
18 some of the items that were there at the Aden Hotel to
19 determine, again, which items were the most logical to take
20 back with us.

21 That discussion happened between myself, Dayna
22 Better, and Bob Sibert.

23 Q. I take it the items were already packaged, correct?

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1 A. They were.

2 Q. And once you determined which items you were going to
3 bring back to the United States, what did you do with them?

4 A. The items were sort of assembled, some in boxes, some
5 in other kinds of containers. Some of the items were rather
6 large, and so the items were sort of assembled, put together,
7 and then I believe the next day we took them out to the
8 airport and they were loaded on an Air Force transport and
9 placed in the back transport area of the aircraft.

10 Some were palletized, if you will. The load masters
11 assisted us in -- for palletizing it and securing it within
12 the aircraft. And then some of the items were too large to be
13 sort of easily palletized and they were secured in the back of
14 the plane.

15 Q. Did you travel with the evidence?

16 A. I did.

17 Q. And where did you first go?

18 A. We left Aden and flew from there to Ramstein.

19 Q. When you landed at Ramstein, what did you do with the
20 evidence? What happened to the evidence?

21 A. So because we were going to have to stay overnight in
22 Ramstein before transiting the following day, myself and
23 several Air Force OSI folks got together that evening and

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1 determined that the most secure way to secure the evidence
2 overnight was to seal the evidence in the plane that was
3 actually going to be used to do the transport, and we secured
4 that plane with a tamper-proof evidence seal. And then the
5 plane was guarded overnight.

6 I went and got a little bit of sleep. The following
7 day, came back to the plane, broke the seal, and then we
8 continued on from there.

9 Q. So you traveled to the United States with the
10 evidence?

11 A. I did.

12 Q. And where in the United States did you land?

13 A. At Andrews Air Force Base.

14 Q. And when you landed at Andrews, did you surrender the
15 evidence to any individual?

16 A. I did. We met a team of agents, investigators, and
17 lab personnel. There were personnel there from the New York
18 FBI office and then also personnel there from the
19 FBI Laboratory, and we turned all of the evidence over to
20 members of the Explosives Unit in the FBI Laboratory.

21 Q. Do you know Kelly VanArsdale?

22 A. I do.

23 Q. All right. Was that one of the individuals to whom

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1 you surrendered the evidence?

2 A. It was Kelly and Andy English and I believe a few
3 other folks from -- from the Explosives Unit.

4 Q. If you would, please, provide the witness with
5 Prosecution Exhibit 105 for Identification.

6 Sir, I place what's been placed before you as
7 Prosecution Exhibit 105 for Identification. Do you recognize
8 that, sir?

9 A. I do.

10 Q. All right. And how are you able to recognize it?

11 A. The evidence tag contains my signature and date and
12 time of signing that, that evidence log on the face of the
13 piece of evidence.

14 Q. That is not something you collected; is that correct?

15 A. That's correct.

16 Q. Does the chain -- does the chain of custody indicate
17 who ----

18 A. Yes. The item was recovered on the Aft Deck, Port
19 Side Deck 00, by Special Agent Anthony Duback.

20 Q. Was this one of the items that you couriered or
21 carried back to the United States?

22 A. I believe so, yes.

23 Q. And is your signature contained on the chain of

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1 custody form on the front of that bag?

2 A. It is. It's the third one down. I believe it's Tony
3 Duback. I believe the second signature is Special Agent
4 Better and then my signature below that.

5 Q. And is there a 1B number on that bag?

6 A. 1B466.

7 Q. Is there also a DK number on that bag? If you look
8 at the top of the evidence tag.

9 A. I'm sorry, yes. DK00-100. And then also appears on
10 the inner bag as well.

11 TC [MR. MILLER]: Permission to use the ELM0, Your Honor?

12 MJ [Col SPATH]: You may.

13 TC [MR. MILLER]: And permission to publish to the witness
14 Prosecution Exhibit 105.

15 MJ [Col SPATH]: You may.

16 Q. I've placed on the ELM0 Prosecution Exhibit 105C for
17 Identification. Do you recognize that chain of custody form,
18 sir?

19 A. I do.

20 Q. And if you would look on the third line of that chain
21 of custody form, do you recognize the signature there?

22 A. Yes, it's mine.

23 Q. And when did you sign that?

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1 A. On October the 21st of 2000 at 10:15 in the morning.

2 Q. Was this so that you could transport it back to the
3 United States?

4 A. Yes.

5 Q. And underneath your signature there's a signature by
6 Kelly ----

7 A. ---- Baribeau, which was ----

8 Q. Do you recognize her signature?

9 A. Yeah, Kelly VanArsdale's maiden name.

10 Q. All right. And is that the person to whom you
11 surrendered the items?

12 A. It is.

13 Q. And what date and time did you surrender them to her?

14 A. This indicates that she signed the log on
15 October the 23rd at 4:25 p.m.

16 Q. Is that consistent with your memory?

17 A. It is.

18 Q. There is also a 1B number and a DK number on top of
19 that form; is that correct?

20 A. Yes.

21 Q. And are you able to associate this particular form
22 with the exhibit you have in front of you, Prosecution
23 Exhibit 105?

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1 A. Yes, I can. The exhibit has DK00-100, Q173, and then
2 the form has DK00-100 and 1B466 on both.

3 Q. And I take it once you had surrendered the evidence
4 to the lab, you no longer had any contact or possession of it,
5 correct?

6 A. That's correct.

7 TC [MR. MILLER]: Nothing further of this witness, Your
8 Honor.

9 MJ [Col SPATH]: Defense Counsel?

10 DDC [LT PIETTE]: Defense takes no position.

11 MJ [Col SPATH]: I understand. I think I've said enough
12 on that issue, so I won't say anything else.

13 I know you've testified previously. You know you'll
14 remember I gave you an order the last time not to discuss your
15 testimony until the issue is resolved. I'm pretty sure I told
16 you then it might be a while. So I'm correct, it is going to
17 be a while and it's not resolved yet, as you probably can
18 imagine, as we work through some issues.

19 So do you understand and remember the order?

20 WIT: I do, sir.

21 MJ [Col SPATH]: I appreciate again very much you coming
22 in person to testify about these matters. I know it's
23 appreciated. Thank you again. You're excused.

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1 [The witness was warned, temporarily excused, and withdrew
2 from the courtroom.]

3 MJ [Col SPATH]: Call your next witness.

4 TC [MR. MILLER]: Thank you, Your Honor. Government calls
5 Special Agent Robert Sibert.

6 Sir, if you would remain standing, please, and raise
7 your right hand.

8 ROBERT W. SIBERT, civilian, was called as a witness for the
9 prosecution, was sworn, and testified as follows:

10 **DIRECT EXAMINATION**

11 Questions by the Trial Counsel [MR. MILLER]:

12 Q. Would you state your name for the court, please.

13 A. Robert W. Sibert.

14 Q. And are you -- were you formerly employed by the
15 Federal Bureau of Investigation?

16 A. Yes, sir, I was.

17 Q. For how many years?

18 A. Thirty-four years.

19 Q. I want to talk a little bit about your background,
20 sir, if I can. You attended university; is that correct?

21 A. Yes, the University of Maryland.

22 Q. Did you receive a degree from Maryland?

23 A. Yes, an engineering degree.

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1 Q. What year?

2 A. 1969.

3 Q. Did you receive any graduate degrees?

4 A. Yes, sir, I did.

5 Q. And what were those?

6 A. Master of Science in forensic science from the George
7 Washington University in 1974, and a Master of Arts in special
8 studies from George Washington in 1982.

9 Q. And when did you join the FBI?

10 A. 1969.

11 Q. I take it that you attended the basic agent training
12 at Quantico?

13 A. Yes, sir, I did.

14 Q. Did you receive any training in the collection and
15 processing of evidence while at New Agent School?

16 A. I did.

17 Q. What was your first post of duty?

18 A. I was assigned to the New Haven, Connecticut Field
19 Office.

20 Q. And what were your general duties and
21 responsibilities in New Haven?

22 A. I had general criminal matters.

23 Q. How long did you remain in New Haven?

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- 1 A. Slightly over a year.
- 2 Q. Where did you go from New Haven?
- 3 A. To the New York City Field Office.
- 4 Q. What did you do in the New York office?
- 5 A. Again, it was criminal. It was a fugitive squad.
- 6 Q. How long did you remain in New York?
- 7 A. I left there in 1971.
- 8 Q. And where did you go from there?
- 9 A. I was called back to the FBI Laboratory Division.
- 10 Q. And what position did you assume there, sir?
- 11 A. I came in as an examiner in the Firearms and Tool
- 12 Marks Unit.
- 13 Q. Did that require any specialized training?
- 14 A. Yes, sir. My first year there was specialized
- 15 training in that discipline as well as general forensics.
- 16 Q. So you would have been, I guess, become proficient in
- 17 the handling of evidence, chain of custody, things like that?
- 18 A. Yes, sir.
- 19 Q. Did you ever testify as an expert?
- 20 A. Yes, sir, numerous times.
- 21 Q. And did you remain an examiner your entire time at
- 22 the Lab Division?
- 23 A. I remained an examiner and through 1995, wherein I

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1 was then made unit chief of the Firearms and Toolmarks Unit in
2 1996.

3 Q. How long did you remain in that position?

4 A. I was there for two years.

5 Q. What happened -- what was your next position, sir?

6 A. I was then made deputy section chief of the
7 scientific analysis section of the Laboratory Analysis
8 Division.

9 Q. And what were your duties and responsibilities?

10 A. There I had the units that were in that particular
11 division. It was DNA units, there was the explosive unit,
12 hairs and fibers, metallurgy, materials sciences.

13 Q. You would have been again familiar -- these would
14 have been areas that were concerned with chains of custody,
15 evidence collection, processing, things of that nature?

16 A. Yes, sir, all of those units.

17 Q. And how long did you remain in that position?

18 A. I was there for two years.

19 Q. And what was your next position?

20 A. Then I was made chief of the Forensic Science
21 Division, and that had to do with fingerprints, cryptic,
22 cryptography, question document analysis, firearms and tool
23 marks ----

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1 Q. And how long did you remain in that position?

2 A. ---- fingerprints.

3 I was there for four years, up until my retirement.

4 Q. And when did you retire?

5 A. In 2003, December.

6 Q. And post your FBI career, were you employed?

7 A. Yes, sir, I was.

8 Q. What did you do?

9 A. I went to work for a firm called Booz Allen Hamilton,
10 and I was initially supporting the FBI, the Operational
11 Technologies Division and the Laboratory Division. And then I
12 moved over to the Science and Technology Directorate of
13 Homeland Security.

14 Q. And what did you -- well, first off, what did you do
15 with the FBI?

16 A. I was there to do a strategic plan for -- ten-year
17 plan for the Laboratory Division. I also at the Operational
18 Technology Division had to do with their handling of material
19 and processing of their materials that they handled.

20 Q. You said you then went on to the Department of
21 Homeland Security?

22 A. Yes, sir.

23 Q. What did you do for them?

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1 A. Initially I was working radiological forensics and
2 attribution, having to do with associating radiological
3 materials forensically. I then moved into chemical forensics
4 and attribution, having to do with hazardous chemicals,
5 chemical warfare agents. And then last I was moved over,
6 also, into biological agents, dealing with anthrax and things
7 of that order.

8 Q. How long did you remain with DHS?

9 A. I was there and I retired in -- I retired from having
10 served as an independent consultant in February of this year.

11 Q. Any other positions you've held post?

12 A. No, sir, I'm fully retired now.

13 Q. Fully retired now? All right.

14 I want to direct your attention back to October of
15 2000. Did you become aware that there had been an attack or a
16 bombing of the United States -- excuse me, the USS COLE?

17 A. Yes, sir.

18 Q. And when you learned of that, did that require you to
19 take any action? Did you have any responsibility in that
20 investigation?

21 A. Yes, sir. I was in charge of the FBI disaster squad
22 at that time, having to do with the identification of mass
23 fatality victims. I was also on a Rapid Deployment Team, and

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1 so I was tasked to go out and to help in the investigation of
2 the COLE.

3 Q. Did you have -- you said a team. Do you recall the
4 persons that went with you?

5 A. Yes, there were a number of laboratory examiners who
6 went from the Explosives Unit, photographers. And we also met
7 up with assets, Evidence Response Team members from New York
8 Field Office as well as Washington Field Office, and others.

9 Q. Do you know a Special Agent Leo West?

10 A. Yes, sir, I do.

11 Q. Was he with you?

12 A. Yes, he was.

13 Q. Do you know a Special Agent Steven Krueger?

14 A. Yes, sir.

15 Q. Was he with you?

16 A. He was.

17 Q. Obviously you traveled to Aden, correct?

18 A. Yes, sir.

19 Q. How did you get there?

20 A. We got there on a military transport plane.

21 Q. When you arrived, did anything unusual happen that
22 you can recall?

23 A. Yes, sir. It was a very different approach. It was

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1 a spiral, a tight spiral coming in for landing. We landed on
2 the ground. We assumed we would be immediately exiting the
3 aircraft; however, there were a number of soldiers who were
4 assembled out there on the tarmac. And so there was a delay
5 before we were finally able to exit the aircraft and to . . .

6 Q. Did you -- obviously you eventually left the airport.
7 Where did you go?

8 A. We went to a hotel. It was out in a rather abandoned
9 area of town. It was, I recall, about a two- or three-story,
10 looked like a motel.

11 Q. And did you stay there?

12 A. We stayed there initially, and we were later
13 relocated.

14 Q. To a larger, taller hotel?

15 A. Yes, sir.

16 Q. When you arrived at the second hotel, were there
17 other law enforcement personnel there?

18 A. There were.

19 Q. And who was in charge of the American law enforcement
20 contingent?

21 A. John O'Neill was in charge of that.

22 Q. Did you have occasion to meet with him and other what
23 I'll call management-level persons?

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1 A. Yes, sir, I did.

2 Q. And did you all come up with a plan as to how the
3 search was going to be conducted of the USS COLE?

4 A. We did. I was in charge of the search aspects, the
5 forensic investigation. Mr. O'Neill had the investigative
6 portion of that. So we had a lot of meetings wherein we were
7 coordinating our activities with briefings each day to make
8 sure that we were apprising each other of what developments on
9 the forensic side would give aid to the investigative side and
10 then vice versa.

11 Q. All right. Were one of the duties or one of the
12 investigative undertakings in which you were interested the
13 swabbing of the ship?

14 A. Yes, sir, that was key.

15 Q. And why was it key?

16 A. Well, it was an explosives scene. I was there and I
17 had some of the FBI's foremost experts in that explosive
18 residue analysis, as well as the collection. And so
19 collaborating with them, we came up with a plan as to how to
20 take samples as well as collecting other items of physical
21 evidence that had a relevance to the attack.

22 Q. Let me -- let's -- I'm going to take a step back.

23 Do you remember when you first went out to the ship?

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1 A. Yes, sir.

2 Q. Did you go alone or did you go with a team of
3 individuals?

4 A. With a team.

5 Q. When you arrived, were you met by any Navy personnel?

6 A. We were, uh-huh.

7 Q. And could you describe for His Honor what occurred?

8 A. Well, we got there and there was a group of Marines
9 who were providing security, and we saw the ship anchored out
10 by the fueling post there, so we coordinated with them. We
11 decided we would survey the scene, also take some photographs,
12 and then we would plan how we would process this as a crime
13 scene.

14 Q. And when you say decide how to process it, what do
15 you mean? Because you could ----

16 A. Well, we wanted to make sure that as we came to this
17 we had an orderly method of collecting evidence. So we -- we
18 decided to come up with a numbering system as to how we would
19 identify pieces of physical evidence that were recovered, such
20 that they would -- we would give a number or identifier that
21 would give us some sort of relevance as to where it was
22 recovered.

23 We also determined that we would have -- the order of

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1 the investigation, the swabbing was key, and that was
2 something that we wanted to get done as quickly as possible
3 because if we had a rain or something like that, some of that
4 evidence could be lost. And we also had the issue of the body
5 recovery.

6 Q. Tell me about that. You say "the issue of the body
7 recovery."

8 A. Well, there were remains of the sailors there that
9 were in the debris of the COLE that had been blown back into
10 the galley area, as well we had some who were suspected of
11 being on the decks that had flooded.

12 Q. I'm interested first in talking about this system of
13 evidence recovery identification. Did you develop this? Was
14 this something that was your idea?

15 A. Well, it was collaborative. I was in charge of it.
16 But we used our standard FBI forms and methods, and we just
17 had to come up with an area that we could have designated for
18 the receipt of evidence and marking and packaging. That was
19 provided by the skipper of the COLE. And so we then broke
20 into teams, and we had people who were collecting the
21 evidence, doing the swabbing, and things of that order.

22 TC [MR. MILLER]: Permission to use the ELM0, Your Honor,
23 to publish to the witness Prosecution Exhibit 105B.

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1 MJ [Col SPATH]: You may.

2 Q. Just by way of example, this particular evidence bag
3 has the number DK00-100. Do you recognize that number, if you
4 look on where it says "evidence" ----

5 A. Yes. Yes, that would be the deck number 00 and it
6 would be the item number 100.

7 Q. All right. So it would be taken from Deck 00, and
8 then the item would be the 100th item recovered from that
9 area?

10 A. Correct.

11 Q. And is that the system that y'all came up with?

12 A. Yes, we had numbered the decks from 00, 01, 02, 03.

13 Q. You indicated you wanted to do the swabbing early.
14 Had the Navy cleaned the ship in any way?

15 A. No, they had not. I recall it was covered with a lot
16 of oil and debris all over the decks.

17 Q. Were you also in charge of oversight of how the
18 evidence was taken from the ship to a point off the ship?

19 A. Yes, sir. We wanted to make sure that we preserved
20 the integrity of the evidence, guarding against
21 cross-contamination. So, therefore, we had an area in the
22 ship where we would store the evidence and mark it, but then
23 it would be transferred back.

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1 And we designated certain rooms in the hotel, the
2 multistory hotel, the -- I think the Aden Hotel, that were to
3 be secure evidence rooms, and we made sure that we had
4 evidence, all evidence that came from the ship would be in one
5 area, and evidence from other areas would be separated from
6 that to make sure that there was no possible chance of
7 cross-contamination.

8 Q. And you indicated that you also oversaw the body
9 recovery?

10 A. Yes, sir.

11 Q. All right. And was there any particular difficulties
12 there?

13 A. Yes. It was difficult in the fact that the debris in
14 that galley area had been blown from the port side over to the
15 starboard, and there were individuals who were in there, their
16 remains, that were in all of that stainless steel and the
17 other equipment partitions, as well as I mentioned some of the
18 bodies were underwater in lower decks that had flooded.

19 Q. Was any outside help or agency brought in to help
20 with the body recovery, sir?

21 A. Yes, sir. We had a dive group, a U.S. Navy dive
22 group called MUDSU, Mobile Underwater -- I forget the acronym
23 but they were there with extensive equipment, diving equipment

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1 and video equipment and communications equipment, so that when
2 they had divers go down, they were in constant contact with
3 them.

