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1 [The R.M.C. 803 session was called to order at 1429, 15 March
2 2017.]

3 MJ [Col SPATH]: These commissions are called to order.
4 All the parties are again present.

5 Trial Counsel, call your next witness.

6 TC [MR. MILLER]: Thank you, Your Honor. The government
7 recalls Jane Rhodes.

8 MJ [Col SPATH]: Ms. Rhodes-Wolfe, come on in and have a
9 seat. I know you're the same Ms. Rhodes-Wolfe who testified a
10 couple of days ago. Just remember you're still under oath.

11 WIT: Thank you.

12 JANE RHODES-WOLFE, civilian, was recalled as a witness for the
13 prosecution, was reminded of her previous oath, and testified
14 as follows:

15 **DIRECT EXAMINATION**

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

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. I'd like to now -- we've discussed sort of generally
20 what has occurred and specific pieces of evidence which you
21 had collected. I'd like to talk about now is the intake or
22 what I call the evidence custodian responsibilities or duties
23 that you may have performed.

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1 A. Okay.

2 Q. If we could return to that and if you could again
3 provide us with a brief explanation as to where that
4 particular station was on the ship.

5 A. As I mentioned yesterday, it was a briefing room
6 somewhere below deck. I don't think I could find it if I was
7 on board the ship, but we had been provided control over that
8 room, and we were able to secure it at night. I don't recall
9 if -- exactly how we did that, but I know that we felt
10 confident that we could secure that room at night or when we
11 were in not present.

12 And then in the subsequent days following our first
13 days on the ship, we were able to use a CONEX trailer or
14 something along those lines within the Marine encampment. So
15 at the end of the day -- again, this did not occur on the very
16 first day. It took us a few days to really develop a process
17 and have better access to resources, and at that time then we
18 would secure things in this CONEX trailer within the Marine
19 area.

20 Q. When you say we, was there another individual working
21 with you, another agent?

22 A. Yes. Special Agent Dayna Better, and then really the
23 other agents that were within our team as well, too. It was a

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1 joint -- a team effort. And so at the end of the day, we had
2 to take a little boat from the refueling area back to land
3 and, depending upon the time of day when we arrived, it was
4 either a two-foot leap up on to the platform or it was a
5 five-foot leap, so it's a joint effort to get people and items
6 back on to the land.

7 Q. When an item was presented to you, how would you
8 process it as the evidence custodian?

9 A. We would indicate it -- as we looked at the materials
10 in the last couple days, we would then complete the
11 information on the outside of one of the brown bags or use one
12 of the plastic bags and then complete that initial information
13 at that time.

14 Q. All right. I show you what is Prosecution
15 Exhibit 22CD -- 22C, excuse me, for Identification. Do you
16 recognize that, ma'am?

17 A. This is a chain of custody that I see -- I see my
18 name on it referenced as storage on 10/22.

19 Q. All right. Would you agree -- does that show that
20 you would have received it as the evidence custodian?

21 A. Yes. That would have indicated I received it from
22 Tom O'Connor and that it was placed into storage that same day
23 on 10/22.

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1 Q. All right. And that indicates -- so we sort of use
2 this as a demonstrative aid also. That shows that you
3 received that from Tom O'Connor. It shows the case ID number,
4 correct?

5 A. Yes, it shows the case -- which is my handwriting as
6 well, the 262 New York, NY-277031 [sic]. So yes, that
7 indicates I'm taking it in for storage, and it is related to
8 the USS COLE investigation.

9 Q. It has a 1B number?

10 A. Yes, 1B775. And an item number, W102, which would
11 indicate it had been recovered from the water.

12 Q. Okay. All right. Now, if I could, what is a 1B
13 number again, for the record?

14 A. Yes. Thank you. The 1B number is an evidence number
15 that is assigned within the FBI case file. That would not
16 have been assigned while we were in Yemen. That would have
17 been assigned later.

18 Q. All right. That is a number unique to that
19 particular evidence bag, correct?

20 A. That is correct. So within a case file, there would
21 be only one 1B775.

22 Q. And the item number?

23 A. The item number was within our own control mechanism

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1 or recordkeeping on board the -- while we were in Yemen for us
2 to be able to identify, in very general terms, where it was
3 recovered from. And then we had a numerical sequencing that
4 we would use to track it as well.

5 Q. Again, that is a unique number for each evidence bag,
6 correct?

7 A. Yes. That would have been our plan, yes.

8 Q. And how did you -- you indicated you used that as an
9 internal mechanism?

10 A. Yes. Because since the 1B number is not generated
11 automatically, we needed to have an internal system by which
12 we would determine if it came from Deck 01, the water; I think
13 there was some items from the beach, other areas that were
14 associated with the USS COLE.

15 Q. All right. Now, as to this particular form, there is
16 a -- it looks like it's Mr. O'Connor, Tom O'Connor, who
17 brought this, correct?

18 A. I see O'Connor, so I would assume that that was Tom
19 O'Connor, but, yes.

20 Q. Did you print his name or did he?

21 A. I can't say for sure. O'Connor -- that O'Connor
22 handwriting looks like mine, but that -- the signature above
23 his name does not look like mine -- my handwriting, but

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1 O'Connor does appear to be my handwriting.

2 Q. Why would you do that?

3 A. It may have just been for time efficiency as well,
4 too, when given Tom's responsibilities recovering the victims;
5 just may have helped to assist in the administrative duties,
6 and for clarity. It looks like his signature may be worse
7 than mine, so perhaps I was just attempting to keep that
8 clear.

9 Q. All right.

10 MJ [Col SPATH]: That item number, is that your
11 handwriting?

12 WIT: Item -- yes, W102.

13 MJ [Col SPATH]: W102.

14 WIT: Looks like mine, yes.

15 Q. And the things -- storage, that's yours also?

16 A. Yes. That is mine as well.

17 Q. So again, you accepted this from him on the 22nd of
18 October at 12:30, correct?

19 A. That is correct.

20 Q. All right. I'm sorry. That was 22. 22C.

21 MJ [Col SPATH]: Say again.

22 TC [MR. MILLER]: 22C, Your Honor.

23 Q. I'll show you Prosecution Exhibit 41C. Do you

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1 recognize that, ma'am?

2 A. Yes, I do. It contains the New York file number for
3 the USS COLE. I see my handwriting on there multiple times
4 and my signature a couple of times.

5 Q. Does it show that you accepted it from the person who
6 collected the evidence?

7 A. Yes, it does.

8 Q. And that you accepted it as the evidence custodian on
9 October 20 -- 22, at 2:45 p.m.?

10 A. That I placed it into storage at that time, yes.

11 Q. All right. And again that would have been for the
12 evidence marked with the 1B number of 1B875, item number W119,
13 correct?

14 A. Yes. I -- it's a little fuzzy on my screen, but yes,
15 I see 119 on the large screen. Thank you.

16 Q. 44. 44 is next. I show you Prosecution Exhibit 44C.
17 Ask you, ma'am, do you recognize that?

18 A. Yes, I do. Again, I see my handwriting with the file
19 number, and then I see my signature in two different -- on two
20 different lines of the form.

21 Q. Right now the only signature we're interested in is
22 the one as the evidence custodian.

23 A. Okay. Thank you.

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1 Q. So that would be the second signature, correct?

2 A. Yes, at 3:30 p.m., looks like on 10/20.

3 Q. And you accepted evidence 1B860, item number W133,
4 correct?

5 A. That is correct.

6 Q. And again, so the record is clear, these are unique
7 numbers to each piece of evidence, correct?

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

9 Q. I show you Prosecution Exhibit 45C, ask you if you
10 recognize that, ma'am?

11 A. Yes, I do. Again, I see my handwriting with the file
12 number and looks like my handwriting for the item number, and
13 I see my signature accepting it for storage on 10/22.

14 Q. All right. At 2:30 p.m., correct?

15 A. That is correct.

16 Q. All right. And that is for item number W117, which
17 is a unique number, correct?

18 A. Yes. 117.

19 Q. All right. There is a lag in the acceptance from --
20 in the time that Tom O'Connor collected it to the time that
21 you received it; is that correct? It show as time of ----

22 A. Yes. It looks like it was collected on 10/20 at
23 4:00 p.m. and I put it into storage a couple of days later in

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1 the afternoon.

2 Q. All right. When you say you put it into storage,
3 could you explain to the court what you mean.

4 A. Sure. So that would have been a combination of our
5 use of the briefing room on board the ship and then also the
6 CONEX trailer that we would take things to at the end of the
7 day. We did not make -- I don't recall making any trips to
8 the CONEX trailer during the day; we just did that in our one
9 movement at night back to land.

10 Q. All right. So how would that explain the lag of two
11 days?

12 A. I can't answer that sitting here today. I can't
13 recall.

14 Q. Is there any doubt, however, in your mind when you
15 received it after he collected it?

16 A. I wouldn't think so, no. Again, based upon the days
17 on there, I have no reason to doubt that.

18 Q. All right. I show you Prosecution Exhibit
19 numbered 48D.

20 A. Okay.

21 Q. Again ----

22 A. Yes.

23 Q. Do you recognize your signature ----

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1 A. Yes.

2 Q. ---- on the second line?

3 A. Yes, I do. Accepting it for storage on 10/20 at,
4 looks like, 3:30 p.m.

5 Q. All right. And from, I guess, Mr. O'Connor and
6 Mr. -- Agents Finnerty and O'Connor; is that correct?

7 A. Yes. It looks like their signatures above, and that
8 appears to be my handwriting that says Finnerty, so that we
9 could help track whose actual signature it would have been.

10 Q. Has the case number on it, correct?

11 A. Yes, the case number and a 1B863.

12 Q. And an item number?

13 A. W132.

14 Q. And by signing these sheets, you're acknowledging
15 that you took possession of it, correct?

16 A. That is correct.

17 Q. I show you Prosecution Exhibit 49C for
18 Identification, ask you if you recognize your signature on the
19 second line.

20 A. Yes, I do, indicating it had been received at, looks
21 like, 10/20 at 3:30 p.m.

22 Q. And you received this evidence in the COLE
23 investigation; you know that from the case number, correct?

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1 A. Yes. I see my handwriting with the New York file
2 number.

3 Q. And if you could read the B number -- the 1B number
4 and the item number into the record.

5 A. 1B862 and item number W134.

6 Q. Showing you Prosecution Exhibit 50C for
7 Identification. Again, and FD-192, ma'am. Do you recognize
8 that?

9 A. Yes, I do. I see my signature accepting the item for
10 storage, looks like on 10/20 in the afternoon. And then also
11 I see my handwriting with the file number of the investigation
12 and also 1B864 along with item number W130.

13 Q. Showing you Prosecution Exhibit 51C for
14 Identification, if you would, please, review that document.

15 A. Yes, sir. Thank you. I see the New York file number
16 in my handwriting, item number 1B871. Item -- I take that
17 back, 1B871, item number W123, and I see my handwriting
18 accepting it from storage from Kevin Finnerty on 10/20 at
19 3:30 p.m.

20 Q. I show you Prosecution Exhibit 75D. Do you recognize
21 that, ma'am?

22 A. Yes, I do. I see my signature collecting it for
23 storage on 10/22 at 12:30 p.m. I also see my handwriting with

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1 the New York file number and a 1B number, which appears to
2 be -- I think it says 885, and item number W106.