4 And while we had a group who were there who had
5 material to cut away -- now, we couldn't use torches because
6 of the fear of fire aboard, so they had to use grinding
7 equipment, which made it a little bit longer process. But
8 nevertheless, they were able to cut away, and so we could get
9 through these various layers of debris to get to the remains.

10 Q. Did you develop a system on board for the storage of
11 evidence, evidence that was being immediately collected, where
12 it would be taken by the evidence collectors?

13 A. Yes. We had this one room there, and we had Evidence
14 Response Team members, and we had them both from New York and
15 Washington Field Office, and they were there to make sure that
16 everything was properly packaged and marked accordingly and
17 the records maintained for chain of custody.

18 Q. Now, were you actually in charge of, yourself,
19 collecting the evidence?

20 A. It was -- I was overseeing that. I did not get
21 personally involved except in one instance. After several
22 days into it, I found a piece of debris on the deck that I
23 took custody of, marked and preserved.

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1 TC [MR. MILLER]: Permission to publish to the witness,
2 Your Honor, Prosecution Exhibits for Identification 109
3 through 109C.

4 MJ [Col SPATH]: You may.

5 TC [MR. MILLER]: And permission to use the ELMO with the
6 witness, Your Honor.

7 MJ [Col SPATH]: You may.

8 Q. All right. I have placed before you what is
9 Prosecution Exhibit 109 for Identification. Do you see that,
10 sir?

11 A. I do.

12 Q. First of all, I'm going to ask you to take a look at
13 the photograph in front of you, Prosecution Exhibit 109A for
14 Identification. Do you recognize generally that type of
15 evidence, sir?

16 A. Yes. That is some of the debris of the type that we
17 recovered from the decks of the COLE.

18 Q. And what would be your interest in getting or seizing
19 this sort of evidence?

20 A. Well, this sort of evidence was something that was
21 obvious, not associated with the USS COLE but that had come
22 from a secondary source. It appeared to be wood/fiberglass
23 material. And so it was suspected that this was blast debris

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1 that had blown up and come to rest on the decks of the COLE.

2 Q. Now, the item has what they call a Q tag. Is that
3 the correct term?

4 A. Yes, sir.

5 Q. All right. Are you familiar with that system?

6 A. Very much so.

7 Q. And what is the Q number on that?

8 A. It bears the number Q339 on the ruler in the
9 photograph.

10 Q. Now before you is Prosecution Exhibit 109. 109, do
11 you recognize that bag, sir?

12 A. I do.

13 Q. And how are you able to recognize it?

14 A. I recognize it by my markings and my signature on the
15 interior.

16 Q. So you recognize the handwriting on the front of the
17 bag, the evidence bag, as yours?

18 A. Yes, sir. There's an inner bag. There's the Q339
19 number and the laboratory number, which is a series of digits,
20 but I recognize within that another bag that has my markings.

21 Q. All right. If you could for His Honor, please, read
22 into the record the description of the evidence, the date and
23 time of recovery, the location of the recovery, and by whom it

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1 was recovered.

2 A. Certainly. At the top it has the case number, which
3 was the FBI file number for this whole investigation. It was
4 262-NY, signifying New York, dash 277013. That would be the
5 overall case number. And for the pouch it has DK-01,
6 indicating it was from deck, which we designated 01. And it's
7 DK01-129. That was the sequential number assigned to this
8 particular piece of evidence at the scene.

9 The description of the evidence I wrote, "Carpet,
10 wood, and fiberglass debris from tray on port side aft of
11 blast area, Deck 01." The date and time of recovery is
12 recorded as 10/24/2000 at 2:00 p.m. It has my printed name,
13 Robert W. Sibert. And then below it starts a chain of custody
14 that bears my signature, again, the date of 10/24/2000, and
15 the time is noted as 2:05 p.m.

16 Q. All right. Are you able to see inside the bag the
17 type of items contained in the bag?

18 A. No, I'm not. It's -- not able to see actually
19 through the plastic.

20 Q. All right. While they're putting gloves on, does it
21 have a 1B number?

22 A. Yes, sir, it does. 1B626.

23 Q. And does it have -- you've already indicated the DK

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1 number is DK01-129; is that correct?

2 A. That is correct.

3 Q. And did you package this yourself?

4 A. I packaged the inner -- inner container which bears
5 all my markings. It's been repackaged with another plastic
6 bag over it.

7 Yes, sir. Now I'm able to see the black debris on
8 the interior of this bag that I -- I sealed.

9 Q. Does it appear to be the same material that's
10 contained in Prosecution Exhibit 109A for Identification?

11 A. Yes, sir, it does.

12 Q. And for the record, the Q number on Prosecution
13 Exhibit 109A for Identification matches the Q number on the
14 evidence bag itself; is that correct?

15 A. It does, Q339.

16 Q. Okay. Now, is there a chain of custody form there in
17 front of you also?

18 A. There is.

19 Q. All right.

20 A. It's called an FD Form 192.

21 Q. I take it with all your years in the lab, you're
22 familiar with this form; is that correct?

23 A. Very familiar.

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1 Q. I'm going to ask you, if you would, to take a look at
2 that form itself. All right. First off, do you recognize the
3 signature on the top line?

4 A. I do. It's my signature.

5 Q. And does it indicate when you collected the evidence?

6 A. Yes, sir, it does. The date and time I mentioned
7 previously in my testimony, 10/24/2000, 2:00 p.m.

8 Q. And is that consistent with the time listed on the
9 evidence bag itself?

10 A. It is.

11 Q. And does it indicate a time when it was surrendered
12 to the evidence custodian?

13 A. Yes, it's marked -- the next line down says that it
14 went to storage, which was on the COLE, and that was at the
15 same date at 2:30 p.m., about a half hour after I recovered
16 it.

17 Q. Now, are you able to associate this chain of custody
18 form with the exhibit, Prosecution Exhibit 109?

19 A. I am, because it has the case number, it has the 1B
20 number, 626, plus the DK01-129, which corresponds with the
21 markings on the envelope that I sealed.

22 Q. I'm going to place on the ELM0 Prosecution
23 Exhibit 109C for Identification. Are the first four entries

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1 of that exhibit, Prosecution Exhibit 109C for Identification,
2 identical to the chain of custody form that you have just
3 reviewed and discussed?

4 A. They are.

5 Q. Lastly, I'm going to show you a photograph,
6 Prosecution Exhibit 109B for Identification, sir.

7 A. Uh-huh.

8 Q. And do you recognize that?

9 A. Yes. That is the exhibit before me.

10 Q. A fair and accurate depiction of Prosecution
11 Exhibit 109?

12 A. It is.

13 TC [MR. MILLER]: Your Honor, at this time the government
14 would move for the -- would offer into evidence Prosecution
15 Exhibit 109A, 109B, and 109C.

16 MJ [Col SPATH]: Thank you.

17 Q. Other than this evidence, did you seize any other
18 evidence?

19 A. I did not personally collect any other evidence.
20 That was the sole piece.

21 Q. All right. And you also did not transport any of the
22 evidence back to the United States?

23 A. I did not.

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1 TC [MR. MILLER]: All right. No further questions. Thank
2 you, Your Honor.

3 MJ [Col SPATH]: Defense Counsel?

4 DDC [LT PIETTE]: Defense takes no position.

5 MJ [Col SPATH]: Thank you. Again, I don't feel I need to
6 comment on it any longer. I think it's in the record
7 extensively, the ruling and the commission's opinion on that.

8 I'm going to give you a standard order. Don't
9 discuss your testimony until this matter is resolved, the
10 difference here being it might be a little while before the
11 matter is resolved, as you can probably imagine, as we
12 continue to work through issues.

13 I have -- for all the witness who travel down here in
14 person, I have thanked all of them. I recognize what it takes
15 to come down here. I appreciate you taking the time to come
16 down here and testifying in person. Your testimony is
17 appreciated. You're excused.

18 WIT: Thank you, Your Honor.

19 MJ [Col SPATH]: Thank you.

20 [The witness was warned, temporarily excused, and withdrew
21 from the courtroom.]

22 MJ [Col SPATH]: Let me just ask, Mr. Miller, before we
23 call your next witness: How many pieces of evidence is your

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1 next witness going to be handling?

2 TC [MR. MILLER]: One, two, three, four, five -- five or
3 six, Your Honor.

4 MJ [Col SPATH]: All right. Why don't we start and see
5 how far we get along. Call your next witness.

6 TC [MR. MILLER]: Government calls Garrett McKenzie.

7 Remain standing, sir. Would you raise your right
8 hand, please?

9 GARRETT J. McKENZIE, civilian, was called as a witness for the
10 prosecution, was sworn, and testified as follows:

11 DIRECT EXAMINATION

12 Questions by the Trial Counsel [MR. MILLER]:

13 Q. State your name.

14 A. My name is Garrett J. McKenzie.

15 Q. And you were formerly a FBI special agent; is that
16 correct?

17 A. Yes, sir, I was.

18 Q. And what year did you retire?

19 A. I retired last June.

20 Q. All right. I want to -- June of?

21 A. June of 2016.

22 Q. Okay. 2016. I want to go a little bit into your
23 background, sir. Obviously you attended college. Where did

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1 you go?

2 A. I did my undergraduate work at Texas A&M University
3 and received a master's degree from Webster University.

4 Q. When did you graduate from Texas A&M?

5 A. 1982.

6 Q. And were you a member of the ROTC?

7 A. Yes, I was.

8 Q. When did you graduate from Webster University in --
9 that's in St. Louis, correct?

10 A. Yes. 1988.

11 Q. Do you have any -- did you serve in the military?

12 A. Yes, sir, I was in active duty in the Marine Corps
13 for 12 years and reserve for about three more.

14 Q. All right. When did you enter the Marine Corps?

15 A. Immediately after graduation at A&M.

16 Q. All right. So that would have been 19 ----

17 A. 1982.

18 Q. All right. And you were commissioned as?

19 A. I was commissioned as a second lieutenant.

20 Q. And did you see any combat?

21 A. Yes, sir. I led a rifle platoon in Grenada and then
22 again in Beirut in 1983, and then a rifle company in Desert
23 Storm.

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1 Q. And when did you leave the Marine Corps, active duty?

2 A. I left active duty in the Marine Corps in 1993.

3 Q. Your rank?

4 A. I was a captain and then picked up major in the
5 Reserves.

6 Q. After your military service, did you immediately go
7 into the FBI?

8 A. Not immediately. There was a short break for about a
9 year when I was a stockbroker ----

10 Q. All right.

11 A. ---- waiting on the government -- there was a
12 government hiring freeze.

13 Q. And when did you join the FBI?

14 A. 1995.

15 Q. Did you remain in the Reserves?

16 A. I had to leave the Reserves at the time. One had to
17 separate all ties from the military to go into the FBI and be
18 designated as a key federal employee.

19 Q. When you entered the FBI, did you go through -- I
20 take it you went to Quantico to the basic New Agent Training?

21 A. I did, sir.

22 Q. And did that involve any training in the collection
23 of evidence, processing of crime scenes?

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1 A. Yes, sir, it did.

2 Q. How long does that course last, by the way, the New
3 Agent School?

4 A. Approximately 16 weeks.

5 Q. After you were finished with New Agent School, what
6 was your first office?

7 A. My first office was Washington Field Office.

8 Q. And what were you assigned? What was your assigned
9 squad?

10 A. My primary squad for the first five years was the
11 violent gang squad, the Safe Streets Task Force; and I had an
12 additional duty of being a member of the Evidence Response
13 Team.

14 Q. Let me first start off with you did drugs and guns,
15 correct?

16 A. Drugs and guns, yes, sir.

17 Q. All right. And I take it that would require you to
18 conduct a number of search warrants, process a number of crime
19 scenes?

20 A. Yes, sir. Our squad on average did three to four
21 search warrants every week.

22 Q. You indicated that you -- as a collateral duty, you
23 had ERT responsibilities?

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1 A. Yes, sir.

2 Q. And did you receive any specialized training in it?

3 A. Yes, I did.

4 Q. How long did you remain at the -- well, how long did
5 you remain in drugs and guns?

6 A. I remained about five years until shortly after 9/11,
7 and then I became the senior team leader for the Evidence
8 Response Team in Washington.

9 Q. And what would that require?

10 A. That was a full-time job, and essentially I oversaw a
11 team of 40 people, all agents who were trained with additional
12 training beyond what a normal agent receives in the matters of
13 crime scene operations and evidence collection.

14 Q. I take it by that time you had received all that
15 training also; is that correct?

16 A. A significant amount of it, yes, sir.

17 Q. And how long did you remain as the senior team leader
18 of the Washington Field Office ERT?

19 A. About five years, sir.

20 Q. And where did you go from there?

21 A. Headquarters, FBI.

22 Q. What did you do there?

23 A. I went to -- first to the counterterrorism division

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1 where I was a program manager for the counterterrorism cases
2 the FBI was working in the northeastern United States. And
3 then after that I went to -- as the unit chief for operations
4 for the terrorist screen center to manage the watch lists.

5 Q. How long did you remain at the Terrorist Screening
6 Center?

7 A. About a year and a half, sir.

8 Q. Where did you go from there?

9 A. From there I went to New York Field Office, where I
10 became a supervisor on the Joint Terrorism Task Force.

11 Q. How long were you at the JTTF?

12 A. About four and a half years.

13 Q. And where did you go from there?

14 A. From there I went to Newark, New Jersey, where I
15 became an ASAC overseeing the -- a new division that we were
16 setting up for crisis management and crisis response.

17 Q. And did you retire out of Newark?

18 A. Yes, sir, I did.

19 Q. And have you had any employment subsequent to your
20 FBI career?

21 A. Yes, sir, I'm currently the -- employed as the
22 director for Pinkerton's Atlanta office which covers most of
23 the southeast of the United States.

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1 Q. Just briefly, what does Pinkerton do?

2 A. Pinkerton is the old Pinkerton from the 1850s, same
3 company that's been around since then, known previously as the
4 Pinkerton National Detective Agency. Essentially today we've
5 become a corporate risk management entity, everything from
6 armed protection all the way up to developing corporate risk
7 strategies for Fortune 500 companies.

8 Q. Do you have any particularized training in the area
9 of photography?

10 A. Yes, sir, I do.

11 Q. And could you relate that, please?

12 A. Well, in addition to private schools that I have
13 attended, I attended the FBI's advanced photography course, a
14 two-week course taught at Quantico.

15 Q. And what -- do you do this as a hobby, also?

16 A. I do it as a hobby, yes, sir.

17 Q. Have you been involved -- other than the COLE, have
18 you been involved in any other significant domestic or foreign
19 bombing investigations or ----

20 A. Yes, sir, I've been involved in 13 major terrorism
21 incidents, all bombings.

22 Q. All right. And could you just ----

23 A. In the -- well, I've worked -- after the USS COLE,

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1 we -- I was present at the Pentagon for the investigation that
2 we did there. And then other than that, I've worked during
3 two tours in Iraq with the FBI and two tours in Afghanistan,
4 worked several different investigation -- bombing
5 investigations there. I worked a bombing investigation in
6 Qatar, several -- I've worked in Athens and -- quite a few.

7 Q. I want to direct your attention to October of 2000.
8 Did you come to learn that there had been an incident or a
9 bombing in -- of a U.S. warship in Aden Harbor?

10 A. Yes, sir, on the morning of October 12th, the word
11 went out that an incident happened, and everybody who was on
12 the Rapid Deployment Team or the Evidence Response Team needed
13 to be prepared to deploy.

14 Q. All right. And I take it you were going to be one of
15 those persons?

16 A. I was asked if I was available, and, yes, sir, I was.

17 Q. Did you take any action? Did you make any
18 preparation to go to Yemen?

19 A. Essentially, being on that team, we also had our go
20 bags ready and our stuff set out aside, our personal equipment
21 and the equipment that we would need on the truck -- crime
22 scenes. So it was a matter of going to that and breaking out
23 the things that you don't need for this particular environment

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1 and adding the things that you do for that, but it's all set
2 out. Then, of course, we had to go and build the load-out for
3 the team equipment.

4 Q. All right. What do you mean "build the load-out"?

5 A. Well, most of the equipment that the team needs to do
6 its forensic responsibilities to actually work the crime
7 scene, everything from shovels to plastic bags to sifters, all
8 of that, is stored in a warehouse for the -- off site on the
9 team. And we would have to go open up all of the mount-out
10 kits, boxes, and then make an estimate of what we were going
11 to need at this scene and pull it off the shelves, package it
12 up, and get it ready for embarkation.

13 Q. Have you ever been involved in the evidence
14 recovery -- or evidence recovery on a sinking ship?

15 A. No, sir.

16 Q. All right. So this was something new?

17 A. Yes, sir, it was.

18 Q. And after you had gathered up what you thought you
19 were going to need, what did you do with it?

20 A. Well, at that point we palletized it and transported
21 it all over to Andrews Air Force Base where we met military
22 transport.

23 Q. And did you travel with it to Aden?

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1 A. Yes, sir.

2 Q. Did you go directly to Aden?

3 A. We stopped in Germany for refuel and a crew change.

4 Q. When you arrived in Yemen, anything unusual about the
5 landing?

6 A. Other than it was a very -- it was a tactical type of
7 landing, you know, spiral down to a short approach. And then
8 once we were -- we were landing at the airport and on the
9 apron, very quickly we were surrounded by government forces,
10 military forces.

11 Q. You were able, obviously, at some point to leave the
12 airport, correct?

13 A. We were. After -- after a prolonged delay,
14 eventually the diplomatic pieces were all put together and we
15 were allowed off the airplane. We took all of our palletized
16 equipment over to a -- what passed for a customs type of
17 facility, and ran all of that equipment for inspection.

18 Q. Did you have a camera with you?

19 A. I did, yes, sir.

20 Q. And what kind of camera did you have?

21 A. Mamiya 635.

22 Q. Excuse me?

23 A. It was a Mamiya 635, an old-school medium-format

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1 camera that has long since gone the ways of the dinosaur.

2 Q. All right. Not a digital camera?

3 A. Correct. We did -- in the team we did have a digital
4 camera there, but those -- any of -- that was a test. We
5 weren't allowed -- Bureau policy at the time would not allow
6 us to use any digital photographs for evidentiary purposes.
7 It was a new technology, and the courts had not yet approved
8 any of that use.

9 Q. All right. What were your duties and
10 responsibilities going to be regarding the search of the COLE?

11 A. Well, our team was -- did not have as many people, of
12 course, as we would like. So it's very much like a rifle
13 company in that every man is a rifleman. So we were all
14 involved in some capacity of doing evidence, and being
15 shorthanded, everybody would do several different things, and
16 we were all cross trained to do all the different jobs that
17 one needs.

18 My specialty -- and we all had specialties that we
19 tended to work on, so my specialty was photography because of
20 the training and my personal experience with it. So when I
21 wasn't collecting evidence, I was doing -- actually, it was
22 the other way around.

23 When I wasn't doing photography, I was doing all the

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1 other tasks, everything from collecting evidence, bagging and
2 tagging, to fingerprinting, doing superglue, other processing.