3 Q. And again, all the item numbers that are written on
4 these you wrote yourself, correct?

5 A. The item number, yes; the 1B number, no. At least --
6 it has not been my handwriting on all of the item numbers.
7 The last couple didn't appear to be mine, but this one is my
8 handwriting.

9 Q. And I -- for the record, I think I called this
10 Prosecution Exhibit 75B, but it is actually Prosecution
11 Exhibit 75C, the green sheet, correct?

12 A. You know, I'm not able to see the exhibit on this
13 screen here. Perhaps it's up there. Thank you. Yes, 75C.

14 Q. All right. Showing you Prosecution Exhibit 82C. Do
15 you recognize that?

16 A. I do. Once again, I see my handwriting with the New
17 York file number, a 1B number of 773, item number in my
18 handwriting, W100, and then it indicates I accepted it from
19 storage from Tom O'Connor on 10/22 at 12:30 p.m.

20 Q. And again, as far as -- we are talking about, again,
21 the signature on the second line, correct?

22 A. Yes, sir.

23 Q. Showing you Prosecution Exhibit 94C for

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1 Identification. Do you recognize that, ma'am?

2 A. Yes, I do. I see my handwriting on here multiple
3 times. I see I completed the New York file number, this is a
4 record of 1B870, and I see my signature on the second line
5 accepting it for storage from Kevin Finnerty on 10/20.

6 Q. At 3:30 p.m., correct?

7 A. That is correct.

8 Q. And it shows an item number of W124, correct?

9 A. Yes. For instance, on this one, that is not my
10 handwriting for W124.

11 Q. But again, whoever put that, these are unique numbers
12 for that piece of evidence, correct?

13 A. That is correct.

14 Q. I place before you Prosecution Exhibit 95C for
15 identification and ask you if you recognize that, ma'am?

16 A. Yes, I do. Again, I see my handwriting on the -- for
17 the case number, New York case number. This record -- this is
18 a record of 1B869, item number W125, which is not my
19 handwriting there, but I do see my handwriting and signature
20 on the second line accepting it for storage from Kevin on
21 10/20 at 3:30 p.m.

22 Q. Now, once this item was handed to you, where would
23 you put it immediately?

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1 trailer, no.

2 Q. Was that documented anywhere?

3 A. Not that I -- not that I can recall. But I don't --
4 I don't know if it was or was not, but I can't recall sitting
5 here today.

6 Q. And this was an off-site, on-the-beach-somewhere
7 storage?

8 A. Yes. So the Marines had established a secure area on
9 shore, which is where we would arrive every day in our vans
10 driven by the HRT, and from there it was a secure area for a
11 variety of military and government officials; but, yes, within
12 the Marine encampment.

13 Q. Do you know if the area or the containers that the
14 evidence was placed in was a temperature-controlled area or
15 was it -- I know it was under a tent, but do you know if it
16 was climate controlled?

17 A. Well, I don't know it was under a tent, but I just do
18 remember a CONEX box, and I don't recall that detail.

19 Q. So you don't know whether it was or not?

20 A. I do not, no. I don't recall.

21 Q. And once you established this new location to store
22 items, is that what you used continually from that day on?

23 A. That is my recollection, yes.

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1 Q. And the process you explained was you would take it
2 at the end of the day off the ship and bring it over to the
3 containers on the beach?

4 A. Yes.

5 Q. And -- but you were logging the material in -- the
6 one -- the forms -- the custodian logs as you received them?

7 A. So I think as we discussed yesterday, I don't have an
8 exact memory of creating a log. I -- certainly would make
9 sense we would have done that. But certainly we were tracking
10 item numbers, so it would make sense that we would have
11 tracked it that way. I just can't sit here today and exactly
12 recall an evidence log. But we were certainly tracking our
13 progress, which is how we were able to numerically track --
14 track the items we collected.

15 Q. And might the log contain a notation of when you
16 switched storage spaces?

17 A. Certainly possible, yes.

18 Q. Now, you mentioned that as -- in some of your
19 testimony and some of the exhibits, you would receive an item
20 from someone and not record their name; is that true?

21 A. I'm not sure I'm following your question. Can you
22 repeat that?

23 Q. Sometimes where ----

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1 A. Oh, oh.

2 Q. ---- people were bringing you items ----

3 A. Yes. Thank you.

4 Q. ---- and you would not record their names, but other
5 times -- like just today you were testifying somebody brought
6 you an item, you would record their name?

7 A. Sure. And that would be for FBI personnel. But if a
8 non-FBI person had presented me with something, in order for
9 to us start the chain, we would enter it, the first FBI person
10 who had collected it. But, for instance, like I indicated, I
11 wrote Finnerty's name or O'Connor's name for tracking, but I
12 would not have done that, for instance, if it had been one of
13 the COLE crewmembers that gave me something.

14 Q. Is there a particular guideline that says that a -- a
15 non-FBI person cannot be on the chain of custody?

16 A. Well, generally speaking, we certainly -- there are
17 task force officers that are assigned to squads, and their
18 names may be there, but from my understanding and my
19 interpretation of that, that we wanted to have FBI names on
20 the form for us to be able to track and that contain that in
21 our systems. I don't know in 2000 if there was a policy that
22 was -- specifically stated that one way or the other.

23 Q. Do you remember if you made the decision to only put

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1 the FBI agents, or was that the general instruction given by
2 one of the team leaders?

3 A. I -- I -- I don't -- I don't -- I don't recall. I
4 don't recall.

5 Q. Now, you mentioned again we were -- some testimony
6 about where this room was.

7 A. Uh-huh.

8 Q. I'm going to call it the evidence room. It's been
9 called several different things ----

10 A. Okay.

11 Q. ---- throughout the testimony.

12 A. I called it the briefing room, but we can certainly
13 call it the evidence room. Yep. So we know we're talking
14 about the same room. Yeah, thank you.

15 Q. Thank you. Inside this evidence room, when someone
16 brought you something, was there a box you would put it into,
17 or was it just gathered in an area?

18 A. I -- I don't recall. I can't recall that level of
19 detail sitting here today, but ----

20 Q. Do you recall any detail about the room?

21 A. Sure. I think, as I mentioned yesterday, I described
22 it more as a kind of a kiva-style. For me, there was a front
23 area that I understand that executive officers would provide

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1 briefings, and then there were chairs that were in a -- kind
2 of an auditorium or a -- they were chairs that had a little
3 desk associated with them. I'd have to estimate there were
4 probably 20 chairs in there.

5 Q. And I guess my question is: With specific regard to
6 the evidence, where in the room was that being placed?

7 A. I -- I don't want to answer one way or the other
8 because I can't recall. But I recall sitting in those little
9 desks at various times and completing our paper, but I
10 think -- I don't recall one particular part of the room that
11 we used.

12 Q. Were there times when the room was filled with
13 evidence before you could take it off the ship?

14 A. That is a subjective term. I would be hesitant to
15 use the word -- you know, at times we collected certainly a
16 lot of evidence and it would -- we would obtain a large number
17 during the day; but to pile up or to be overwhelmed with
18 evidence, I don't -- I don't I think could characterize it
19 like that one way or the other.

20 Q. How did you separate one day's evidence from the next
21 day, if you did?

22 A. Well, if we -- when we were able to finally take
23 things to the shore at night, then we would take everything

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1 that had been collected that day. But until we were able to
2 do that, we would have just maintained it. I don't know that
3 there necessarily would have -- that there would have been a
4 need to organize it by day.

5 Q. Okay. Fair enough.

6 Now, you -- you testified a little bit about
7 sometimes you would print the individual's name ----

8 A. Uh-huh.

9 Q. ---- and then they would sign it?

10 A. Uh-huh.

11 Q. Okay. Do you recall if they would sign it at the
12 same time that you printed the name?

13 A. I -- I can't recall.

14 Q. So it's possible they would have come back and signed
15 it later once you had printed the name, or you don't know?

16 A. I just don't know. But I know that it would make
17 sense that, you know, given some signatures are -- you know,
18 can be difficult to read, that would have been my intention
19 that I would have written their names, but I -- I don't know
20 when it was actually signed.

21 Q. Okay. So your testimony is you did that for
22 clarification?

23 A. That is correct. Yes.

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1 Q. And once you maintained -- once you obtained this
2 log, the 192, it stayed with the evidence, correct?

3 A. Ah ----

4 Q. I'm calling it a log, but I may be throwing you off
5 by saying that. Just the custodian -- the 192 that stayed
6 with the piece of evidence.

7 A. The 192 chain of custody.

8 Q. Chain of custody.

9 A. Thank you, yes. That should have stayed with the
10 evidence then.

11 Q. And you said it was -- you kept all of this in a room
12 that was -- you were able to secure?

13 A. Yes.

14 Q. Okay. Can you tell us how you were able to secure
15 it?

16 A. I can't recall if -- I can't recall if either we had
17 the key or there was some other locking mechanism. I just --
18 I don't recall at this time how we were able to do that, but
19 we certainly felt confident being able to store it there, that
20 it was a secure location.

21 Q. Could any -- could somebody at any time come back and
22 sign anything without you knowing?

23 A. Well, I certainly wasn't in the room, you know,

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1 24 hours a day. I think I mentioned I was routinely within
2 areas of the ship, but I -- that would just be conjecture. I
3 don't want to do that.

4 Q. Were you or Ms. Better ever given instructions that
5 once you received these bags, no one else was supposed to
6 touch them? Or how did you maintain these bags when you
7 weren't able to take them off the ship?

8 A. Well, my recollection is that we would ensure that
9 either Dayna or myself would be there to maintain the
10 integrity of it. If not, we were able to secure the room.
11 But I don't recall any specific guidance like that. We just
12 used our best judgment, and again, as I mentioned yesterday,
13 the very limited staffing we have.

14 Normally at this kind of large event, you would have
15 an evidence control technician and someone that was their
16 exact job. We did our best to balance the amount of work and
17 the amount of materials that were coming in given just our
18 very limited resources.

19 Q. Okay. So no one in this situation was an evidence
20 technician, correct?

21 A. That is correct. There were no professional support
22 employees that made the journey to support the Evidence
23 Response Team.

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1 Q. And if I recall correctly, did you say this room was
2 a room where sometimes -- because it was air conditioned,
3 correct? Or was it not?

4 A. Gosh, I hadn't ever thought about that. It must have
5 been, but I can't recall one way or the other -- you know,
6 certainly the power to the ship was intermittent at times, as
7 was the running water, but -- I can't recall AC one way or the
8 other.

9 Q. Okay. Were there times when people other than
10 yourself and the other evidence custodian was in the room?

11 A. Yes. As I mentioned yesterday, as well, too, when we
12 would need to -- there would be all the other FBI agents,
13 other people that understood what our processes were. But as
14 other members of the team may bring things to us, and at times
15 there were -- yeah, other people in the room. I remember one
16 time I cut my head and the medic was patching up my head in
17 there with me as I was still completing the forms. So it was
18 an interesting spot.

19 Q. Okay. And you said sometimes even sailors were in
20 that room?

21 A. Well, they would -- I don't know that they would
22 necessarily come in. They would come to our doorway and we
23 would visit with them there.