3 Q. Did you have a -- is there some sort of photography
4 protocol as far as taking pictures of evidence?

5 A. Generally, yes, there is. You know, what we're
6 taught in the school, if we're going to take photographic
7 evidence of a piece of evidence of some sort, you would
8 take -- take more than one angle of it. You would take a
9 distance shot to give you a perspective of where that piece of
10 evidence was in the scene. And then you would take a closer
11 shot to give you a better perspective of it. And then you
12 would actually go up and take a close-up shot of it. And then
13 you would do the same thing again with some sort of scale put
14 in it, a ruler of sort, something you could take, okay, that's
15 the size of this piece.

16 So typically of a piece of evidence, you would take
17 three or four different photographs. Sometimes the situation
18 didn't allow you to take all of them. For example, if you
19 didn't have a way to take a long-distance shot just because of
20 where it was, yeah, you wouldn't do that.

21 Q. Do you remember when you first traveled out to where
22 the ship was?

23 A. Yes, sir.

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1 Q. All right. And did you conduct any other search
2 initially, other than of the ship?

3 A. Yes. When we first arrived at the location where the
4 ship was -- and again, the ship was tied off -- it wasn't tied
5 up to the shore. It was tied up to a fueling dolphin out
6 probably five, six -- and I'm guessing what the distance was,
7 but it was a good five-minute boat ride from the shore.

8 At the shore we just -- the Marines had already
9 arrived from the FAST company and set up a perimeter for us to
10 lay out our gear, set up our organized program. And while all
11 that was happening, I took the opportunity to walk up and down
12 the beach around that area and look for any evidence that may
13 have washed ashore.

14 TC [MR. MILLER]: Permission to publish Prosecution
15 Exhibit 171, Your Honor, to the witness.

16 MJ [Col SPATH]: You may.

17 TC [MR. MILLER]: Permission to use the ELM0.

18 MJ [Col SPATH]: You may. And again, no need to ask
19 permission since we've covered all these.

20 TC [MR. MILLER]: Okay. I'm sorry, this one is actually
21 going to be on the ----

22 MJ [Col SPATH]: Overhead?

23 TC [MR. MILLER]: ---- computer, yes.

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1 MJ [Col SPATH]: All right.

2 Q. Do you recognize that photograph, sir?

3 A. Yes, sir. It looks like a photograph that I would
4 have taken on the beach that first day.

5 Q. All right. Was it various pieces of -- that is
6 Prosecution Exhibit 171, which I believe has already been
7 identified, admitted?

8 MJ [Col SPATH]: Admitted.

9 Q. Do you recognize the various pieces or items that
10 seem to have washed up or were laying on the shore?

11 A. Yes, sir. In addition to the normal flotsam and
12 jetsam that one finds on a shore like this, there were pieces
13 of evidence -- or there were parts that apparently had been --
14 come from the COLE.

15 Q. All right. Now, after you had done this initial
16 search of the beach, where did you -- did you go out to the
17 ship itself?

18 A. I did not that first day.

19 Q. All right. The second day, did you do so?

20 A. Yes, sir.

21 Q. And when you went out there, what were your assigned
22 duties? What were your assigned responsibilities?

23 A. My role that day was strictly photography, because

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1 normally the first thing that you want to do when you get onto
2 a scene, the number one priority is to preserve that scene as
3 many ways as you can. You have somebody doing a sketch. You
4 want to get the photographers on there to preserve it
5 photographically, and then the other trace evidence and
6 other -- to preserve the perishable parts of it, and
7 photography was a piece of that.

8 Q. The ship itself, how did you find it from an
9 evidentiary standpoint, was it challenging?

10 A. It was challenging.

11 Q. Why was that, sir?

12 A. Well, it was challenging because, first, the crew was
13 still there. The crew was not only there trying to stay out
14 of the way and not -- not disturb any of the evidence. They
15 had been given very strict instructions to move nothing,
16 change nothing, unless you had to do it to save the ship.

17 And that was the other piece. The ship was in
18 constant danger of sinking, and they were being -- having to
19 be very busy about that to do the damage control that they had
20 to do to keep the ship afloat.

21 Q. Now, you indicated that you tried to take various
22 pieces of -- or various angles of the evidence; is that
23 correct?

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1 A. Yes, sir.

2 Q. All right.

3 TC [MR. MILLER]: Permission to publish Prosecution 229,
4 232, 233, 234, 235, and 236 to the witness, Your Honor.

5 MJ [Col SPATH]: You may.

6 Q. I'm showing you Prosecution Exhibit 229 for
7 Identification. Do you recognize this photograph, sir?

8 A. Yes, sir, I do.

9 Q. All right. And what do you recognize it to be?

10 A. I recognize it to be fiberglass part likely of the --
11 of the boat that carried the explosives.

12 Q. And were these the sorts of photographs that you were
13 taking on the COLE?

14 A. Yes, sir.

15 Q. All right. Now, there's a -- for the record, there
16 is a, what looks like a ruler with various markings and
17 circles and lines on it. Could you identify that, please?

18 A. Yes, sir. That is a standard type of scale that we
19 use for the photograph that I mentioned, the different types
20 of photos that you would take. The purpose of that is to show
21 the size of the -- of the item in question.

22 Q. And was this one of the pieces of evidence that was
23 recovered or was found on the COLE?

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1 A. Yes, sir.

2 Q. All right. Fair and accurate depiction of it?

3 A. Yes, sir.

4 Q. All right.

5 TC [MR. MILLER]: Your Honor, the government would move
6 for the admission of 229 at this time.

7 MJ [Col SPATH]: I understand. I'm going to defer at this
8 time.

9 TC [MR. MILLER]: All right. If you would, publish,
10 please, Prosecution 232.

11 Q. Again, do you recognize this photograph?

12 A. Yes, sir.

13 Q. All right. And is this another, again, piece of
14 evidence that was on the USS COLE?

15 A. Yes, sir.

16 Q. All right. Now, typically you would take a
17 photograph of the evidence alone?

18 A. Yes.

19 Q. All right. Fair and accurate depiction of it as it
20 appeared back in October of 2000?

21 A. Yes, sir. That was -- it was consistent with the
22 debris that was on the COLE.

23 Q. Now, would persons point these out to you -- is that

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1 how it would work -- or did you go around and find them
2 yourself?

3 A. A little bit of both. It would happen both ways.
4 Frequently we would actually engage the members of the crew to
5 help us. It would -- it did several things. One, it gave the
6 crew something to do. For the ones who weren't trying to keep
7 the ship afloat, they were trying to stay out of the way. And
8 by getting them to help us, it was also very helpful for us to
9 have somebody who could look at it and say either this is part
10 of the USS COLE or no, this is not. And with their expert
11 knowledge of what things were that were around, it was very
12 helpful.

13 Q. All right. Prosecution Exhibit 233, please. That
14 appears to be the same piece of evidence, however, with a
15 ruler; is that correct?

16 A. Yes, sir.

17 Q. And again, obvious, but what is the purpose of the
18 ruler?

19 A. It would serve the same purpose as the -- as the
20 white one, L-shaped ruler in the other piece. It is to show
21 the scale or size of the -- of the items in question.

22 Q. Fair and accurate depiction of the evidence and the
23 ruler as it appeared on the COLE back in October of 2000?

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1 A. Yes, sir.

2 Q. 234, please. Again, just more evidence that was
3 gathered up on the COLE?

4 A. Yes, sir.

5 Q. Fair and accurate depiction as it appeared on the
6 deck?

7 A. Yes, sir.

8 Q. And I take it was this all over the deck?

9 A. Yes, sir, it was. It was -- it was scattered all
10 over the deck.

11 Q. All right.

12 A. On the various decks, actually.

13 Q. Fair and accurate depiction of how it appeared ----

14 A. Yes, sir.

15 Q. ---- when you photographed it?

16 A. Yes, sir.

17 Q. Next go to 235. Again, I'd ask you to take a look at
18 Prosecution Exhibit 235 for Identification. Appears to be the
19 same piece of evidence; is that correct?

20 A. Yes, sir.

21 Q. But again, it has that ruler with it?

22 A. Yes, sir.

23 Q. All right. And again, for the record, the purpose of

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1 using that ruler in regard to this piece of evidence?

2 A. Is to provide scale.

3 Q. Fair and accurate depiction of how it appeared back
4 in October of 2000 on the COLE?

5 A. Yes, sir.

6 Q. All right. Lastly, 236. Again, is that more
7 evidence from the COLE?

8 A. Yes, sir.

9 Q. All right. Again, fair and accurate depiction as it
10 appeared back then?

11 A. Yes, sir.

12 Q. And again, you're using that ruler to show scale?

13 A. Yes, sir.

14 Q. I take it you bring those with you when you go to
15 crime scenes?

16 A. Yes, sir.

17 TC [MR. MILLER]: Your Honor, I think I've already moved
18 for 229, but the government is also going to move for the
19 introduction of Prosecution 232, 233, 234, 235, and 236.

20 MJ [Col SPATH]: I understand, and I'm going to defer at
21 this time. Thank you.

22 Q. You were also charged with gathering some of the
23 evidence or collecting the evidence; is that correct?

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1 A. Yes, sir.

2 Q. And did you do the collection on the ship itself?

3 A. I did some, yes, sir.

4 TC [MR. MILLER]: Now I'll need to use the ELM0, Your
5 Honor and permission to publish to the witness Prosecution
6 Exhibit 28 -- 28 through 28C for Identification.

7 MJ [Col SPATH]: You may.

8 Q. Has Prosecution Exhibit 28 been placed in front of
9 you, sir?

10 A. Yes, sir, it has.

11 Q. All right. Before we talk about that, I would ask
12 you to take a look at the photograph, Prosecution Exhibit 28A.
13 And do you generally recognize the type of evidence that's
14 contained in that photograph?

15 A. Yes, sir. It's consistent with a fiberglass residue
16 that we found on the USS COLE.

17 Q. And your purpose in seizing that evidence was what?

18 A. I believe there was a strong possibility that it was
19 fragments of the boat that had been used to convey the bomb or
20 the explosives to the boat.

21 Q. All right. And that has at the bottom a ruler,
22 correct?

23 A. Yes, sir.

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1 Q. It has a Q tab number on it, correct?

2 A. Yes, sir.

3 Q. And you're familiar with that system; is that
4 correct?

5 A. I am. It's the system the laboratory uses to mark
6 their questioned items.

7 Q. Are you able to read that Q number?

8 A. Q298, sir.

9 Q. All right. And you have the bag in front of you; is
10 that correct?

11 A. I do.

12 Q. Do you recognize that bag?

13 A. I do, sir.

14 Q. What do you recognize that bag to be?

15 A. I recognize it to be an evidence bag of residue that
16 I had collected off of the USS COLE.

17 Q. And do you recognize the handwriting on the bag?

18 A. Yes, sir, the handwriting is mine.

19 Q. All right. If you would, please, read into the
20 record the description of the evidence, the date and time of
21 recovery, the location of the recovery, and by whom it was
22 recovered.

23 A. Yes, sir. The description of the evidence is "Boat

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1 pieces." The time of recovery -- or the date of recovery was
2 10/19/2000. The location was at the Aft VLS, the vertical
3 launch system. It was recovered by me. It was seized for
4 analysis and it was received from the USS COLE, and my
5 signature indicates that it was brought in at 10/24/2000 at
6 10:45.

7 Q. Can you explain why there's a difference between the
8 date and time of recovery and the date that it was provided to
9 the evidence custodian?

10 A. Generally what we would do, particularly as we were
11 moving quickly in the early -- to preserve the crime scene,
12 much of it was collected and then put into -- taken to the
13 compartment where we would store the evidence, and then we'd
14 come back and do the paperwork for the chain of custody. So
15 it was in a secured, locked environment allowing us to move
16 forward, then come back and do the chain of custody.

17 Q. When -- when you actually recovered it on the 19th,
18 did you put it in a -- did you seal the ----

19 A. Yes, sir, I sealed the bag, the inner bag of this set
20 of bags.

21 Q. All right. So it was sealed on the 19th, and it was
22 turned over on the 24th?

23 A. Yes, sir.

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1 Q. All right. Does the bag have a Q number on it?

2 A. Yes, it does.

3 Q. And what is that Q number?

4 A. Q298.

5 Q. All right. And that matches the Q number on
6 Prosecution Exhibit numbered -- Prosecution Exhibit 28A for
7 Identification, correct?

8 A. Yes, sir, it does.

9 Q. I think I may have already asked you. Can you see
10 the item inside ----

11 A. Yes, I can.

12 Q. ---- 28?

13 And does it appear to be the same item in Prosecution
14 Exhibit 28A?

15 A. Yes, it does.

16 Q. Is there a 1B number on that bag?

17 A. Yes. 1B817.

18 Q. And does it have an MDK number up by the pouch
19 number?

20 A. MDK-129.

21 Q. Is there a chain of custody form attached to the
22 exhibit?

23 A. Yes, sir, there is.

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1 Q. And do you recognize that chain of custody form?

2 A. I do, sir.

3 Q. And do you recognize your signature on it?

4 A. I do.

5 Q. Where is your signature?

6 A. My signature is on the first line above the word
7 "Collected," and it indicates that I received -- collected it
8 on 10/24/2000 at 1045.

9 Q. And that matches the chain of custody form that you
10 have on the bag itself, correct?

11 A. Yes, sir.

12 Q. And are you able to associate that chain of custody
13 form with Prosecution Exhibit 28?

14 A. Yes, sir, I am. It bears the same 1B number, 817,
15 and it has the same MDK number, 129.

16 Q. Placing on the ELM0 Prosecution Exhibit 28C for
17 Identification. Do the first four entries of twenty -- 28C,
18 are they identical to the chain of custody form that you have
19 just described?

20 A. Yes, sir, they are.

21 Q. For the record, is that your signature on the top
22 where it says "Collected"?

23 A. Yes, sir, it is.

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1 Q. Lastly, I'm placing on the ELM0 a photograph,
2 Prosecution Exhibit 28B for Identification. Do you recognize
3 that photograph, sir?

4 A. Yes, sir, I do.

5 Q. And what do you recognize it to be? A photograph of
6 what?

7 A. I recognize it to be a photograph of the -- of the
8 envelope or the bag that was used to collect the evidence.

9 Q. Is it a fair and accurate depiction of it?

10 A. Yes, sir, it is.

11 TC [MR. MILLER]: Government would move at this time, Your
12 Honor, for the introduction of 28A, 28B, and 28C.

13 MJ [Col SPATH]: Thank you.

14 Q. Placed before you is Prosecution Exhibit 30; is that
15 correct?

16 A. Where is the -- yes, sir.

17 Q. Before we talk about that, I'd ask you to take a look
18 at the photograph placed on the ELM0, Prosecution Exhibit 30A.
19 Generally, do you recognize that kind of -- that type of
20 evidence?

21 A. Yes, sir.

22 Q. And was that the type of evidence that was being
23 seized on the COLE?

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1 A. Yes, sir, it's consistent with the debris that we
2 found on the USS COLE.

3 Q. And does that particular photograph, Prosecution
4 Exhibit Number 30A for Identification -- Prosecution
5 Exhibit 30A for Identification -- does it have a Q tab number?

6 A. Yes, sir, it does. Q304.

7 Q. All right. If you would look at the bag, please. Do
8 you recognize that bag, Prosecution Exhibit 30?

9 A. Yes, sir, I do.

10 Q. And how are you able to recognize it?

11 A. It has the -- it has my handwriting on it with my
12 initials and signature.

13 Q. If you could for the record, please, read into the
14 record the description of the evidence, the date and time of
15 the recovery, the location of the recovery, and by whom it was
16 recovered.

17 A. Yes, sir. The type of evidence is listed as boat
18 pieces. It was recovered on 10/19 and sifted on 10/24.

19 Q. Let me stop you there. What does that mean?

20 A. We collected the evidence -- collected the debris and
21 secured the debris, realized that we had a great deal of
22 debris, not as much of it which had potential evidentiary
23 value as we needed. So we took it to sifters, basic screen

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1 type of -- table-type screen. We put the stuff on there and
2 it would sift through the dust and the dirt and all the things
3 that really had no evidentiary value, and then we could see
4 the pieces that were remaining, and that allowed us to cut the
5 bulk down of the amount of material that we were going to have
6 to transport to the lab.

7 Q. And when did you recover the initial -- the initial
8 items, I guess, before sifting?

9 A. We initially recovered it, as indicated on my bag
10 here, on 10/19.

11 Q. And from where did you recover it?

12 A. The harpoon deck.

13 Q. And it indicates it was recovered by you; is that
14 correct?

15 A. Yes, sir.

16 Q. There's a chain of custody form also filled out at
17 the bottom. Could you read that into the record, please?

18 A. Yes, sir. The chain of custody on the bag says
19 "received from the USS COLE, Garrett McKenzie," my signature,
20 on the date of 10/19/01 [sic], and then again I signed it as
21 received.

22 Q. The bag, does it have a Q number on it?

23 A. Yes, sir, it does.

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1 Q. And what is that Q number?

2 A. The Q number is 304.

3 Q. And that would match the Q number on Prosecution
4 Exhibit numbered -- Prosecution Exhibit 30A for
5 Identification, correct?

6 A. Yes, sir, it does.

7 Q. Is there a 1B number on the bag?

8 A. Yes, sir, 1B810.

9 Q. Is there a MDK number on it, also?

10 A. Yes, sir, MDK-123.

11 Q. Can you see inside the bag?

12 A. My view is obstructed, but I can see most of it, yes,
13 sir.

14 Q. Does it appear to be the same material that is
15 contained in the picture, Prosecution Exhibit 30A for
16 Identification?

17 A. Yes, sir.

18 Q. Is there a chain of custody form attached?

19 A. Yes, sir, there is.

20 Q. Do you recognize that form?

21 A. I do, sir.

22 Q. Does it contain your signature?

23 A. It does, on the first line above the word

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1 "Collected."

2 Q. Are you able to associate that chain of custody form
3 with Prosecution Exhibit 30?

4 A. Yes, sir, I can. They bear the same 1B number of 810
5 and the same MDK number of 123.

6 Q. Placing on the ELM0 Prosecution 30D for
7 Identification. Are the first four entries on 30D, 30D for
8 Identification, are they identical to the chain of custody
9 form you have just described?

10 A. Yes, sir, they are.

11 Q. Lastly, I want to show you a couple of photographs.
12 First, Prosecution Exhibit 30B for Identification, do you
13 recognize that, sir?

14 A. Yes, sir, I do.

15 Q. And what do you recognize that to be?

16 A. I recognize it to be this bag that contained the
17 evidence.

18 Q. Fair and accurate depiction of it?

19 A. Yes, sir.

20 Q. Showing you Prosecution Exhibit 30C. Do you
21 recognize that -- let me get that. Do you recognize that,
22 sir?

23 A. Yes, sir.

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1 Q. And what do you recognize that to be?

2 A. One of the inner bags of this bag.

3 Q. Of Prosecution Exhibit 30?

4 A. Yes, sir.

5 Q. Fair and accurate depiction of it?

6 A. Yes, sir.

7 TC [MR. MILLER]: Move for the admission, Your Honor, at
8 this time, of 30A, 30B, 30C, and 30D.

9 MJ [Col SPATH]: Thank you.

10 Q. Sir, I think we have handed you Prosecution
11 Exhibit 108. Is that in front of you?

12 A. Yes, sir, it is.

13 Q. I'm placing on the ELM0 first Prosecution
14 Exhibit 108A and ask you if you recognize generally that type
15 of material.

16 A. Yes, sir. Again, it's consistent with the debris
17 that we collected from the USS COLE's outer decks.

18 Q. And your purpose in collecting this sort of debris?

19 A. I believe that it was part of the debris from the
20 explosives, or the boat that carried the explosives, so we
21 collected it for analysis back at the laboratory.

22 Q. It also has a Q number on the ruler underneath it; is
23 that correct?

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1 A. Yes, sir.

2 Q. And can you read that number?

3 A. Yes, sir, I can. It's Q299.

4 Q. I'd ask you to take a look at Prosecution

5 Exhibit 108. Do you recognize that, sir?

6 A. Yes, sir.

7 Q. And how are you able to recognize it?

8 A. I recognize it because it's my handwriting on the bag
9 and my signature.

10 Q. So it would be items that you seized yourself
11 personally?

12 A. Yes, sir.

13 Q. All right. If you could read into the record the
14 description of the evidence, the date and time of the
15 recovery, the location of the recovery, and by whom it was
16 recovered.

17 A. The description of the evidence is "Sifted stuff."
18 The date and time of recovery was 19 October 2000, and it was
19 on Deck 2, my name as the recovering agent, on the USS COLE,
20 my signature, and then again, on 10/24 at 10:50.

21 Q. All right. And again, the lag time between the 19th
22 and the 24th ----

23 A. Correction, sir. It was actually 10:05 a.m.

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1 Q. And again, the difference, the lag time?

2 A. The lag time was this was obviously the stuff that we
3 sifted -- stuff, again, I apologize for the lack of -- but it
4 was the debris that we sifted, originally collected on the
5 19th, and then as we got more time and were still around --
6 remember, as we were initially there we were in constant fear
7 that the ship would sink. So we went and collected bulk, and
8 now we were -- later we had the time to go back and whittle
9 that down to more relevant items.

10 Q. All right. And is there a Q tag number on the bag
11 itself?

12 A. Yes, sir. And it's Q299.

13 Q. And does that match the number on Prosecution
14 Exhibit 108A?

15 A. Yes, sir, it does.

16 Q. Is there a 1B number on the bag?

17 A. Yes, sir, 1B818.

18 Q. There's an -- is there an MDK number on it?

19 A. Yes, sir, MDK-130.

20 Q. Are you able to see inside the bag, sir?

21 A. Yes, sir, I am.

22 Q. Does it appear to be the same item that's pictured in
23 Prosecution Exhibit 108A?

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1 A. Yes, sir, the properties are consistent.

2 Q. Is there a chain of custody form there?

3 A. Yes, sir, there is.

4 Q. And do you recognize your signature on it?

5 A. Yes, sir. My signature is on the first line above
6 the word "Collected," and it was collected on 10/24/2000 at
7 2:30 p.m.

8 Q. And the -- are you able to associate this chain of
9 custody form with Prosecution Exhibit 108?

10 A. Yes, sir. They ----

11 Q. And how are you able to do that, sir?

12 A. They have the same 1B number, 818, and the same
13 MDK number, 130.

14 Q. I'm placing on the ELM0 Prosecution Exhibit 108C for
15 Identification. Are those entries, first four entries,
16 identical to the entries on the chain of custody form you have
17 just described?

18 A. Yes, sir, they are.

19 Q. All right. I'm showing you a photograph, Prosecution
20 Exhibit 108B. Do you recognize that, sir?

21 A. Yes, sir, I do.

22 Q. What do you recognize that to be?

23 A. It's the evidence bag that contains the -- the item

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1 we're talking about right now.

2 Q. Fair and accurate depiction of it?

3 A. Yes, sir.

4 Q. Has Prosecution Exhibit 131 been handed to you?

5 A. Yes, sir.

6 Q. Before we talk about the actual exhibit, I'd ask you
7 to take a look at the photograph, Prosecution Exhibit 131A for
8 Identification on the ELM0. Do you recognize the types of
9 evidence or the types of items contained in the photograph?

10 A. Yes, sir, I do. They're consistent with the debris
11 that we collected off of the USS COLE.

12 Q. Is there a Q number contained on that, sir?

13 A. Yes, sir.

14 Q. If you're able to -- are you able to make it out?

15 A. I believe it's a 308. It's virtually like an eye
16 test, but yes, 308.

17 Q. All right.

18 A. Or 303. I can't see that last number very well.

19 Q. Did -- if you would take a look at the photograph --
20 excuse me, the item in front of you.

21 A. Yes, sir.

22 Q. Prosecution 131B -- or excuse me, Prosecution
23 Exhibit 131 for Identification. Do you recognize that bag?

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1 A. I do, sir.

2 Q. And how are you able to recognize it, sir?

3 A. Again, it has my signature, my initials, and the
4 handwriting on it is mine.

5 Q. And if you could read into the record, please, for
6 His Honor, the description of the evidence, the date and time
7 of the recovery, the location of the recovery, by whom it was
8 recovered.

9 A. And the description of the evidence was "Boat parts."
10 Date and time of recovery was 10/19/2000. This also came from
11 the harpoon deck. It was recovered by myself, SA McKenzie,
12 and it was received from the USS COLE, again, my signature and
13 the times of 10/24/2000 at 10:15 a.m., and my signature is on
14 the bag.

15 Q. And again, the explanation for the lag time between
16 the 19th and the 24th?

17 A. Again, it was the sifting process in an effort to
18 cull out the evidence of value.

19 Q. Does -- is there a Q number on the evidence bag ----

20 A. Yes, sir.

21 Q. ---- Prosecution Exhibit 131?

22 A. Yes, sir, Q308.

23 Q. All right. Would that appear to be the same number

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1 on Prosecution Exhibit 131A?

2 A. Yes, sir, it does.

3 Q. Is there a 1B number on that bag, Prosecution
4 Exhibit 131?

5 A. Yes, sir, 1B815.

6 Q. And is there an MDK number on the Prosecution
7 Exhibit 131 for Identification?

8 A. Yes, sir, MDK-127.

9 Q. Are you able to see inside the bag?

10 A. I am, sir.

11 Q. Are the items inside the bag the same items contained
12 in the photograph, Prosecution Exhibit 131A?

13 A. Yes, sir.

14 Q. Is there a chain of custody form there?

15 A. Yes, sir, there is.

16 Q. And does it have a -- excuse me. Do you recognize
17 it?

18 A. I do, sir.

19 Q. And is your signature contained on it?

20 A. Yes, sir, my signature is on the first line over the
21 word "Collected."

22 Q. Are you able to associate that chain of custody form
23 with Prosecution Exhibit 131?

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1 A. Yes, sir. They have -- both have 1B815 and MDK-127
2 on them.

3 Q. Placed on the ELM0 Prosecution Exhibit 131C for
4 Identification. Is the Prosecution Exhibit 131C for
5 Identification -- are the first four entries identical to the
6 ones contained on the chain of custody form you have just
7 described?

8 A. Yes, sir, they are.

9 Q. Placing before you Prosecution Exhibit 131B for
10 Identification on the ELM0. Do you recognize that, sir?

11 A. Yes, sir, I do.

12 Q. And what do you recognize it to be?

13 A. I recognize it to be the bag containing this
14 evidence.

15 Q. Fair and accurate depiction of it?

16 A. Yes, sir.

17 TC [MR. MILLER]: The government would move for the
18 admission at this time, Your Honor, of prosecution -- excuse
19 me.

20 The government would move at this time, Your Honor,
21 for the admission of Prosecution Exhibit 131A, 131B, and 131C.

22 MJ [Col SPATH]: Thank you.

23 TC [MR. MILLER]: And I would also offer at this time

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1 Prosecution Exhibit 131 -- excuse me, Prosecution 108A, 108B,
2 and 108C.

3 MJ [Col SPATH]: Thank you.

4 TC [MR. MILLER]: Last exhibit I think for this witness,
5 Your Honor.

6 Q. Sir, I think has been placed before you is
7 Prosecution Exhibit 132; is that correct?

8 A. That is correct, sir.

9 Q. Placing on the ELM0 a photograph, Prosecution
10 Exhibit 132A. Do you recognize that type of material?

11 A. Yes, sir. It's consistent with the debris that we
12 collected off of the USS COLE.

13 Q. Does that photograph contain a Q tag?

14 A. Yes, sir, it does. Q309.

15 Q. If you would, take a look at the evidence bag itself.
16 Do you recognize that, sir?

17 A. Yes, sir, I do.

18 Q. And how are you able to recognize it?

19 A. I'm able to recognize it by my signature and my
20 handwriting on it.

21 Q. If you could, please, read into the record the
22 description of the evidence, the date and time of recovery,
23 the location of the recovery, and by whom it was recovered.

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1 A. The description of the evidence -- evidence is "Boat
2 pieces." The date of recovery was 10/20/2000. Location of
3 recovery is illegible on this.

4 Q. All right.

5 A. It looks like 02, so I might have ----

6 Q. If you're unable to read it, that's all right.

7 A. Yes, sir.

8 Q. It says -- by whom was it recovered?

9 A. McKenzie, my name is there, along with the signature,
10 indicating the recovery.

11 Q. And is there a chain of custody ----

12 A. Yes, sir.

13 Q. ---- portion?

14 A. There's a chain of custody on the bag which says that
15 it was collected from the USS COLE, with my signature, on
16 10/24 at 10:15 a.m.

17 Q. It appears that you have turned all the evidence
18 over, all the evidence that you collected at least we've shown
19 you today, over on the 24th at 10:15; is that correct?

20 A. Yes, sir, that would be the time we were doing the
21 sifting -- the sifting operation.

22 Q. All right. Does the bag itself have a Q number?

23 A. Yes, sir, it does. Q309.

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1 Q. And does that match the number in Prosecution
2 Exhibit 132A for Identification?

3 A. Yes, sir, it does.

4 Q. Are you able to look inside the bag?

5 A. Yes, sir, I can.

6 Q. And does it appear that the materials or items
7 contained in the bag are identical to the ones contained in
8 the photograph, Prosecution Exhibit 132A?

9 A. Yes, sir.

10 Q. Does the bag have a 1B number?

11 A. Yes, sir, it does. 1B816.

12 Q. And does it have an MDK number?

13 A. Yes, sir, MDK-128.

14 Q. Do you have a chain of custody form there with it?

15 A. I do, sir.

16 Q. All right. And do you recognize that form?

17 A. I do, sir.

18 Q. Does it contain your signature?

19 A. It does. It contains my signature over the word
20 "Collected" on the first line, and the date is 10/24/2000 at
21 10:15 a.m.

22 Q. Are you able to associate that chain of custody form
23 with Prosecution Exhibit 132?

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1 A. Yes, sir. They both bear the 1B number of 816 and
2 MDK number 128.

3 Q. Placing on the ELM0 Prosecution Exhibit 132C for
4 Identification. Are the four entries on the Exhibit 132C
5 identical to the chain of custody form you've just described?

6 A. Yes, sir, they are.

7 Q. Placing on the ELM0 Prosecution Exhibit 132B for
8 Identification. Do you recognize that photograph?

9 A. Yes, sir, I do.

10 Q. And what is it a photograph of?

11 A. It's a photograph of the evidence bag containing the
12 item we're speaking of now.

13 Q. All right. Fair and accurate depiction of it?

14 A. Yes, sir.

15 TC [MR. MILLER]: Your Honor, the government would move at
16 this time for the admission of Prosecution Exhibits 132A,
17 132B, and 132C.

18 MJ [Col SPATH]: Thank you.

19 Q. As to any of these exhibits, do you have any reason
20 to believe that they have been changed or altered in any way?

21 A. Well, the lab -- the lab would have done -- would
22 have performed examinations on them, some of which may be
23 invasive or intrusive, but intact. They remain the same as I

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1 collected them.

2 TC [MR. MILLER]: All right. I have nothing further, Your
3 Honor. Thank you.

4 MJ [Col SPATH]: Defense Counsel, any questions?

5 DDC [LT PIETTE]: Defense has -- takes no position.

6 MJ [Col SPATH]: All right. Thank you. And again, I
7 think I've commented on it enough over the course of the days
8 and will in our written findings ultimately.

9 Agent McKenzie, let me first thank you for coming to
10 testify in person. I do appreciate it when witnesses come
11 down here in person. It's certainly very helpful for us to
12 resolve these matters.

13 I'm going to give you a standard order. Don't
14 discuss your testimony until this issue has been resolved.
15 However, the difference here being it could be a while before
16 this issue is resolved. So the order is in effect for a
17 while. Do you understand the order?

18 WIT: Yes, sir, I do.

19 MJ [Col SPATH]: All right. And again, thanks again for
20 coming down in person. You're excused.

21 WIT: Thank you, sir.

22 [The witness was warned, temporarily excused, and withdrew
23 from the courtroom.]

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1 MJ [Col SPATH]: Mr. Miller, before we break for lunch,
2 can you give me an idea -- after lunch we have two more?

3 TC [MR. MILLER]: Two more, Your Honor, and I believe
4 we'll probably finish with them this afternoon and that will
5 be all the 207 we have for the week.

6 MJ [Col SPATH]: All right. I understand. For the two
7 this afternoon, do you have an estimate of how many real
8 exhibits they're going to be handling?

9 TC [MR. MILLER]: Between them, probably 14.

10 MJ [Col SPATH]: Okay. Then 1330 should be good. Some
11 people here have I know a few things to do over the lunch
12 break, so we'll come back at 1330. We'll see you then. We're
13 in recess.

14 [The R.M.C. 803 session recessed at 1203, 16 November 2017.]

15 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1336,
2 16 November 2017.]

3 MJ [Col SPATH]: These commissions are called to order.
4 All the parties who were present at our last session are again
5 present.

6 Do we have any update on Ms. Yaroshefsky yet?

7 TC [MR. MILLER]: General Martins.

8 CP [BG MARTINS]: Your Honor, we have been in contact with
9 her counsel and we have -- we do not anticipate that you will
10 receive any request for relief from the subpoena, pursuant to
11 your authority to do that under -- and responsibility to do
12 that under 703.

13 We are in coordination on specific travel
14 arrangements, so we do anticipate her appearing at this point.
15 And there is a time, you know, for her attorney to get there
16 and all of the logistics to come together. Were she to
17 actually be able to be in the witness room and up on the
18 screen, if that were to happen, say, Your Honor, at 1400, I
19 wouldn't be surprised. But that's still coming together and
20 we'll keep you updated.

21 MJ [Col SPATH]: Perfect. Thank you. I know there is a
22 filing coming with a request to discuss, I think, what I'm
23 interested in getting declassified, if possible.

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1 CP [BG MARTINS]: Yes, there is, Your Honor. And just to
2 sort of foreshadow that, if you will ----

3 MJ [Col SPATH]: Sure.

4 CP [BG MARTINS]: ---- is we will be asking for an
5 ex parte in camera -- not ex parte, correction -- an in camera
6 but not ex parte conference under M.C.R.E. 505(d), which gives
7 us authority to, you know, consider, of course, the
8 implications of things that may impinge upon classified
9 matters. And we would like to raise, among other things, in
10 that potential modalities for dealing with things that may be
11 asked or said in that.

12 So -- and I think we're seeking that either late
13 today or early tomorrow. I think -- I don't want to get ahead
14 of ----

15 MJ [Col SPATH]: No, I know it's coming. I'm not sure if
16 it's in yet. If it is, it just came in.

17 CP [BG MARTINS]: I don't think we've actually filed it.
18 I think I just saw the last draft of that.

19 MJ [Col SPATH]: Okay.

20 MATC [COL WELLS]: Your Honor, Colonel Wells. That's
21 correct, sir. We'll draft that and file that before 1600
22 today.

23 MJ [Col SPATH]: And maybe it was a request for the AE

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1 number that I probably saw.

2 CP [BG MARTINS]: Yes, Your Honor.

3 MJ [Col SPATH]: Okay. My plan would be then to take that
4 up sometime late tomorrow morning or around noon-ish, assuming
5 that I grant it, but it makes some sense so we can talk
6 through -- what my direction was the other day, make sure
7 we're on the same page.

8 And so for both sides, just to have that kind of as a
9 target, we'll do that before Ms. Yaroshefsky and give the
10 court time to get everything set up after a classified session
11 for her planned testimony. Perfect. Thanks.

12 Okay. Sorry about that. Mr. Miller, I know you're
13 ready to go. Call your next witness.

14 TC [MR. MILLER]: Thank you, Your Honor. The government
15 calls Steven Krueger.

16 Step forward, step up to the witness stand, please.
17 Remain standing. Would you raise your right hand, please.
18 STEVEN T. KRUEGER, civilian, was called as a witness for the
19 prosecution, was sworn, and testified as follows:

20 DIRECT EXAMINATION

21 Questions by the Trial Counsel [MR. MILLER]:

22 Q. State your name for the record.

23 A. My name is Steven T. Krueger.

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1 Q. You are form -- were you formerly an FBI agent?

2 A. Yes, I was.

3 Q. And when did you retire from the FBI?

4 A. I retired in March of 2015.

5 Q. I want to talk a little bit about your background.

6 You attended college; is that correct?

7 A. I did. I graduated from SUNY Fredonia in Upstate New
8 York with a bachelor's degree in chemistry in 1987.

9 Q. For the record, SUNY is the State University of New
10 York?

11 A. Yes.

12 Q. And did you obtain any graduate degree?

13 A. I obtained my master's degree in chemistry from the
14 University of Maryland at College Park in 1990.

15 Q. Subsequent to your obtaining your master's degree,
16 did you obtain any law enforcement employment?

17 A. Yes, after graduating with my master's degree, I was
18 employed with the DEA in D.C. as a forensic chemist, I believe
19 starting July of 1990.

20 Q. And how long did you work for the Drug Enforcement
21 Administration?

22 A. Until the end of '94, into January of '95.

23 Q. What were your duties, what were your

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1 responsibilities at the DEA?

2 A. I was a forensic chemist with the DEA, working out of
3 their Mid-Atlantic Laboratory in D.C., and the job was to
4 analyze evidence for the existence of controlled substances.

5 Q. I take it you would process and handle evidence on a
6 routine basis?

7 A. That's correct.

8 Q. Almost daily?

9 A. Yes.

10 Q. And you were responsible for things like chain of
11 custody, storage of the items, things of that ----

12 A. Correct.

13 Q. You ever testify as an expert?

14 A. Yes, several times.

15 Q. In what area?

16 A. In the area of forensic chemistry, drug chemistry.

17 Q. Now, you indicated that you remained at the DEA until
18 the beginning of 1995 -- late '94, early '95. What did you do
19 at that time?

20 A. At that time I was -- I was hired by the FBI as an --
21 as a special agent.

22 Q. Did you obtain -- did you attend the New Agent School
23 at Quantico?

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1 A. I did, in January of 1995.

2 Q. And did you, like the other persons, receive evidence
3 collection training and training in the processing of crime
4 scenes?

5 A. Yes.

6 Q. After New Agent School, what was your first -- first
7 office?

8 A. My first office and assignment was in the Las Cruces
9 Resident Agency out of the Albuquerque Division in New Mexico.