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1 Q. Okay.

2 A. But, you know, again, we did not have the facilities.
3 We did not have the control or the space that we would
4 normally have in that kind of situation, and we made our best
5 with what we had, limited capabilities.

6 Q. It wasn't your preference to do it this way, it was
7 just doing the best you could?

8 A. Absolutely. It's what we had available.

9 Q. Just a couple of questions. On -- and I think one of
10 them was 41C -- some of these forms, you would sign saying you
11 accepted it for storage, correct?

12 A. Excuse me. That's correct.

13 Q. And those were all of the forms you talked about
14 today in your testimony, more or less, right?

15 A. Yes. I think the ones we did today all indicated I
16 accepted them from others for storage.

17 Q. And you indicated that you would only do this -- you
18 would only fill this part out at the exact time that you
19 received the item?

20 A. The approximate time. I -- it would be probably -- I
21 don't want to say that it's exactly to the minute, but it
22 would certainly be an approximate time.

23 Q. Give or take, in light of everything that was going

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1 on?

2 A. Correct. Thank you, yes.

3 Q. So this -- when you accepted it for storage, you
4 never took something out of the other storage place or
5 anything like that, correct?

6 A. Not that I can recall.

7 Q. Okay. So if there is a two-day lag -- I'm sorry,
8 that's the wrong one. Maybe 22. If there was a two-day
9 lag -- and I believe one of them had it, I will continue to
10 try to find it ----

11 A. Yes. I recall seeing that one this afternoon, yes.

12 Q. That means that that individual had that in their
13 possession for two day, correct?

14 A. That may be what occurred. It may have been drying.
15 It may have been collected and it may have been drying. But I
16 don't -- I can't sit here today and remember one particular
17 piece of evidence from another, so I can't -- I can't answer
18 that.

19 Q. But it's fair to say most of the times you had it
20 within the same day?

21 A. That is correct.

22 Q. In fact, sometimes within the same time frame?

23 A. Yes. Sometimes it was a very short time frame.

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1 Q. And sometimes a half hour?

2 A. Yeah. Yes. Sorry. Thank you.

3 Q. So for -- this one is 45C. I'm showing you what's
4 been marked as PE 45C. This is the actual item that there is
5 a two-day -- I'm going to call it a lag -- from the time the
6 individual collected it and gave it to you?

7 A. Yes. That's what the document shows, yes.

8 Q. And do you know how often this would occur?

9 A. I don't recall having seen that on many of the other
10 forms, but certainly there's other evidence as well that I
11 don't think we're discussing during this hearing. So I
12 can't -- I wouldn't pretend to put a number on that.

13 Q. Was there any other place to store items except for
14 with you and Ms. Better?

15 A. Well, there -- as I mentioned, there had been some
16 kind of drying station. I cannot recall where the drying
17 station was. Certainly, especially as items were -- that were
18 either found on the victims or found near them, that was
19 certainly a wet area and that may have been something that, in
20 this particular instance, Special Agent O'Connor may have put
21 into the drying station, but I -- I can't necessarily explain
22 the gap on that document.

23 Q. To be clear, the drying stations were not in the

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1 evidence room?

2 A. I cannot recall, sitting here today, where they were.
3 I just know that they existed somewhere.

4 Q. Would you have noticed a drying station if it was in
5 the evidence room?

6 A. Possible. But again, I don't want to -- I don't want
7 to -- I don't want to make a supposition.

8 Q. So we're going to say it could have been outside the
9 drying room -- I mean outside of the evidence room?

10 A. Yes. I agree with you, yes.

11 Q. Okay. And if it was then in the drying room for two
12 days, it was not secured, correct?

13 A. Again, I don't -- I don't know where it was. I don't
14 know if Tom had another way to secure it in another part of
15 the ship. There may have been something below deck in where
16 they were working primarily on the recovery of the victims.
17 And there may have been another way that he felt confident
18 that it was contained there, but I don't know for sure.

19 Q. That wasn't noted anywhere on this form?

20 A. No. There's no indication of that, and that's
21 just -- I'm just -- that is a possibility.

22 Q. Is it safe to say you're deferring to him on this
23 issue, right?

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1 A. Yes.

2 Q. Okay.

3 ADC [MS. ELIADES]: No further questions.

4 MJ [Col SPATH]: Mr. Miller, any follow-up?

5 TC [MR. MILLER]: No redirect, Your Honor. Thank you.

6 MJ [Col SPATH]: I know you will remember the instruction.

7 Same one, don't talk about your testimony until we're

8 finished. Thanks.

9 WIT: Thank you, kindly.

10 TC [MR. MILLER]: This witness is again subject to recall,

11 Your Honor.

12 MJ [Col SPATH]: She knows.

13 [The witness was warned, excused, and withdrew from the

14 courtroom.]

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

16 TC [MR. MILLER]: Government calls Special Agent Dayna

17 Sepeck.

18 Ma'am, if you would, please, stand and raise your

19 right hand.

20 DAYNA SEPECK, civilian, was called as a witness for the

21 prosecution, was sworn, and testified as follows:

22 DIRECT EXAMINATION

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

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1 Q. Would you please be seated and spell your name.

2 State your name and spell it for the record.

3 A. Dayna Better Sepeck. D-A-Y-N-A, B-E-T-T-E-R,

4 S-E-P-E-C-K.

5 Q. So we can get to this issue right away, in the year
6 2000, was your name Sepeck?

7 A. No.

8 Q. What was it at that time?

9 A. Better.

10 Q. All right. Ma'am, how are you presently employed?

11 A. Supervisory special agent with the FBI.

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

13 A. Approximately 21 years.

14 Q. All right. Ma'am, I want to go into a little bit
15 about your background. You attended university, correct?

16 A. Yes. University of Maryland.

17 Q. Did you receive a degree?

18 A. Yes.

19 Q. In?

20 A. BA in criminal justice.

21 Q. Did you have any post-graduate work?

22 A. Yes, I did. I received a master of forensic sciences
23 from George Washington University.

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1 Q. Now, after you received these degrees did you obtain
2 any employment with a police department?