10 Q. What was your squad -- what squad were you assigned?

11 A. I was primarily -- I was primarily assigned as a
12 criminal agent working drugs and public corruption.

13 Q. I take it as a drug investigator, you had occasion to
14 investigate numerous crime scenes?

15 A. Yes.

16 Q. Seize numerous -- or various pieces of evidence?

17 A. Correct.

18 Q. How long did you remain in the Las Cruces RA?

19 A. I was there until the summer of '98, which is when I
20 was -- when I transferred to -- back to FBI Headquarters in
21 the Laboratory Division in their -- their Explosives Unit and
22 Chemistry subunit.

23 Q. What was your responsibilities? What were your

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1 duties?

2 A. Back in the laboratory I was an examiner responsible
3 for analyzing evidence, explosive evidence and residue for the
4 existence of explosives.

5 Q. Would you investigate FBI cases only?

6 A. Oh, no. No. Primarily the vast majority of them
7 were state and local cases.

8 Q. Did you receive any specialized training when you
9 took this assignment?

10 A. Yeah, the training was -- lasted about a year, which
11 was specialized in explosive chemistry and explosive residue
12 work.

13 Q. Did you ever become a trainer or an instructor in
14 this area?

15 A. Yes, I provided instruction in evidence collection.

16 Q. And would that be to state and local police officers?

17 A. Yes.

18 Q. How long did you remain in the Lab Division?

19 A. Until 2002, early 2002. I then was transferred to
20 the Counterterrorism Division, the WMD directorate.

21 Q. And how long did you remain at the -- I guess WMD
22 stands for weapons of mass destruction?

23 A. Correct.

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1 Q. You remained there how long?

2 A. I was there until the end of -- the end of 2004.
3 Beginning of January of 2005 I transferred to Lafayette,
4 Louisiana.

5 Q. All right. And that would be in the New Orleans
6 Division; is that correct?

7 A. Correct.

8 Q. And how long did you remain in Lafayette?

9 A. I was the supervisor down there in Lafayette from
10 that point until January of 2009.

11 Q. And what happened in 2009, sir?

12 A. I was promoted to the assistant special agent in
13 charge of the Little Rock Division over their criminal
14 program.

15 Q. And how long did you remain at Little Rock?

16 A. In February of 2011, I was promoted to -- back to the
17 Training Division in Quantico, Virginia over their instruction
18 section.

19 Q. You became head of instruction?

20 A. That's correct. I was responsible and with the
21 oversight of all the instruction and the instructors at the
22 academy.

23 Q. Did that include courses and training in evidence

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1 collection, crime scene processing?

2 A. Yes, that was a part of it.

3 Q. How long did you remain as the head of the
4 instruction at the academy?

5 A. Until late summer of 2013, at which point I
6 transferred back to Lafayette, Louisiana, for the remainder of
7 my career.

8 Q. And you retired in?

9 A. March of 2015.

10 Q. And subsequent to your FBI career, have you been
11 employed?

12 A. Yes.

13 Q. And how have you been employed?

14 A. For about four months right after retirement I
15 assisted the State of Louisiana Inspector General's Office
16 for -- for about four months as a contractor, and then I was
17 hired back on as a retired annuitant with the FBI Security
18 Division in August of 2015 and have been there since.

19 Q. Now, you worked the USS COLE case, correct?

20 A. That's correct.

21 Q. In addition to the COLE -- or other than the COLE,
22 have you ever investigated any other notable or large bomb
23 scenes?

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1 A. Two. Two notably. The -- right before the
2 deployment to the COLE, I was deployed out to -- to Sri Lanka
3 to investigate an alleged bombing of a helicopter crash. And
4 then in 2002 I was deployed to the U.S. Consulate bombing in
5 Karachi.

6 Q. I want to direct your attention back to October of
7 2000. Where were you stationed at that time?

8 A. I was in the Laboratory Division in D.C.

9 Q. Were you a member of any team at that time?

10 A. Yeah, at that time we had initiated some Rapid
11 Deployment Teams and ----

12 Q. What is a Rapid Deployment Team, sir?

13 A. Right about that time the Bureau was beginning to
14 deploy on several occasions to these post-blast scenes, so the
15 Laboratory Division had created these -- and identified
16 specific people for Rapid Deployment Teams so that when our
17 resources were requested, then we would identify and mobilize
18 one team.

19 Q. And what would be your responsibilities on that team?
20 What would your duties be?

21 A. So I was identified as an explosives chemist, as a
22 part of that Rapid Deployment Team, with the responsibility on
23 scene of handling and collecting trace evidence for the

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1 possibility of having it be explosive residue.

2 Q. Now, are you familiar with the terms "bulk evidence"
3 and "trace evidence"?

4 A. Yes.

5 Q. What is the difference between those two types of
6 evidence, sir?

7 A. In the most simplistic way, the bulk evidence is that
8 which you can see and pick up and handle, and the trace
9 evidence is that which you can't see, and you're sampling
10 different areas for possibilities of traces.

11 Q. And your area of expertise was in trace evidence?

12 A. Yes.

13 Q. Do you recall being notified of the bombing of the
14 USS COLE?

15 A. Yes.

16 Q. And did you deploy as part of this Rapid Deployment
17 Team?

18 A. Yes.

19 Q. Do you remember who the other team members were?

20 A. On the flight that left Andrews Air Force Base, I
21 recall being on the plane with Don Sachtleben and Leo West.

22 Q. And prior to getting on the plane, between the time
23 you were notified and the time you got on the plane, notified

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1 of the bombing and you got on the plane, did you put together
2 any sort of supplies, any sort of equipment to take with you
3 to Yemen?

4 A. Yes. At that time we would -- we would package up a
5 kit. Primarily I would be responsible for packaging up the
6 kit for the residue analysis, the trace analysis, which would
7 include the protective gear, the Tyvek suits and the gloves
8 and the forceps and the glass vials and the cotton swabs,
9 et cetera.

10 Q. So the things that you would normally use in trying
11 to find trace evidence?

12 A. Correct.

13 Q. Did you bring a change of clothes, things of that
14 nature, also?

15 A. Yes.

16 Q. Do you remember landing in Aden?

17 A. Yes, I do.

18 Q. All right. Now, at the time that you landed -- or
19 excuse me. By the time you landed in Aden, I take it you knew
20 what it was that was going to be asked of you to do on the
21 ship, correct?

22 A. Sure, yes.

23 Q. And if you could relate, what was it that you

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1 thought, or what event was going to be expected of you
2 regarding the processing of the COLE?

3 A. So the first thing that has to be done in a scene
4 like that is to secure the trace evidence. So you've got to
5 get out there first, the trace folks have to get out there
6 first to swab and collect as much trace evidence as they can
7 before the bulk of the resources get there to -- to then
8 gather up the bulk evidence.

9 Q. Now, it may be obvious, but why is it that you must
10 get there first and do your job at the earliest?

11 A. So with trace evidence, you certainly want to limit
12 contamination as best you can. So you want to secure that
13 evidence prior to anyone else or anything else destroying it
14 or contaminating it.

15 Q. And I think I -- I think you indicated you flew to
16 Yemen, correct?

17 A. Yes.

18 Q. Anything unusual occur upon landing?

19 A. Yeah. I mean upon landing the -- it was an
20 interesting environment, given the fact that we were there
21 to -- to try to help and secure some evidence and see what
22 happened. And our flight landed at the airport, and it seemed
23 somewhat abandoned. There wasn't anything going on on the

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1 tarmac or even in the -- in the airport itself.

2 And the minute the back of the -- the back of the
3 plane let down, the Yemeni military had surrounded the plane,
4 initially we thought in an effort to, you know, provide
5 security for us. But it didn't take long to see that the
6 Yemeni military was actually facing us, with their guns
7 pointed at us, versus securing us away. So immediately it
8 gave us pause as to the difficulty of the situation that we
9 were about to incur.

10 And then -- and then we had to sit on the plane for
11 what seemed like half the afternoon, where they grabbed --
12 they grabbed all of our weapons and they grabbed all of our
13 passports, and they took them off into the airport; and we
14 continued to wait on the plane until those came back. And
15 then once -- once they had returned all of that stuff, then --
16 then we finally got off the plane and got into the airport.

17 And then they had the -- I mean, all the equipment
18 that was on the plane, they had to go through the x-ray, which
19 I don't think was even working and ----

20 Q. The equipment that had to go through the x-ray, did
21 that include the equipment that you had brought?

22 A. Yeah. They -- they passed everything through what
23 seemed like a nonworking x-ray machine.

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1 Q. But you were able to get your equipment through,
2 correct?

3 A. Yes.

4 Q. Did you then go to a hotel to stay?

5 A. Yes.

6 Q. Do you recall having any sort of operational meetings
7 there at the hotel?

8 A. At that first hotel we stayed for only about two or
9 three days. Our Hostage Rescue Team that was providing
10 security had deemed it -- deemed that location as unsafe, that
11 they couldn't secure it. So after two or three days from that
12 hotel, they moved us all to the Moevenpick, the Aden Hotel,
13 which is where we stayed for the rest of the deployment.

14 Q. And do you recall having any other operational
15 meetings there?

16 A. Yes. We would have almost nightly meetings in the
17 main ballroom with all the -- the entire deployment team in
18 the ballroom there.

19 Q. Was there -- was it indicated that you would conduct
20 the swabbing of the ship?

21 A. By that time I had already done it.

22 Q. Okay. When did you go out and do that?

23 A. That afternoon. The moment that we finally got, you

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1 know, on ground and established, that late afternoon, that
2 evening is when I went out and met with the commander and --
3 and proceeded to swab the ship.

4 Q. Let's talk about that. You landed. You got to the
5 hotel. Was it that very day that you went and did the
6 swabbing?

7 A. That's correct. It was late in the afternoon. I
8 mean, we didn't get -- we didn't get out of that airport until
9 late in the afternoon.

10 Q. But you wanted to do the swabbing as quickly as
11 possible?

12 A. Yes.

13 Q. Did anybody accompany you out to the ship?

14 A. Yes. Don Sachtleben.

15 Q. And did you have your equipment with you?

16 A. Yes.

17 Q. And what equipment did you have with you, sir?

18 A. So we both suited up in the Tyvek suits with the
19 hood, and we had the blue nitrile gloves and our swabbing
20 equipment.

21 Q. Let me stop you there. For the record and for those
22 who may not know, when you say "Tyvek suit," what is that?

23 A. That's like a material that protects -- protects the

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1 evidence from us and also us from the evidence. It's
2 protective gear that's some sort of a fiber, fibrous material
3 that -- that creates a barrier. And then you've got the
4 nitrile gloves that do the same for the hands.

5 Q. Did you wear masks?

6 A. I don't believe so.

7 Q. And you indicated that you were with a Mr. -- or
8 Agent Sachtleben, correct?

9 A. Sachtleben.

10 Q. Sachtleben. Where did you -- first off, what were
11 you -- you were swabbing. What was the purpose? What were
12 you looking for?

13 A. So immediately I'm looking for -- there's looks like
14 what's explosive damage to the ship. So you're looking for
15 explosive residue in and around the area of the wreckage.

16 Q. To determine what?

17 A. To determine what the explosive material was.

18 Q. So did you go to the outside of the boat?

19 A. Yes.

20 Q. Or I should say ship.

21 I'm going to show you ----

22 TC [MR. MILLER]: Permission to publish to the witness,

23 Your Honor, Prosecution Exhibit numbered 193.

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1 MJ [Col SPATH]: You may.

2 WIT: Is it going to be on here or here?

3 TC [MR. MILLER]: There it is.

4 Q. Before you is Prosecution Exhibit 193. Do you
5 recognize that, sir?

6 A. Yes, I do.

7 Q. And what do you recognize that to be?

8 A. Well, that's the -- that's the hole in the USS COLE
9 that was resultant from the explosion.

10 Q. Did you conduct any swabbing in this particular area?

11 A. Yes. All around, both on the sides and also above
12 the -- immediately above the hole.

13 Q. You can actually draw on it, if you want. If you
14 could show His Honor where it was that you took your samples.

15 A. With my ----

16 Q. Finger.

17 A. So the boat -- so we were in a -- you know, it was
18 probably a 24-, 28-foot boat, you know, that we're motoring
19 around here, so it wasn't ----

20 Q. You and Sachtleben?

21 A. And a few of the Navy folks obviously operating the
22 vessel.

23 Q. Okay.

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1 A. And we were -- I would take -- I would take swabs all
2 around here. And as we got to the top of the -- the hole, the
3 swabbing areas would be closer to here, because I could only
4 get so high while I was on that, on that boat. And then
5 obviously over here on this side.

6 And then, also, I can remember exact -- I can
7 remember swabbing at least one or two of these types of vents
8 where I thought that there was -- there might be a higher
9 chance where the trace might be collecting in a -- you know,
10 in an area that would have some sort of a vent like that, a
11 hole. As the blast goes through, maybe it was a collection
12 point of -- of trace residue.

13 So I can't recall exactly how many, but it was -- it
14 was both on the sides and directly above the wreckage.

15 Q. And could you -- it looks like a series of purple
16 dots, but the purple dots that are sort of surrounding the --
17 for the record, the outside of the hole in the side of the
18 ship; is that correct?

19 A. Yes. And we -- and obviously I did not go inside
20 that hole for security reasons, and also the -- you know the
21 boat's ability to get in and out. And also, at the same time
22 there's -- there's other -- there's damage that is unknown
23 that's inside that hole that provided a security risk or a

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1 safety risk to try to get inside that wreckage at that time.

2 Q. And excuse me. How did you go about taking the
3 actual swabs? What did you do?

4 A. So the swab itself would -- would come from a clean
5 scintillation vial, which is nothing but a glass vial that had
6 a cotton swab in it. And that would be -- that would be
7 dipped into an alcohol solution or solvent.

8 And then you would use a plastic forcep, which is
9 nothing more than a pliers, a plastic pliers, if you will.
10 And then you would just simply swab that cotton swab that's --
11 that's -- that has some alcohol in it and just swab the
12 nonporous area of the metal area, and then put that -- that
13 used swab back into the scintillation vial and seal it back up
14 and label it. And we do that over and over and over again.

15 Q. Were -- the bottles and the swabs you were using,
16 were these prepackaged?

17 A. Yes.

18 Q. So you had brought those with you?

19 A. Yes.

20 Q. And what would you do in between swabs? Did you
21 change gloves? Did you do anything to take any other
22 precautions?

23 A. No. So the series, the sequence of swabbing that I

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1 did, the first one was a blank swab. So essentially that --
2 that -- that is your system swab. So it would be your control
3 for your system, which would be for your cotton swab, your
4 alcohol, and your glass vial.

5 So you would take a blank cotton -- cotton ball with
6 the forcep and put it into into the scintillation vial, and
7 that would be your blank. And then we would test that to make
8 sure that the swabs that you used and the glass that you used
9 and the alcohol that you used did not have any explosive
10 material in it.

11 And then the second swab that is your control would
12 be the swab of the user, the controller, the examiner. So
13 while dressed up in a Tyvek suit, I would also take the same
14 swab with some alcohol in it or on it, and I would swab myself
15 and my hands and put that in a vial, and that would be your
16 second sample. And that would make sure that that's clean to
17 show that the examiner is not producing or has any explosive
18 residue on themselves.

19 And then from that point on, all of the other swabs
20 were using the same system.

21 Q. And once you had taken a swab and sealed it in a
22 bottle, what did you then do with it?

23 A. Then that was commingled with several other bottles

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1 that had -- I think there was 18 total swabs that were taken.
2 And they were put together in a Ziploc bag, and we ended up
3 shipping that off back to the lab.

4 Q. Were there any other areas in which you swabbed?

5 A. Yeah. Once -- once I swabbed and covered this area,
6 then I got back on the ship and I swabbed areas from the
7 second level and the third level as well.

8 TC [MR. MILLER]: Permission to publish to the witness,
9 Your Honor, Prosecution Exhibits 202 for Identification, 231,
10 225 for Identification, 224 for Identification, and 237.

11 MJ [Col SPATH]: You may.

12 Q. Starting with Prosecution Exhibit 202 for
13 Identification, do you recognize that?

14 A. That's the -- that's the other side of the boat,
15 right? That's not the wrecked side?

16 Q. Right, that is the other side.

17 A. Okay.

18 Q. Did you conduct any of your testing on this side of
19 the ship?

20 A. No.

21 Q. All right. 231, do you recognize this area, sir?

22 A. Yeah. That's the -- that's the -- that's the first
23 level. That's the first level of the deck.

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1 Q. All right. And I'm circling an area up here. Do you
2 recognize that area? That's sort of -- for the record, it's
3 sort of at the top, a little bit to the left.

4 A. Yes.

5 Q. All right. And did you swab in that area?

6 A. Yes, I do -- I did.

7 Q. All right. 225, please, for Identification, a
8 closeup of that. Do you recognize Prosecution Exhibit 225 for
9 Identification?

10 A. Yes, I recognize that only because you can see the
11 blast damage to that -- that area and obviously with some
12 blast damage, and I believe that was a more porous area. I
13 can't recall exactly what that face was, but I believe it was
14 porous which caused me to want to swab that as well.

15 Q. Fair and accurate depiction as it appeared at that
16 time?

17 A. Yes.

18 Q. All right.

19 TC [MR. MILLER]: Your Honor, I think we've previously
20 requested admission of it, but I'll again ask for -- to move
21 it into evidence, Prosecution Exhibit 225 for Identification.

22 MJ [Col SPATH]: I understand, and I'm still deferring on
23 225. 202 you haven't asked yet, and 231 was already admitted.

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1 Q. If you could -- there appears to be a -- sort of a
2 blackish film on the side of the ship there. Could you
3 explain what that was?

4 A. So when we first got to the ship, you could tell -- I
5 mean, it was almost immediate. You could tell that there
6 was -- there was an oil residue all over the place, and -- and
7 also the smell was there as well. And in talking with the
8 commander, apparently somehow the oil was -- right after the
9 explosion, just came up through the exhaust, whatever that is
10 in the, you know, top, very top of the destroyer. And it just
11 came out, and it just sprayed the entire ship with oil from
12 somewhere. I'm not sure where, but you could tell. It was
13 evident. It was everywhere.

14 Q. Was it -- did it appear to you that the Navy had --
15 or the sailors on the ship had cleaned the ship in any way?

16 A. No. No, it did not look that way at all.

17 Q. And was that an aid to you in being able to do your
18 job?

19 A. Oh, yes, very much so.

20 TC [MR. MILLER]: Let me show the witness, please,
21 Prosecution Exhibit -- Prosecution 146, please.

22 And, Your Honor, at this time we would ask permission
23 to publish to the witness Prosecution Exhibits 146 through

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1 146C, and I would also ask permission to use the ELM0.

2 MJ [Col SPATH]: You may.

3 Q. I've placed before you what has been marked as
4 Prosecution Exhibit 146 for Identification. Do you have that
5 in front of you, sir?

6 A. 146. This is 146, right? Yes.

7 Q. Do you recognize that bag, sir?

8 A. Yes, I do.

9 Q. And what do you recognize it to be?

10 A. Well, this is the bag that I sealed after putting the
11 18 swabs into it.

12 Q. All right. Those are the 18 swabs you took off the
13 ship; is that correct?

14 A. Yes.

15 Q. And you know it because?

16 A. It -- it has my initials and the date on the seal.

17 Q. All right. And what's the date on the seal?

18 A. 10/15/2000.

19 Q. Now, there is an evidence tag, also, on it; is that
20 correct? It says "evidence" and the case number, et cetera?

21 A. Yes, on the front of the bag, uh-huh.

22 Q. Now, is that your handwriting?

23 A. No, it doesn't appear to be.

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1 Q. Do you recognize the information, however?

2 A. Yes.

3 Q. Is the information contained on the evidence bag
4 correct?

5 A. Yes.

6 Q. It describes the evidence as swabbings, Q1 through
7 Q18. Are those the swabs you took off the ship?

8 A. Yes.

9 Q. It indicates that the date and time of recovery is at
10 1800 on 10/15 of 2000 ----

11 A. That's correct.

12 Q. ---- is that correct?

13 It indicates the location of the recovery is the
14 USS COLE; is that correct?

15 A. Yes.

16 Q. And it indicates that it was recovered by yourself,
17 meaning you took the swabs; is that correct?

18 A. Yes.

19 Q. Once you had taken them and sealed them in the bag,
20 what did you do with the evidence itself?

21 A. Well, then it was turned over to -- it was turned
22 over to the evidence technician and it was flown back to D.C.,
23 flown back to the lab.

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1 Q. All right. And why was it flown back so quickly?

2 A. To try to -- I mean, it's -- for lead value, it's --
3 we're on the ground already, and it's going to take a week or
4 so, at least a week or so to process the crime scene. So the
5 sooner we can get these swabs back and analyzed, the more
6 valuable they are, because we're on site already.

7 Q. All right. I'm going to place -- is there an
8 evidence receipt with that bag?

9 A. An evidence ----

10 Q. A chain of custody form?

11 A. Yes.

12 Q. If you would take a look at it. It indicates -- you
13 recognize that form?

14 A. Yes, it's the 192, green sheet for the chain of
15 custody.

16 Q. It does not have your name on it; is that correct?

17 A. That's correct.

18 Q. Whose name is on that?

19 A. It starts with Agent McNamara.

20 Q. And who is Agent McNamara?

21 A. He was the evidence technician.

22 Q. And when you say "the evidence technician," could you
23 explain for the court, please, what you mean by that term?

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1 A. Well, he was, he was identified as the primary
2 evidence collector on site. So most of the chain -- most of
3 the chains would start with Agent McNamara.

4 Q. So did you give Prosecution Exhibit 146, the 18
5 vials -- did you give those to Special Agent McNamara?

6 A. Yeah. And I sealed -- I sealed the bag and initialed
7 and dated the seal.

8 Q. All right. And do you know what agent -- if you
9 know, do you know what Agent McNamara then did with those 18
10 vials?

11 A. Exactly, I wouldn't be able to tell you, but I know
12 they went back on the plane that day back to D.C.

13 Q. I'm going to show you what has been marked as
14 Prosecution Exhibit 146C. Do you recognize that, sir?

15 A. Yes, I do.

16 Q. All right. And is that the chain of custody form
17 that is attached to the Exhibit 146?

18 A. Yes, it is.

19 Q. At least for the first four entries, are they exact
20 duplicates?

21 A. Yes.

22 Q. Do you recognize the signatures, any of the
23 signatures, underneath?

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1 A. Well, I recognize -- well, I don't recognize the
2 signature, but I recognize Agent Babyak because I recall that
3 she was the one who actually physically transported the swabs
4 back to the laboratory.

5 Q. All right. And you know that how?

6 A. I just -- because I knew that my swabs were going
7 back and she was the one taking them back.

8 Q. All right. Okay. And when did she take custody of
9 them?

10 A. It says that she took custody of them on the 15th of
11 October 2000 at 6:35 p.m.

12 Q. So about an hour and a half after you took the actual
13 swabs; is that correct?

14 A. Yeah, at least. I mean, I handed them over to Joe
15 McNamara at 5:00, is what it says. So I would have probably
16 taken the swabs at least a couple hours before that.

17 Q. All right.

18 A. Because it took over an hour to collect them all.

19 Q. Okay. I'm placing on the ELMO Prosecution Exhibit
20 numbered 146B for Identification. Do you recognize that, sir?

21 A. That's the front -- that's the front of this evidence
22 bag, yes.

23 Q. All right. And is it a fair and accurate depiction

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1 of the exhibit, Prosecution 146?

2 A. Yes, it is. All it's lacking is this blue -- I guess
3 the blue signature that's on this, blue marker.

4 Q. And I may not have asked this question, but I will
5 ask this question of you: Prosecution Exhibit 146C, is that
6 an exact duplicate of the chain of custody form that is
7 attached to Prosecution Exhibit 146?

8 A. Yes.

9 TC [MR. MILLER]: Move for the admission, Your Honor, of
10 146B and 146C.

11 MJ [Col SPATH]: Thank you.

12 Q. Did you have occasion to seize other items? Other
13 than the vials, did you actually seize some physical evidence?

14 A. Yes.

15 TC [MR. MILLER]: Could you please provide the witness
16 with Prosecution Exhibit 156.

17 Q. Sir, have you been handed Prosecution Exhibit 156?

18 A. Yes.

19 Q. Before I ask you about the bag itself, I ask you to
20 take a look at the photograph that's been placed on the ELM0.
21 Prosecution Exhibit 156A for Identification. Do you recognize
22 that item?

23 A. Yeah. That's one of the flags that -- that we

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1 recovered from the ship.

2 Q. All right. Why did you -- when you say "we," did you
3 recover it?

4 A. Yes.

5 Q. All right. And why would you recover the flag, or
6 seize the flag?

7 A. So -- so at the time that we first got out to the
8 ship and we met with the commander and began to work out the
9 plan to get around the ship and around the wreckage, we asked
10 the commander, was there any flags flying at the time of the
11 explosion? At which point he -- he said there were, and that
12 they would secure them for us, and then we would -- we would
13 take them into evidence.

14 Q. And why were you interested in those flags, sir?

15 A. Well, if they were out flying at the time of the
16 explosion, there's a really good chance that we could analyze
17 those flags and see if there's any explosive residue on them.

18 Q. Prosecution Exhibit 156A also contains a Q tag; is
19 that correct?

20 A. Yes.

21 Q. Can you ----

22 WIT: Bless you.

23 MJ [Col SPATH]: Thank you.

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1 Q. Can you read that number?

2 A. It's Q -- it's Q465.

3 Q. All right. Now, if you would look at the bag itself.
4 Do you recognize that bag, sir?

5 A. Yes, I do.

6 Q. And what do you recognize it to be?

7 A. Well, this is the brown paper bag that I packaged
8 this particular flag in for evidence.

9 Q. And is that your handwriting on the evidence sticker
10 that's attached to the bag?

11 A. Well, it's my handwriting actually on the bag.

12 Q. All right. Okay. Is this also an evidence, what
13 says evidence -- it's sort of a form, is that correct, on
14 there?

15 A. The white -- this white sticker?

16 Q. Yes.

17 A. Yes.

18 Q. Do you recognize that?

19 A. Yes.

20 Q. Is that your handwriting?

21 A. It's my signature and date.

22 Q. All right. And what does it show?

23 A. It shows the -- that the bravo flag that was

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1 recovered on 10/16 from the USS COLE.

2 Q. And is it your signature there as receiving it?

3 A. Yes.

4 Q. And does it indicate the date and time that you
5 received it?

6 A. It was received on 10/16/2000 at -- I guess it says
7 2:00 p.m. from -- from the USS COLE.

8 Q. Does that particular evidence bag have a -- its own Q
9 number?

10 A. This bag has Q number 465.

11 Q. And does that match the Q number on Prosecution
12 Exhibit Number -- Prosecution Exhibit 156A for Identification?

13 A. Yes, this is 465 on the ruler right there.

14 Q. Does the bag also have a 1B number?

15 A. Yes, this bag here has 1B919.

16 Q. Does it have a, what I call a DK number?

17 A. The DK number is DK04-125.

18 Q. Now, can you tell -- can you actually see the flag?

19 A. Not very well, but yeah.

20 Q. You can see it through the plastic?

21 A. Yeah, I can see that it's a red fabric.

22 Q. Does it appear to be the same flag that's contained
23 in Prosecution Exhibit 156A?

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1 A. Yes.

2 Q. Is there a chain of custody form attached to it?

3 A. Yes, there is.

4 Q. If you can take a look at that form, please. Do you
5 recognize your signature on it?

6 A. Yes.

7 Q. And where is your signature, sir?

8 A. It's the -- it's the top signature, accepted by
9 myself with my signature on 10/16/2000 at 2:00 p.m.

10 Q. Are you able to associate that particular chain of
11 custody form with Prosecution Exhibit 156 for Identification?

12 A. It -- yes, it has the same 1B number and the same DK
13 number.

14 Q. I'm placing on the ELM0 at this time Prosecution
15 Exhibit 156C for Identification. I want to ask you if the
16 first four entries on that exhibit, Prosecution Exhibit 156C
17 for Identification, is identical to the first four entries of
18 the chain of custody form that you have just described?

19 A. Yes, it's identical. At least the first four are.

20 Q. Right. And that's all I'm asking you about, is the
21 first four.

22 A. Yes.

23 Q. Yours has additional entries; is that correct?

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1 A. That's correct.

2 Q. Subsequent to Kelly Baribeau's?

3 A. Yes.

4 Q. Placing now on the ELM0 Prosecution Exhibit 156B for
5 Identification, ask you if you recognize that picture, sir.

6 A. That's a -- that's a picture of the evidence tag
7 that's on the -- the bag holding the evidence, yes.

8 Q. Fair and accurate -- fair and accurate depiction of
9 it?

10 A. Yes.

11 TC [MR. MILLER]: Your Honor, the prosecution would offer
12 into evidence Prosecution Exhibit 156A, 156B, and 156C.

13 MJ [Col SPATH]: Thank you.

14 TC [MR. MILLER]: If you would, please, hand the witness
15 Prosecution Exhibit 157 for Identification.

16 Q. Sir, you've been handed Prosecution Exhibit 157; is
17 that correct?

18 A. Yes, that's correct.

19 Q. Before we talk about that, I'm going to ask you to
20 take a look at the photograph in front of you, Prosecution
21 Exhibit 157A for Identification. Do you recognize that, sir?

22 A. Yes, that's the -- that's the second flag that we --
23 we recovered from the COLE.

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1 Q. And when you say "we," did you recover that?

2 A. Yes.

3 Q. The answer is?

4 A. Yes, I recovered that.

5 Q. Okay. And that also has a Q number, correct, the
6 photograph? I'm just asking generally, does it?

7 A. Yes, it's going to have a Q number, Q466.

8 Q. Let me make it a -- can you read that?

9 A. Yes, Q466.

10 Q. And you recognize the flag in the photograph as the
11 one that you seized?

12 A. Yes.

13 Q. If you would, take a look at the actual bag,
14 Prosecution 157. Do you see that?

15 A. Yes.

16 Q. Do you recognize it?

17 A. Yes.

18 Q. And how are you able to recognize it?

19 A. It's my handwriting.

20 Q. And does it indicate when and where you seized the
21 item?

22 A. Yeah, it identifies what the item is. It's the --
23 it's called the kilo flag flying at the time of the explosion

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1 on the starboard side, Deck 4. Date and time of recovery,
2 10/16, 2:00 p.m. Location of recovery was Deck 4 Front
3 Starboard. And then my signature and initials.

4 Q. Is there an evidence tag, a black-and-white evidence
5 tag, also, on it?

6 A. Yes.

7 Q. All right. And there's a chain of possession on the
8 bottom; is that correct?

9 A. Chain ----

10 Q. Right there.

11 A. Oh, on this tag? Yes.

12 Q. Does it indicate from where it was received?

13 A. Yeah, location of recovery was the USS COLE,
14 recovered by myself, Steve Krueger, and then my signature with
15 my initials. The date of the recovery, 10/16/2000. Time of
16 recovery, 2:00 p.m. And then it has myself turning it over to
17 somebody on the 18th.

18 Q. But that is your handwriting?

19 A. Yes.

20 Q. And you testified, I think, to a little bit more
21 information that's contained on this evidence sticker. Is
22 there some other handwriting on there that is yours on the
23 bag?

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1 A. On the bag?

2 Q. You indicated it was like from the starboard side; is
3 that correct?

4 A. Yes.

5 Q. And where were you getting that information?

6 A. That was information that the commander had provided
7 us as to where these flags were.

8 Q. Right. Is it on ----

9 A. Oh, it's ----

10 Q. ---- on the exhibit itself?

11 A. It's on the brown paper bag that I put the flag
12 in ----

13 Q. All right.

14 A. ---- under the "Item Description" section.

15 Q. So we can be clear, there are two, I take it, areas
16 on that exhibit where there's information as to who seized it
17 and when it was seized, correct?

18 A. Yes.

19 Q. All right. The first one that you read, where are
20 you getting that information?

21 A. The first set of information where I read out the
22 kilo flag and where it was flying, that was information that I
23 wrote on the brown paper bag at the time of seizing it.

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1 Q. All right. If you would turn it over, there's also a
2 white evidence tag on there, correct?

3 A. That's correct.

4 Q. And you signed that in your handwriting, correct?

5 A. That's correct.

6 Q. And that indicates that you seized it on the 16th of
7 October at approximately 2:00 p.m.?

8 A. 2:00 p.m., correct.

9 Q. Does that bag -- does that evidence container have a
10 Q number on it?

11 A. Q466.

12 Q. And does that match the Q number on Prosecution
13 Exhibit 157A?

14 A. Yes, that's 466, Q466.

15 Q. And does the bag have a 1B number?

16 A. The evidence bag has 1B760.

17 Q. All right. And does it have an item number or DK
18 number on there?

19 A. The DK number is DK04-124.

20 Q. Now, if you would, please, could you take a look at
21 the chain of custody form that's attached and accompanies the
22 exhibit? Do you recognize that form, sir?

23 A. Yes, this is the green sheet, the FD-192.

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1 Q. And does it contain your signature?

2 A. Yes, it does.

3 Q. On what line?

4 A. On the very first line as having collected the
5 evidence, and it shows that I collected it on 10/16/2000 at
6 2:00 p.m.

7 Q. Does it have an item number on it, the form? A DK
8 number?

9 A. It has a DK04-124.

10 Q. And does it have a 1B number?

11 A. 1B760.

12 Q. Are you able to associate this chain of custody -- or
13 that chain of custody form with Prosecution 157?

14 A. Yes.

15 Q. And how are you able to do that, sir?

16 A. It's -- the chain of custody has 157 on it.

17 Q. All right. Excuse me?

18 A. The green sheet, the FD-192, has "157" written on it.

19 Q. And does the green sheet -- does the 1B numbers and
20 the DK numbers also match those that are on the bag?

21 A. Yes.

22 Q. Placing before you Prosecution Exhibit 157 [sic]. Do
23 the first four entries on that sheet -- sheet, Prosecution

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1 Exhibit 157D, are those identical to the first four entries on
2 the chain of custody form that you have just described?

3 A. Yes.

4 Q. Lastly, you talked about the paper bag that you put
5 some printing and information on. I'm placing on the ELM0
6 Prosecution Exhibit 157C for Identification. Do you recognize
7 that, sir?

8 A. Yes, that's my writing.

9 Q. All right. Is that the information on the bag that's
10 contained in Prosecution 157?

11 A. Yes.

12 Q. Is it a fair and accurate depiction of the bag?

13 A. Yes, it is.

14 Q. I'm also placing before you -- or I am placing before
15 you 157B for Identification. Do you recognize that, sir?

16 A. Yes.

17 Q. And what is that?

18 A. That's the evidence sticker on the glassine bag.

19 Q. Fair and accurate depiction of it?

20 A. Yes.

21 Q. Are you able to look inside the bag, by the way?

22 A. Well, I can see -- I can see the bag, yeah, see the
23 flag.

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1 Q. Can you see the flag?

2 A. Yes, it's blue and yellow.

3 Q. Does it appear to be the same flag that's contained
4 in Prosecution Exhibit 157A?

5 A. Yes.

6 TC [MR. MILLER]: Your Honor, the government would offer
7 into evidence at this time Prosecution Exhibits 157A, 157B,
8 and 157D.

9 MJ [Col SPATH]: Thank you.

10 Q. You later assisted in some of the land searches; is
11 that correct?

12 A. Yes.

13 TC [MR. MILLER]: All right. And we'll talk about those,
14 Your Honor, at another time.

15 I have no further questions of the witness.

16 I didn't say C? Just for the record, Your Honor, to
17 make sure I covered them all, Your Honor, we would move for
18 the admission of 157A, 157B, 150C -- 157C, and 157D, if I
19 missed one.

20 MJ [Col SPATH]: Thank you.

21 TC [MR. MILLER]: Thank you, sir.

22 MJ [Col SPATH]: Defense Counsel?

23 DDC [LT PIETTE]: Defense takes no position.

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1 MJ [Col SPATH]: All right. Let me first thank you for
2 coming down here in person to offer testimony. I know it's an
3 effort to travel down here, of course, as it is to travel
4 anywhere.

5 I'm going to give you a standard order. Don't
6 discuss your testimony until this issue is resolved. I
7 anticipate that's going to be a period of time longer than a
8 few days, as you can imagine, so the order will stay in place
9 for a while.

10 So do you understand the order?

11 WIT: I do.

12 MJ [Col SPATH]: I appreciate your testimony. You're
13 excused.

14 WIT: Thank you.

15 [The witness was warned, temporarily excused, and withdrew
16 from the courtroom.]

17 MJ [Col SPATH]: Mr. Miller, let's do this. Let's take
18 ten minutes before we go any further, okay?

19 TC [MR. MILLER]: Thank you, Your Honor.

20 MJ [Col SPATH]: All right. We're in recess.

21 [The R.M.C. 803 session recessed at 1430, 16 November 2017.]

22 [END OF PAGE]

23

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1 [The R.M.C. 803 session was called to order at 1443,
2 16 November 2017.]

3 MJ [Col SPATH]: All right. These commissions are called
4 back to order. All the same parties are present.

5 Trial Counsel, call your next witness.

6 TC [MR. MILLER]: Thank you, Your Honor. The government
7 calls Special Agent Elizabeth Rosato.

8 Stand and be sworn, please.

9 ELIZABETH ROSATO, civilian, was called as a witness for the
10 prosecution, was sworn, and testified as follows:

11 DIRECT EXAMINATION

12 Questions by the Trial Counsel [MR. MILLER]:

13 Q. Would you state your name for the record.

14 A. Elizabeth Rosato.

15 Q. And you are a special agent with the Federal Bureau
16 of Investigation?

17 A. That is correct.

18 Q. Ma'am, I want to talk a little bit -- or Agent, I
19 want to talk a little bit about your background. You attended
20 college?

21 A. Yes, I did.

22 Q. Where did you go?

23 A. My undergraduate degree was from Trinity College in

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1 Hartford, Connecticut.