3 A. Yes, I did. I worked for the Washington, D.C.
4 Metropolitan Police Department Mobile Crime Lab.

5 Q. And what were your duties and responsibilities?

6 A. I was a crime scene technician. I worked processing
7 major crime scenes, homicides, rapes, assault with intent to
8 kill, suicides.

9 Q. Approximately what time frame did you do that?

10 A. That was for two years, from 1994 to 1996.

11 Q. All right. Did you receive any particular -- or any
12 specific training to do that job?

13 A. I did. We had a training course that we went through
14 and also on-the-job training from the officers that worked
15 there.

16 Q. Do you know one of the defense experts?

17 A. Yes, I do.

18 Q. And whom do you know?

19 A. Mr. Plant.

20 Q. And how do you know him?

21 A. I was trained by him as well as I worked with him for
22 the two years that I was there.

23 Q. All right. Now, after your time at the D.C. Police

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1 Department, did you obtain employment with the FBI?

2 A. Yes, I did.

3 Q. And that would have been in 1996?

4 A. That's correct.

5 Q. And did you attend the New Agent School at Quantico?

6 A. Yes.

7 Q. During your new agent training, did you receive
8 additional training in the collection of evidence and the
9 processing of crime scenes?

10 A. Yes, I did.

11 Q. And where was your first office out of Quantico?

12 A. New York.

13 Q. And what were your duties -- what were your assigned
14 duties there?

15 A. I worked Italian Organized Crime, was my main
16 responsibility. As well, I also worked on the Evidence
17 Response Team.

18 Q. That was a collateral duty, correct?

19 A. Yes, it was.

20 Q. And when did you join the Evidence Response Team, the
21 ERT?

22 A. I joined in approximately 1998.

23 Q. Did you receive specialized training to become a

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1 member of that team?

2 A. Yes, I did. There was a two-week 80-hour basic ERT
3 course that we took, and then following that there was
4 advanced training courses.

5 Q. How long did you remain in the New York office?

6 A. I was there for seven years.

7 Q. And where did you go from there?

8 A. I went to Quantico to the Laboratory Division,
9 Evidence Response Team unit.

10 Q. And what did you do there?

11 A. I was a supervisory special agent and I did training,
12 I did operational work, administrative work, a variety of
13 different things.

14 Q. Is that your present position today, or ----

15 A. No, it is not.

16 Q. What is your present position?

17 A. I'm the special assistant to the laboratory director.

18 Q. Just generally, what do your duties and
19 responsibilities involve?

20 A. It's generally -- I manage sensitive assignments as
21 given to me by the laboratory director. It includes things
22 like public and congressional affairs, strategy management,
23 recruitment, metric management, things like that.

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1 Q. Have you ever acted as an instructor in the area of
2 evidence collection and scene -- securing crime scenes?

3 A. Yes, I have.

4 Q. Have you ever -- prior to the COLE in October of
5 2000, had you ever been involved in evidence collection for
6 any mass-casualty situation?

7 A. Prior to the COLE, I worked TWA 800 and I worked
8 Egypt Air 990 for mass collections.

9 Q. Now, I want to direct your attention, ma'am, to --
10 Agent, to October of 2000.

11 Were you a member of the ERT in New York at that
12 time?

13 A. Yes, I was.

14 Q. And did you receive information that there had been
15 an attack on a United States naval vessel in Yemen?

16 A. Yes.

17 Q. Was any request made of you to assist in that
18 particular incident?

19 A. Yes.

20 Q. And could you relate what that was?

21 A. The team leader would ask us if we were available and
22 interested in participating in the evidence collection, and I
23 responded that I was.

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1 Q. And who was the team lead, if you can recall?

2 A. I believe it was either Stan Regan or Howard
3 Leadbetter at the time.

4 Q. And did you eventually fly to Yemen?

5 A. Yes.

6 Q. How soon after receiving the request to become a
7 member of the team?

8 A. It was approximately two days later.

9 Q. All right. Did anything unusual happen when you
10 landed in Yemen?

11 A. It was not a very friendly response when we landed.
12 We had some issues at customs. It took us a while to get
13 through there. And then also on the tarmac, they didn't want
14 us to get off the plane and surrounded our plane for a while
15 before we were able to work out the situation and de-plane and
16 get into the country.

17 Q. After you de-planed, where did you go?

18 A. We went to the hotel, Aden Hotel.

19 Q. And when you arrived at the Aden Hotel, were there
20 other FBI agents and law enforcement officials there?

21 A. Yes. There were folks from the WFO Field Office and
22 some other people that were there as well that had arrived
23 before us.

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1 Q. While there, did you receive any instructions as to
2 what your responsibilities, what your duty was going to be
3 regarding the search of the USS COLE?

4 A. At the hotel, it was more just a briefing about
5 security and awareness and the surroundings and sort of what
6 we had to deal with at that point.

7 Q. Did you go to the COLE within a day or two of your
8 arrival?

9 A. Yes.

10 Q. And with whom did you travel to the COLE?

11 A. With the other ERT members. There were HRT members,
12 Hostage Rescue Team, because they were Security Forces, and
13 they took us in a caravan to the COLE.

14 Q. Was there a -- when you arrived, did you do a
15 walk-through or were you given any instructions? If you
16 could, relate what happened when you first arrived, let's say,
17 at the port.