2 Q. And when did you graduate from Trinity?

3 A. 1990.

4 Q. Do you have any graduate degrees?

5 A. Yes, I do.

6 Q. And where did you attend -- what university did you
7 attend?

8 A. Northeastern University in Boston.

9 Q. And what degree did you obtain?

10 A. A Master of Science in criminal justice.

11 Q. And when did you receive that?

12 A. September of 1994.

13 Q. Did you eventually join the FBI?

14 A. Yes, I did.

15 Q. When did you join the FBI?

16 A. September of 1996.

17 Q. You went to New Agent School?

18 A. Yes, I did.

19 Q. Did you receive training in the collection of
20 evidence and the processing of crime scenes while at that New
21 Agent School?

22 A. Yes, I did.

23 Q. After New Agent School, what was your first office?

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1 A. My first office assignment was New York City.

2 Q. And how long did you -- when did you get there?

3 A. Approximately February of 1997.

4 Q. And how long did you remain?

5 A. Until August of 2010.

6 Q. When you first got to New York, what was your squad?
7 What squad were assigned to?

8 A. I was assigned to a criminal squad investigating
9 public corruption.

10 Q. And how long did you remain in the public corruption
11 squad?

12 A. About four and a half years.

13 Q. After that where did you go?

14 A. After that I was transferred to the Joint Terrorism
15 Task Force on a squad working weapons of mass destruction.

16 Q. How long did you remain there?

17 A. About three years.

18 Q. After that assignment, where did you next go?

19 A. Then I was assigned as senior team leader for the New
20 York office Evidence Response Team.

21 Q. And could you explain to the court what your duties
22 and responsibilities were?

23 A. As senior team leader I was in charge of a 40-person

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1 team, and my job was to do logistics planning, training and
2 operational response for any crime scenes that the New York
3 office had investigative purview.

4 Q. And did you receive specialized training in order to
5 do this, take this assignment?

6 A. Yes, I did.

7 Q. And when did you assume this assignment as the head
8 of the ERT?

9 A. Approximately June of 2005.

10 Q. Prior to that, were you a member of the ERT?

11 A. Yes, I was.

12 Q. And did you receive specialized training for that?

13 A. I did.

14 Q. Do you remember when you joined the ERT?

15 A. I did, in 1999.

16 Q. Prior to the COLE?

17 A. Correct.

18 Q. You remained in New York until 2010. In 2010 where
19 did you -- where were you transferred?

20 A. I was transferred to FBI Headquarters in
21 Washington, D.C.

22 Q. And what did you do there?

23 A. I was a supervisor in the Weapons of Mass Destruction

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1 Directorate in their Training Unit.

2 Q. And was there an evidence collection component to
3 that training?

4 A. Not at that time.

5 Q. How long did you remain there at the directorate?

6 A. Approximately three years.

7 Q. And where did you go?

8 A. Then I was transferred to the Boston Division in the
9 Providence, Rhode Island Resident Agency.

10 Q. And what was your assignment there?

11 A. I was a supervisory special agent in charge of all
12 white collar crime matters in the Joint Terrorism Task Force.

13 Q. And what's your present assignment?

14 A. I'm currently assigned as an assistant legal attaché
15 in the Rome, Italy FBI office.

16 Q. And that occurred this year; is that correct?

17 A. That is correct.

18 Q. I want to direct your attention back to October of
19 2000. You were working in the New York office; is that
20 correct?

21 A. That is correct.

22 Q. Were you notified that there had been a bombing in
23 Aden, Yemen?

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1 A. Yes.

2 Q. And what was asked of you?

3 A. Asked if I could deploy as part of an evidence
4 collection team.

5 Q. And what did you say?

6 A. I said yes.

7 Q. Prior to leaving for Yemen, did you put together or
8 did you gather up any items?

9 A. There wasn't much of an evidence collection kit at
10 that time. Our purpose was to augment the teams that were in
11 place with manpower.

12 Q. When you say "augment," how so?

13 A. We had previously deployed teams from Washington
14 Field Office and Headquarters, so the New York contingent was
15 going to add additional personnel, because they had already
16 forward deployed with supplies.

17 Q. Do you remember how you traveled to Yemen?

18 A. Yes, I do.

19 Q. And how did you travel?

20 A. We traveled down to Fort Dix, and at Fort Dix we were
21 taken by a charter plane to Andrews Air Force Base, and from
22 Andrews Air Force Base we left on a military lift overseas.

23 Q. And where did you go?

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1 A. We ended up in Ramstein, Germany.

2 Q. Did you move on quickly to Yemen?

3 A. No.

4 Q. All right. What happened?

5 A. We were stopped in Ramstein because there was issues
6 of allowing a certain number of investigators or agents into
7 country. So we were basically waylaid there for a number of
8 days before we could get approval to enter the country.

9 Q. Were there any evidentiary, or any investigative or
10 evidence collection tasks that needed to be done at Ramstein?

11 A. Yes, there were.

12 Q. And what was that?

13 A. We were charged with collecting and packaging some of
14 the items from either survivors or victims that had been
15 transited through Ramstein Hospital, the air base there.

16 Q. There was a hospital on the air base?

17 A. Yes, nearby.

18 Q. You said "we were charged."

19 A. Uh-huh.

20 Q. Who was -- who was asked or tasked with doing that?

21 A. Myself and the other members of the New York Evidence
22 Response Team that were there.

23 Q. Now, during your time at Ramstein, did you have

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1 occasion to speak with an Agent William Davitch?

2 A. Yes, I did.

3 Q. And had you known him prior to landing in Ramstein?

4 A. Yes, I did.

5 Q. How did you know Special Agent Davitch?

6 A. I knew him to be one of the special agent bomb
7 technicians in the office, and we had met on other cases while
8 in New York.

9 Q. And when you say "the office," you mean the New York
10 office?

11 A. Yes, I do.

12 Q. And what did you discuss with him?

13 A. I discussed how we would go about creating explosive
14 residue swabbing kits so that I could bring them to the
15 hospital for certain items of evidence.

16 Q. Why did you need to discuss that with him?

17 A. Because typically we would have collected certain
18 items, but I needed to swab certain items. And given that we
19 didn't have explosive residue kits, I wanted to ask him
20 what -- the supplies we needed to purchase and to put the kits
21 together so that we could collect that evidence.

22 Q. And why did you ask him in particular?

23 A. I knew he was a special agent bomb tech and he had

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1 provided that instruction before.

2 Q. What did he tell you?

3 A. He instructed me to buy certain things, such as
4 cotton, cotton swabs or cotton -- cotton balls, to procure
5 jars that we could seal these items in, possibly distilled or
6 sterile water, and follow the protocol to collect those swabs.

7 Q. Were you aware what the protocol was?

8 A. Yes.

9 Q. And what was that protocol?

10 A. Is to collect first what we call a control or a blank
11 swab. So if I have some cotton, I would collect one; that is
12 the control. And then do a dry swab of the item in question,
13 and then also, if we could do it, to get a wet swab using
14 distilled water or sterile water.

15 Q. Were there any particular items that you were looking
16 to swab?

17 A. Yes.

18 Q. What were they?

19 A. Those were belt buckles from some of the survivors or
20 victims.

21 Q. How soon after you landed at Ramstein did you go
22 conduct the evidence gathering at the hospital?

23 A. I believe it was within 24 -- within 24 hours.

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1 Q. And without talking about the belt buckles, what
2 other items were you interested in seizing?

3 A. We were collecting any of the clothing items or any
4 of the personal items that came off victims or survivors.

5 Q. And did you have evidence -- did you have your own
6 evidence bags at that time?

7 A. No, we did not.

8 Q. All right. So what did you do?

9 A. We went to the local PX and we purchased the
10 necessary supplies, or we also got some from the local Air
11 Force office, whatever they could give us.

12 TC [MR. MILLER]: If you would please -- could you show
13 the witness, provide the witness with Prosecution Exhibit --
14 Your Honor, I'm going to ask leave of court to show the
15 witness Prosecution Exhibit 160 for Identification through
16 160C, and we're going to do that through 160 -- 167.

17 MJ [Col SPATH]: You may.

18 Q. Before you is Prosecution Exhibit 160; is that
19 correct?

20 A. That is correct.

21 Q. And do you recognize that, ma'am?

22 A. It looks consistent with the items that we collected.

23 Q. When you say "we," did you collect them or did

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1 somebody else collect them?

2 A. I collected them, and there was other members of my
3 team there.

4 Q. All right. And how did you come into -- how did you
5 come to collect items -- the items contained in Prosecution
6 Exhibit 160?

7 A. We were given these by members of the hospital staff.

8 Q. All right. And do you know what is contained in that
9 bag?

10 A. It appears to be clothing, probably a jumpsuit, and
11 there's some -- a paper envelope with foreign writing on it.

12 Q. All right. And did you, in fact, collect those
13 items?

14 A. I believe so, yes, I did.

15 Q. When you say you "believe so," are you sure?

16 A. Yes.

17 Q. All right. Okay. I'm going to place on the ELM0 a
18 photograph, Prosecution Exhibit 160A. Do you recognize that,
19 ma'am?

20 A. Yes.

21 Q. What do you recognize that to be?

22 A. It appears to be the jumpsuit and personal effects
23 typical of what we have collected from the victims and

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1 survivors.

2 Q. And are those the items in the bag, Prosecution
3 Exhibit 160?

4 A. They appear to be, through the bag. It's a
5 little ----

6 Q. Fair and accurate depiction as you remember them?

7 A. I believe so.

8 Q. Is that a yes?

9 A. Yes.

10 Q. All right. Is there an evidence tag with that bag,
11 also, or a chain of custody form?

12 A. Yes, there is.

13 Q. And do you recognize that form?

14 A. Yes, I do.

15 Q. And how are you able to recognize it?

16 A. I recognize my name and my signature on the top line.

17 Q. I show you Prosecution Exhibit 160B for
18 Identification. Well, first off, look at the one in front of
19 you, I guess is the better way of doing it.

20 You said it had your signature, correct?

21 A. Yes, it does.

22 Q. If you would look at Prosecution Exhibit 160B, do you
23 recognize that form?

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1 A. Yes.

2 Q. And how are you able to recognize it?

3 A. I recognize the same signatures on it, mine being the
4 top signature, as collected.

5 Q. And is that an exact duplicate of the form that is
6 contained with the exhibit?

7 A. Yes.

8 Q. All right. It has a case number but no other
9 identifying information; is that correct?

10 A. That is correct.

11 Q. Does it give a date and time of when you collected
12 it?

13 A. Yes, it does.

14 Q. And what is that date and time?

15 A. October 15th, 2000 at 5:00 a.m.

16 Q. And do you recognize the name of the person
17 underneath?

18 A. Yes, I do.

19 Q. And who is that?

20 A. I believe that's Beth Babyak.

21 Q. And who is Beth Babyak?

22 A. She was another one of the agents assigned to the --
23 the investigation.

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1 Q. All right. And it indicates she received it on 10/18
2 of 2000; is that correct?

3 A. That is correct.

4 Q. And why did -- have you got some water?

5 A. Uh-huh. Thank you.

6 Q. And why was she given the evidence?

7 A. She was collecting it to be transported back to the
8 States, I believe.

9 TC [MR. MILLER]: Your Honor, the government would move
10 for the admission of Prosecution Exhibit 160A and 160B.

11 MJ [Col SPATH]: Thank you.

12 TC [MR. MILLER]: Provide the witness with Prosecution
13 Exhibit 161.

14 Q. Do you have before you Prosecution Exhibit 161?

15 A. Yes, I do.

16 Q. Do you recognize that bag?

17 A. The inside bag is not my label, but it appears to be
18 items that we collected.

19 Q. Excuse me?

20 A. It appears to be items that we collected. It's
21 difficult to see through this.

22 Q. All right.

23 TC [MR. MILLER]: Could you open that for her, please?

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1 Q. While he's opening the bag, the item -- Prosecution
2 Exhibit 160 and 161, did you get them directly from the
3 victims?

4 A. No, we did not.

5 Q. Where did -- how did you obtain these items?

6 A. We obtained them from hospital staff.

7 Q. They would be brought to you?

8 A. That's correct.

9 Q. If you would look at the inside there, the bag ----

10 A. Uh-huh.

11 Q. ---- Prosecution Exhibit 161 for Identification, do
12 you recognize the contents, ma'am?

13 A. They look familiar.

14 Q. Is there anything that I could provide to you that
15 would enable you to make an independent judgment as to whether
16 or not you, in fact, collected those?

17 A. I believe we had notes or some type of record of
18 everything that went into each bag.

19 TC [MR. MILLER]: Permission to approach the -- permission
20 to approach the witness, Your Honor?

21 MJ [Col SPATH]: Have you shown the defense -- I assume
22 you're using that to refresh recollection.

23 TC [MR. MILLER]: Yes.

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1 MJ [Col SPATH]: All right. Just make sure you show
2 defense counsel. And you may. And if you need to ask
3 questions, you just need to share that microphone.

4 Q. I've provided you with a sheet that has a Bates
5 number on it of 10015-110 -- excuse me, 10015-001129211. Do
6 you recognize -- do you recognize that, ma'am?

7 A. Yes, I do.

8 Q. Would you read that, please, to yourself?

9 A. Um ----

10 Q. Just read it to yourself.

11 A. Okay.

12 Q. Now, having reviewed that, does that assist you in
13 recalling whether or not you seized the items in there?

14 A. Yes.

15 Q. And is that an independent recollection independent
16 of the document that is before you?

17 A. Yes, it is.

18 Q. I would ask you again, then: Did you seize or
19 collect the items contained in Prosecution Exhibit 161?

20 A. Yes, I did.

21 Q. Is there a chain of custody form attached to it?

22 A. Yes, there is.

23 Q. All right. And does it contain your signature?

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1 A. Yes, it does.

2 Q. And is that on the first line?

3 A. Yes, it is.

4 Q. Does it contain a date and time?

5 A. Yes.

6 Q. And what is that date and time?

7 A. October 15th of 2000, at 5:00 a.m.

8 Q. And does it indicate to whom you transferred

9 possession of the item?

10 A. Yes, it does.

11 Q. And who is that?

12 A. Again, Beth Babyak.

13 Q. Date and time?

14 A. October 18th of 2000.

15 Q. And do you independently recall giving her the items

16 so she could transport them?

17 A. No, I do not.

18 Q. All right. Do you know how she came into possession

19 of them?

20 A. Yes.

21 Q. And how is that?

22 A. That would have been at the command post area where

23 she took these items.

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1 Q. I've placed before you Prosecution Exhibit 161B for
2 Identification. Again, there's no identifying information
3 other than the case ID, but is that a duplicate of the chain
4 of custody form attached to Prosecution Exhibit 161?

5 A. Yes, it is.

6 Q. All right.

7 TC [MR. MILLER]: Your Honor, the government would move
8 for the introduction of Prosecution 161B into evidence.

9 MJ [Col SPATH]: Thank you.

10 TC [MR. MILLER]: If you could provide the witness with
11 Prosecution Exhibit 162, please.

12 Q. What has been placed before you is Prosecution
13 Exhibit 162 for Identification. Do you recognize that bag,
14 ma'am?

15 A. Again, this bag is not my packaging.

16 Q. All right.

17 TC [MR. MILLER]: Could you open it, please?

18 Q. You've looked inside the bag; is that correct?

19 A. That's correct.

20 Q. Looked at the contents of Prosecution Exhibit 162?

21 A. Uh-huh.

22 Q. Do you recognize that item?

23 A. It's consistent with the items that we collected.

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1 Q. All right. Is there anything that I could provide
2 you with that you would be able to make an independent
3 judgment as to whether or not you took custody of those items
4 at Ramstein?

5 A. Yes.

6 Q. All right. And what would that be, ma'am?

7 A. Again, the notes that I took at the time that I
8 collected the items.

9 TC [MR. MILLER]: Permission to -- permission to approach,
10 Your Honor?

11 MJ [Col SPATH]: You may.

12 Q. For the record, I'm placing before you a handwritten
13 sheet of paper with the Bates number of 10015-00129199.
14 Ma'am, I would -- I'd ask you to take a look at that, read it
15 to yourself.

16 A. Okay.

17 Q. Ma'am, does that refresh your recollection as to
18 whether or not you collected the contents of Prosecution
19 Exhibit 162?

20 A. Yes, it does.

21 Q. And is that recollection independent of the document
22 that you reviewed?

23 A. Yes, it is.

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1 Q. And I'll ask you then, did you collect the items
2 contained in Prosecution Exhibit 162?

3 A. Yes, I did.

4 Q. I'm going to show you a photograph, Prosecution
5 Exhibit 162A. Do you recognize that, ma'am?

6 A. Yes, I do.

7 Q. And what do you recognize that to be?

8 A. The overalls and undergarments of one of the victims
9 or survivors.

10 Q. And that is the overall and documents contained in
11 Prosecution Exhibit 162?

12 A. That is correct.

13 Q. Fair and accurate depiction of it as it ----

14 A. Yes.

15 Q. Is there a chain of custody form attached to that?

16 A. Yes, there is.

17 Q. Again, if you would review that, please. Do you
18 recognize that chain of custody form?

19 A. Yes, I do.

20 Q. And does it indicate a case number?

21 A. It does.

22 Q. All right. But there's no other identifying
23 information, correct?

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1 A. That's correct.

2 Q. And do you recognize your signature?

3 A. I do.

4 Q. And the -- is it on the first line?

5 A. It is.

6 Q. Does it give a date and time?

7 A. It does, October 15th, 2000, 5:00 a.m.

8 Q. Do you recognize the name of the person underneath?

9 A. Yes, Beth Babyak.

10 Q. All right. And does it indicate the same -- that she
11 received it the same time and same date as the other exhibits?

12 A. Yes.

13 TC [MR. MILLER]: Government would move for the admission,
14 Your Honor, of Prosecution Exhibits for Identification 162A
15 and 162B.

16 MJ [Col SPATH]: Thank you.

17 TC [MR. MILLER]: Provide the witness, please -- provide
18 the witness, please, with Prosecution Exhibit 163.

19 Q. You have before you Prosecution Exhibit 163?

20 A. Yes, I do.

21 Q. Do you recognize that, ma'am?

22 A. Again, it's consistent with the items that we
23 collected in the hospital.

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1 Q. Can you see those items?

2 A. A little bit. If I could have it opened?

3 TC [MR. MILLER]: Sergeant, please.

4 [The paralegal opened the evidence bag.]

5 WIT: Thank you.

6 Q. For the record, ma'am, the bag has been opened. Do
7 you recognize the items inside?

8 A. They do appear consistent with what I collected.

9 Q. All right. Is there anything I could provide you
10 with that would enable you to make a definitive determination
11 whether or not you seized those items?

12 A. Yes, again, please, the -- my notes from collection.

13 TC [MR. MILLER]: Permission to approach, Your Honor?

14 MJ [Col SPATH]: You may.

15 Q. Agent, I'm placing before -- thank you. I'm placing
16 before you a document with the Bates number 10015-00129200,
17 and I would ask you to read that to yourself.

18 A. Uh-huh.

19 Q. Having read -- having read that piece of paper, that
20 document, are you now able to make an independent
21 determination as to whether or not you seized those items?