18 A. At the port, that was where the Marines were staged.
19 And we got additional instructions again there about our
20 surroundings and security and the situation, general
21 instructions there as well.

22 Q. Did you travel to the ship?

23 A. Yes.

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1 Q. And how did you get there?

2 A. We took -- back and forth to the ship, we were riding
3 on trash barges.

4 Q. When you arrived on the ship, what were the first few
5 things that you did? How did you sort of become familiar with
6 the USS COLE?

7 A. When we first got to the ship, we were met with
8 crewmembers and they gave us some briefings and information
9 about the ship. We were taken around the ship to sort of get
10 an idea of what the ship looked like, the different decks of
11 the ship, kind of get an idea of the scene itself, the
12 condition of the ship and just sort of view the situation.

13 Q. Were you informed of how the search was going to be
14 conducted?

15 A. Yes. At some point we did have a discussion about
16 how the search was going to be conducted, yes.

17 Q. And were there any specific instructions or were
18 there any tasking provided or asked of you?

19 A. Yes. It was decided that I would be the evidence
20 custodian.

21 Q. And how did you first go about fulfilling those
22 duties, those responsibilities?

23 A. Well, in order to do that, I had to locate an area on

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1 the ship that would be safe and secure to keep the evidence
2 stored.

3 Q. And how did you -- if you could just describe for His
4 Honor, how did you pick the room that you picked?

5 A. They assigned a crewmember to me and we walked around
6 the ship, we looked at all different areas of the ship. The
7 ship was in -- as I'm sure you've heard several times in the
8 testimony already, the ship was in bad condition, it was
9 listing, it was filled with water, so I had to find an area
10 that would be secure, that wasn't wet, that could be locked to
11 keep the evidence. So the crewmember took me all around the
12 ship. We looked at many different areas until I found one
13 that I felt was going to be safe and secure to keep the
14 evidence.

15 Q. Could you describe that room as best you can
16 remember?

17 A. It was essentially a suite of rooms where I had an
18 area I that could work and had a desk and I could keep my
19 documents that I had to fill out, and pens and writing
20 utensils. And then it had another area where I could keep the
21 evidence once it was finished and I had completed all of my
22 documents, I could store it. And then I also had another area
23 where I could, if evidence came in, if it had to be dried, if

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1 it needed more drying or something, that I could lay out some
2 evidence, too, before it was packaged up and finalized and
3 sealed. It was very basic, there was not much there, it was
4 simple.

5 Q. What do you mean it was very basic?

6 A. It was very simple. It was a very basic area. The
7 desk was kind of a plank that came out of the wall, you know,
8 attached to the wall. There was nothing in there but a desk,
9 a table, a chair, my documents, utensils. I mean, there was
10 not much in there.

11 Q. When you say my documents, what do you mean my
12 documents?

13 A. Those were the documents that we had brought over,
14 our typical documents that we use when we do a search. The
15 evidence logs, the chain of custody 192 forms, which is what I
16 was responsible for doing as a part of my role.

17 Q. Now, you had been to many crime scenes prior to that,
18 correct?

19 A. Yes. That is correct. Many crime scenes.

20 Q. And how would you describe this particular crime
21 scene?

22 A. This particular crime scene was very unusual for many
23 reasons. Despite the fact that it was in an unfriendly

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1 territory, which made it difficult to do things, we had to
2 bring over all of the supplies that we thought we might need.
3 Of course, you never know what supplies are you going to need
4 until you get to the scene and observed what you had. And I'd
5 think, oh, I wish I had this, I wish I had that; you never
6 have what you need in a situation like that, so you do the
7 best you can.

8 The ship was in horrible condition. It was very
9 complex, in that we had evidence both on the ship and in the
10 water. So we had to do recovery on the ship, we had to do the
11 water recovery, in addition to the human remains recovery,
12 which was very difficult.

13 In addition to that, in most scenes, in fact, in the
14 majority, almost every scene I've ever worked, you as a crime
15 scene investigator, in order to do your job -- you see a lot
16 of very horrible things. In order to do your job, you really
17 have to separate yourself from the victims in order to be able
18 to collect the evidence and not think about the atrocities
19 that you're dealing with. So you never really have friends or
20 family or loved ones of the victims on site with you.

21 In this case, all of the crewmembers remained on
22 board, and they were with us the entire time watching us,
23 talking to us, observing us, and so it was very unusual. It

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1 was a very unusual situation. It was a very emotional
2 situation.

3 And also the fact that every time a victim was
4 recovered, everything stopped and we honored that victim. And
5 we brought them to the top with a flag covering them,
6 everybody came up, stood at attention, and it was one of the
7 most emotional things that I've ever seen. Because you saw
8 the crewmembers standing there at attention honoring their
9 fallen crewmember, and you could -- I just very strongly
10 remember seeing them standing at attention trying very hard
11 not to cry, not to show any emotion, but their lips just
12 quivering so hard because they wanted to hold it in. And it
13 was just -- you don't see -- you don't have that at scenes
14 that you work. So this is a very different situation.

15 So that being said, in addition to the fact that you
16 had all of the other conditions that you don't normally have,
17 you have to make adjustments. You know, it's -- you know,
18 there's a certain way you want to process the scene; but when
19 there's a circumstance that you have that changes everything,
20 you have to make adjustments.

21 Q. Let me stop you there. Again, you've worked many
22 scenes. You've acted as an instructor, correct?

23 A. Yes.

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1 Q. There are what we call best practices?

2 A. Absolutely, yes.

3 Q. Do you always apply all of the same best practices to
4 a scene or do you make adjustments?

5 A. You can't. You have to make adjustments. You try
6 to, you try to apply those, but you have to make adjustments
7 to fit your scenario. And that's why you do a preliminary
8 survey.