22 A. Yes, I am.

23 Q. And is that determination independent of the piece of

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1 paper itself?

2 A. Yes, it is.

3 Q. Ma'am, did you collect the items contained in
4 Prosecution Exhibit 163?

5 A. Yes, I did.

6 Q. Placing on the ELM0 a photograph of items -- or a
7 photograph of Prosecution Exhibit 163A for Identification. Do
8 you recognize that photograph?

9 A. Yes, I do.

10 Q. And what do you recognize it to be?

11 A. The clothing, belt, some undergarments, and socks
12 from one of the victims or survivors.

13 Q. And is that the contents of Prosecution Exhibit 163?

14 A. Yes, it is.

15 Q. Fair and accurate depiction?

16 A. It is.

17 Q. Is there a chain of custody form attached to that
18 exhibit?

19 A. There is.

20 Q. And -- excuse me -- does it contain your signature?

21 A. Yes, it does.

22 Q. It also contains the case number, correct?

23 A. That is correct.

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1 Q. No other identifying information on it?

2 A. No.

3 Q. And does it show the date and time that you collected
4 these items?

5 A. It does. October 15th, 2000, 5:00 a.m.

6 Q. And does it indicate to whom you surrendered these
7 items?

8 A. It was -- the "next accepted" is by Beth Babyak.

9 Q. On the 18th at 11:30 a.m.?

10 A. That's correct.

11 Q. Placing on the ELM0 Prosecution Exhibit 163B. Is
12 that an exact duplicate of the chain of custody form attached
13 to Prosecution Exhibit 163?

14 A. Yes, it is.

15 TC [MR. MILLER]: Prosecution would move -- at this time,
16 Your Honor, would offer into evidence Prosecution Exhibit 163A
17 and 163B.

18 MJ [Col SPATH]: Thank you.

19 TC [MR. MILLER]: Provide the witness, please, with
20 Prosecution Exhibit 164.

21 Q. I've placed before you Prosecution Exhibit 164. Do
22 you recognize that bag, ma'am?

23 A. Again, it appears to be consistent with the items

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1 collected at the hospital that evening.

2 Q. And did you collect those items?

3 A. I believe so, yes. May I have the bag opened?

4 Q. Yes.

5 A. Thank you.

6 TC [MR. MILLER]: If you would open the bag for the
7 witness, please.

8 WIT: Thank you.

9 Q. For the record, the bag and the contents of 164 --
10 the bag has been opened, and the contents of 164 have been
11 provided to you.

12 Do you recognize those items, ma'am?

13 A. They look consistent with what we collected.

14 Q. Again, as before, is there something I could provide
15 you that you could make a definitive judgment?

16 A. Yes, please, my evidence collection notes.

17 TC [MR. MILLER]: Permission to approach, Your Honor.

18 MJ [Col SPATH]: You may.

19 Q. Agent, I'm providing you with a piece of paper with
20 the Bates number of 10015-1 -- excuse me, 10015-00129206 and
21 ask you if you would look at that and read it to yourself.

22 Ma'am, have you reviewed that?

23 A. Yes.

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1 Q. Having reviewed it, are you now able to make an
2 independent judgment as to whether or not you seized those
3 items?

4 A. Yes.

5 Q. Is that judgment independent of the item or the piece
6 of paper that you reviewed?

7 A. Yes, it is.

8 Q. I ask you, ma'am, did you seize the items or collect
9 the items contained in Prosecution Exhibit 164?

10 A. Yes, I did.

11 Q. I'm going to show you a photograph, Prosecution
12 Exhibit 164A for Identification. Do you recognize that
13 photograph?

14 A. Yes, I do.

15 Q. Is that the contents of Prosecution Exhibit 164?

16 A. It is.

17 Q. Fair and accurate depiction?

18 A. Yes, it is.

19 Q. I'm also placing before -- or placing on the ELM0
20 Prosecution Exhibit 164B. It shows some personal effects or
21 some personal papers. Do you recognize those, ma'am?

22 A. Yes, I do.

23 Q. Are those contained in the contents of Prosecution

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1 Exhibit 164?

2 A. Yes, they are.

3 Q. Fair and accurate depiction of them?

4 A. Yes.

5 Q. Is there a custody -- chain of custody form attached
6 to the Exhibit 164?

7 A. Yes, there is.

8 Q. All right. Again, no identifying information other
9 than the case number, correct?

10 A. That is correct.

11 Q. Does it contain your signature?

12 A. Yes, it does.

13 Q. And when did you take custody of it?

14 A. October 15th, 2000, at 5:00 a.m.

15 Q. And that's your signature, I take it, at the very
16 top?

17 A. Yes, it is.

18 Q. And does it indicate to whom you surrendered the
19 items?

20 A. It was accepted by Beth Babyak.

21 Q. All right. Again, on what time and what date?

22 A. October 18th at 11:30 a.m.

23 Q. Placing on the ELM0 Prosecution Exhibit 164C for

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1 Identification, and ask you, is that an exact duplicate of the
2 chain of custody form attached to Prosecution Exhibit 164?

3 A. Yes, it is.

4 Q. And is that your signature at the top?

5 A. Yes, it is.

6 TC [MR. MILLER]: Your Honor, the prosecution would move
7 to admit into evidence Prosecution Exhibit 164A for
8 Identification, 164B, and 164C.

9 MJ [Col SPATH]: Thank you.

10 TC [MR. MILLER]: Provide the witness, please, with
11 Prosecution Exhibit 165.

12 Q. Do you recognize that bag, ma'am?

13 A. Again, it looks consistent with the items that we
14 collected at the hospital.

15 Q. For the record, that is Prosecution Exhibit 165,
16 correct?

17 A. Yes. Correct.

18 TC [MR. MILLER]: Would you open it for the witness,
19 please?

20 Q. For the record, Prosecution Exhibit 165 has been
21 opened and the contents have been provided to you; is that
22 correct?

23 A. That's correct.

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1 Q. Are you able to state whether or not you collected
2 those items?

3 A. I believe so, but if I may see my notes.

4 TC [MR. MILLER]: Permission to approach, Your Honor?

5 MJ [Col SPATH]: You may.

6 Q. Agent, I'm placing before you a piece of paper,
7 again, notes with the Bates number of 10015-001291 -- 29193 --
8 let me do that again -- 10015-00129193, and ask you to look at
9 that, please.

10 Ma'am, have you reviewed that piece of paper?

11 A. I have.

12 Q. Are you now able to make an independent judgment as
13 to whether or not you collected the items contained in
14 Prosecution Exhibit 1 -- I think it's 165?

15 A. May I have this bag opened?

16 Q. You may.

17 A. Thank you. **[The witness reviewed the evidence.]**

18 Thank you. Okay.

19 Q. Ma'am, are you now -- ma'am, are you now able to make
20 an independent judgment as to whether or not you collected the
21 items contained in Prosecution Exhibit 165?

22 A. Yes, I am.

23 Q. And is that judgment independent of the actual

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1 document you reviewed?

2 A. Yes.

3 Q. Ma'am, did you collect the items contained in
4 Prosecution Exhibit 165?

5 A. Yes, I did.

6 Q. I'm placing on the ELM0 Prosecution Exhibit 165A for
7 Identification. Do you recognize those items contained in
8 that photograph, ma'am?

9 A. Yes, I do.

10 Q. Are those the items contained in Prosecution Exhibit
11 165?

12 A. Yes.

13 Q. Fair and accurate depiction of them?

14 A. It is.

15 Q. I'm also placing on the ELM0 -- or I am now placing
16 on the ELM0 Prosecution Exhibit 165B for Identification, ask
17 you if you recognize that, ma'am?

18 A. Yes, I do.

19 Q. And what do you recognize that to be?

20 A. An envelope with combings taken from the victim.

21 Q. And was that contained in Prosecution Exhibit 165?

22 A. Yes, it was.

23 Q. Fair and accurate depiction of it?

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1 A. Yes.

2 Q. Is there a chain of custody form attached to it?

3 A. Yes, there is.

4 Q. Could you review that, please. Does that chain of
5 custody form contain your signature?

6 A. Yes, it does.

7 Q. And is it the first signature -- first signature at
8 the top line?

9 A. Yes.

10 Q. Does it indicate the date and time?

11 A. Yes, collected October 15th, 2000, 5:30 a.m.

12 Q. All right. And to whom was it surrendered?

13 A. Beth Babyak accepted it for transport on October 18th
14 at 11:30 a.m.

15 Q. I've placed on the ELM0 Prosecution Exhibit 165C for
16 Identification. Is that an exact duplicate of the chain of
17 custody form you have just described?

18 A. Yes, it is.

19 TC [MR. MILLER]: Your Honor, the government would move to
20 admit Prosecution Exhibit 165A for Identification, 165B, and
21 165C.

22 MJ [Col SPATH]: Thank you.

23 TC [MR. MILLER]: Can you provide the witness, please,

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1 with Prosecution Exhibit 166.

2 Q. For the record, ma'am, have you received Prosecution
3 Exhibit 166?

4 A. I have.

5 Q. Would you look at it, please. Do you recognize it?

6 A. May I have it opened, please?

7 Q. You may.

8 A. May I have the internal packaging opened as well?

9 Q. You may.

10 A. Thank you. May I stand? [The witness reviewed the
11 evidence.]

12 Q. Sure.

13 A. Thank you.

14 Q. Ma'am, did you collect -- or, Agent, did you collect
15 the items contained in Prosecution Exhibit 166?

16 A. I believe I did. May I consult my notes?

17 Q. You may. Would these notes assist you in refreshing
18 your recollection?

19 A. Yes, they would.

20 Q. For the record, Agent, I am placing before you a
21 document with the Bates number 10015-00129175, and I'd ask you
22 to read it to yourself.

23 A. Thank you.

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1 Q. Has that document refreshed your recollection?

2 A. Yes, it has.

3 Q. And are you able to make an independent determination
4 as to whether or not you seized the items contained in
5 Prosecution Exhibit 166?

6 A. Yes.

7 Q. And is that determination independent of the document
8 itself?

9 A. Yes.

10 Q. Agent Rosato, did you seize the items contained in
11 Prosecution Exhibit 166?

12 A. Yes, I did.

13 Q. Placing on the ELM0 Prosecution Exhibit 166A. Do you
14 recognize that, ma'am?

15 A. Yes.

16 Q. And what do you recognize that to be?

17 A. The boots and overalls and an envelope with combings.

18 Q. And is that -- was that contained in Prosecution --
19 the bag, Prosecution Exhibit 166?

20 A. Yes, it was.

21 Q. Fair and accurate depiction of it?

22 A. It is.

23 Q. Placing before you Prosecution Exhibit 166B for

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1 Identification. Do you recognize that, ma'am?

2 A. Yes, it's an envelope of combings.

3 Q. And was that contained in Prosecution Exhibit 166?

4 A. Yes, it was.

5 Q. Fair and accurate depiction of it?

6 A. It is.

7 Q. Is there an evidence receipt or chain of custody form
8 attached to that exhibit?

9 A. There is.

10 Q. And it contains no other identifying information
11 other than the case number; is that correct?

12 A. That is correct.

13 Q. Does it contain your signature?

14 A. Yes, it does.

15 Q. Where, ma'am?

16 A. On the top line "As Collected."

17 Q. And what was the date and time of collection?

18 A. October 15th, 2000, at 6:00 p.m.

19 Q. And to whom did you surrender the evidence?

20 A. These are accepted -- the next person on the chain of
21 custody, there isn't a surrender line here. It is all
22 accepted by the next person, Beth Babyak, yes.

23 Q. When I say "surrendered," I mean accepted by the next

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1 person.

2 A. Correct. October 18th, 11:30 a.m.

3 Q. Placing on the ELM0 Prosecution Exhibit 166C. Is
4 that an exact duplicate of the chain of custody form you have
5 just described?

6 A. Yes, it is.

7 TC [MR. MILLER]: Your Honor, the prosecution would move
8 to admit into evidence Prosecution Exhibits 166A, 166B, and
9 166C.

10 MJ [Col SPATH]: Thank you.

11 TC [MR. MILLER]: Last exhibit. If you could, please,
12 provide the witness with Prosecution Exhibit 167.

13 WIT: May I have it opened?

14 TC [MR. MILLER]: Yes.

15 WIT: Thank you.

16 TC [MR. MILLER]: And if you would open it, please.

17 WIT: Thank you. **[The witness reviewed the evidence.]**

18 Q. Before we move forward, would it be helpful to open
19 up the other bag?

20 A. Yes, certainly. **[The witness reviewed the evidence.]**

21 Q. Agent, have you had the opportunity to inspect the
22 contents ----

23 A. Yes, I have.

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1 Q. ---- of 167?

2 A. Yes.

3 Q. Did you collect those particular items contained in
4 Prosecution Exhibit 167?

5 A. Yes, I did.

6 Q. I'm going to show you a photograph, Prosecution
7 Exhibit 167A for Identification. Do you recognize that
8 photograph, ma'am?

9 A. Yes, I do.

10 Q. And, Agent, is that a photograph of the contents of
11 167?

12 A. Yes, it is.

13 Q. Is it a fair and accurate depiction?

14 A. It is.

15 Q. I am showing you what is Prosecution Exhibit 167B for
16 Identification. Do you recognize that?

17 A. Yes, I do.

18 Q. And what do you recognize that to be?

19 A. An envelope of combings taken from the victim.

20 Q. And is that contained in Prosecution Exhibit 167?

21 A. Yes, it is.

22 Q. Fair and accurate depiction of it?

23 A. It is.

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1 Q. Is there an evidence receipt or chain of custody form
2 attached to that exhibit?

3 A. Yes, there is.

4 Q. If you would inspect that, please.

5 A. Uh-huh.

6 Q. Does it contain any other identifying -- does it
7 contain any identifying information other than the case
8 number?

9 A. No.

10 Q. And does it have your signature?

11 A. Yes, it does.

12 Q. And where on the form?

13 A. Listed as "collected." I collected this item at
14 October 15th, 2000 at 6:00 p.m.

15 Q. And then who accepted the evidence from you?

16 A. Beth Babyak on October 18th at 11:30 a.m.

17 Q. And for the record, the case number in and all the
18 chain of custody forms has been 262-NY-277013; is that
19 correct?

20 A. That's correct.

21 Q. I'm placing on the ELM0 Prosecution Exhibit 167C for
22 Identification. Is that an exact duplicate? Is Prosecution
23 Exhibit 167C an exact duplicate of the chain of custody form

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1 you have just described?

2 A. Yes, it is.

3 TC [MR. MILLER]: Your Honor, the prosecution would move
4 into evidence Prosecution Exhibit 167A for Identification,
5 167B, and 167C.

6 MJ [Col SPATH]: Thank you.

7 Q. And so the record is clear, ma'am, as to all the
8 exhibits, 160 through 167 inclusive, that was items that were
9 given to you by hospital personnel, correct?

10 A. That is correct.

11 Q. After you collected these items, how long did you
12 remain at Ramstein?

13 A. For a few more days, four or five, possibly.

14 Q. And did you proceed to Aden?

15 A. Yes, I did.

16 Q. And did you insist -- "assist" -- assist in the
17 activities there?

18 A. Yes, I did.

19 TC [MR. MILLER]: I have nothing further of this witness,
20 Your Honor. Thank you.

21 MJ [Col SPATH]: Thank you. Hang on, ma'am.

22 WIT: Sorry.

23 MJ [Col SPATH]: That's all right. It is likely going to

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1 be quick.

2 Defense Counsel?

3 DDC [LT PIETTE]: Defense takes no position.

4 MJ [Col SPATH]: You haven't been in here when I've
5 responded to that, but I'm not going to repeat myself as I
6 have said it a number of times on the record.

7 Special Agent Rosato, thank you for coming in person
8 to testify. I have thanked all the witnesses who have come
9 here in person because to travel anywhere to testify takes
10 some time out of your schedule, so it is appreciated.

11 I'm going to give you a standard order. Don't
12 discuss your testimony until this issue is resolved. The only
13 unique piece here is it could be a pretty good length of time
14 before this particular issue is resolved -- as likely you can
15 guess based on what's going on.

16 WIT: Certainly.

17 MJ [Col SPATH]: Do you understand the order?

18 WIT: I do.

19 MJ [Col SPATH]: All right. Again, truly I appreciate you
20 coming down and testifying in person. Thanks a lot. You're
21 excused.

22 WIT: Thank you.

23 [The witness was warned, temporarily excused, and withdrew

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1 from the courtroom.]

2 MJ [Col SPATH]: Trial Counsel, I take it that is all of
3 the 207 witnesses for this session?

4 TC [MR. MILLER]: It is, Your Honor.

5 MJ [Col SPATH]: Come January, do you anticipate
6 additional 207 witnesses?

7 TC [MR. MILLER]: Yes.

8 MJ [Col SPATH]: Do you know about how many? Not yet?
9 Okay.

10 TC [MR. MILLER]: A cast of thousands, but we have other
11 sites and we'll be going through different sites.

12 MJ [Col SPATH]: Yes, we have -- we have other -- I think
13 it's 324, 325, and 326, the appellate exhibits, if I am
14 correct. So I know there are other locations with real
15 evidence.

16 For the stuff from the COLE, though, 207 ----

17 TC [MR. MILLER]: I think we're about getting ready to
18 wrap up.

19 MJ [Col SPATH]: Okay. Just curious, I'm trying to get a
20 feel for how far along we are. Thank you.

21 Any updates from the government? Anything I need to
22 be apprised of?

23 CP [BG MARTINS]: Your Honor, we have gotten more

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1 confirmation of tomorrow's attendance, travel arrangements
2 being made/confirmed/issued, this kind of thing, but nothing
3 final and definitive. But we expect 1400 we would actually be
4 seeking to begin, and then at -- per your instructions on how
5 the witness would be examined, you would then have her at
6 1400.

7 MJ [Col SPATH]: Then why don't we for now tentatively,
8 for the witness, we'll say 1400. If for some chance it
9 changes and there's an opportunity to go earlier tomorrow,
10 just let Mr. Potter know. If not, we'll stick with 1400 for
11 the witness. Thank you.

12 Defense Counsel, any additional matters for today?

13 DDC [LT PIETTE]: Nothing from defense, Your Honor.

14 MJ [Col SPATH]: I will wait. I know there's, like I
15 said, a filing coming regarding a 505 session. I would like
16 to do that. Let's tentatively set that for noon. That will
17 give everyone time to get down here into the courtroom, the
18 court reporters from up the hill.

19 We'll have a closed session to discuss the classified
20 issues surrounding alleged intrusions, and then that will give
21 them enough time to get back up the hill so we could open the
22 session for the witness at 1400 and we'll -- we'll just go
23 from there.

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1 So we don't have anything until noon tomorrow. If
2 something changes with the witness, let us know. We may
3 adjust those times. But right now I think that gives everyone
4 a good idea of where to be. For the audience, that means 1400
5 tomorrow when you're here if you are interested in seeing the
6 testimony tomorrow. I'll see you all at noon, however, for a
7 505 session as we'll standby for that filing.

8 Thank you. We're in recess.

9 [The R.M.C. 803 session recessed at 1538, 16 November 2017.]

10 [END OF PAGE]

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