9 Q. Now, in this particular room that you were working,
10 were there any other agents that were assisting you?

11 A. Yes. Not an agent. He was not an agent, but there
12 was someone assisting me, yes.

13 Q. Who was that?

14 A. His name was Ignacio Mendizabal.

15 Q. Do you know Special Agent Jane Rhodes?

16 A. Yes.

17 Q. Was she assisting you in any way?

18 A. She was not stationed in the room like Ignacio was
19 but she was definitely assisting.

20 Q. Now, if we could, just sort of as a primer, if I
21 brought you an evidence bag, walk us through what you would do
22 when I brought you this bag of evidence.

23 A. So when I would receive evidence, the first thing I

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1 would do is a chain of custody form as receiving the evidence.

2 Q. That's the 192, or what we call the green sheet?

3 A. The green sheet, right. So I would fill that out and
4 I would do an evidence recovery log. I would fill out an
5 evidence recovery log.

6 Q. What is that?

7 A. That is just a log that records all of the evidence
8 that's recovered at a scene.

9 Q. All right. What would you do next?

10 A. I would pull those sheets out and I would take
11 control of the evidence. And eventually, once I completed all
12 of those forms, the evidence would just get maintained in my
13 storage area.

14 Q. How would it get maintained, just put it ----

15 A. It would just get put in the area there, yeah.

16 Q. Then what would happen to the evidence later on?
17 Would it be moved?

18 A. At some point, yes, it would get moved, yes.

19 Q. Now, you indicated there was also a drying area of
20 some sort?

21 A. If I needed it, yes, there was a drying area in case
22 I did need it.

23 Q. All right. And when would you use the -- obviously

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1 it would be for wet evidence, but persons would bring you wet
2 evidence?

3 A. Not all the time, but on occasion. If something
4 would come in and it didn't get fully dried up on top of the
5 deck or wherever they recovered it and I noticed it was wet, I
6 might have to lay it out and get it a little more dried before
7 it could be fully packaged.

8 Q. All right. Now, the green sheet, is that the
9 official chain of custody form used by the FBI?

10 A. Yes.

11 Q. And is that the one upon which you rely?

12 A. Yes.

13 Q. All right. Now I'm going to show you a series of
14 green sheets, so to speak. First, I'm going to show you
15 Prosecution 2C and ask you if you recognize this form, ma'am?

16 A. Yes.

17 Q. All right. And do you see your signature on it?

18 A. I do.

19 Q. All right. And is it the second line?

20 A. Yes.

21 Q. All right. Now, there is certain information in
22 addition to the signatures contained on this particular sheet;
23 is that correct?

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1 A. Yes.

2 Q. And what is that information?

3 A. There is the case ID number, the item number from the
4 evidence, the 1B number, and dates and times.

5 Q. All right. Let's first start with the case ID
6 number. That is a unique number to a case, correct?

7 A. That's right, yes.

8 Q. 262 indicates the type of case, correct?

9 A. Right.

10 Q. And New York is the New York office, correct?

11 A. Yes.

12 Q. And then the following number would be the number in
13 sequence. The next case that New York took on would be 14,
14 correct?

15 A. Right.

16 Q. All right. Then there's a 1B number. If you could,
17 please, explain what the 1B number is.

18 A. That's going to be a number that's assigned once the
19 evidence is brought back to the office through the evidence
20 control technicians.

21 Q. And that is a unique number to each bag of evidence,
22 correct?

23 A. Yes.

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1 Q. All right. So in case 262-NY-277013, there's only
2 going to be one 1B604, correct?

3 A. Right.

4 Q. Then there's an item number?

5 A. Yes.

6 Q. What is the item number, ma'am?

7 A. DK01-108.

8 Q. All right. And what is that number?

9 A. So that is the number that is assigned to the item of
10 evidence at the time it's collected.

11 Q. So that would be DK01-108?

12 A. Yes, correct.

13 Q. All right. The 108th piece of evidence taken from
14 the deck?

15 A. Right.

16 Q. All right. Who put that number on the green sheet?

17 A. The -- I'm not sure if that is me. It could be me or
18 it could be the person who was assisting me. I'm not
19 positive. It ----

20 Q. Who would actually assign that number to that bag of
21 evidence?

22 A. That would be the person collecting the item.

23 Q. All right. They would come up with the DK number?

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1 A. Right.

2 Q. And then you would record it?

3 A. Right.

4 Q. Would you ensure that there was no other DK01-108?

5 A. Yes.

6 Q. All right. So that again is a unique number?

7 A. Right.

8 Q. All right. So as to, again, Prosecution Exhibit 2C,
9 it shows that you took this exhibit into your custody on 10/14
10 at 5:00 p.m., correct?

11 A. According to the chain, yes.

12 Q. All right. And when we say storage, is the word
13 storage on there, that means that you as the evidence
14 custodian have taken it into your custody?

15 A. Right.

16 Q. All right. Now, the actual evidence bag shows a date
17 of 10/16; is that correct? I'm looking and I'm showing you
18 Prosecution Exhibit 2B, correct?

19 A. Yes.

20 MJ [Col SPATH]: She probably can't see the prosecution
21 number.

22 A. I'm not seeing the prosecution number.

23 Q. If you look up on the screen, I've placed on the

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1 screen Prosecution 1D [sic].

2 A. Okay.

3 Q. If Ms. Rhodes indicates that she actually sees that
4 on 10/16, do you have any quarrel with that?

5 A. No.

6 Q. She, however, put 10/14 on the sheet, correct?

7 A. Yes.

8 Q. Did you use her date in filling out ----

9 LDC [MR. KAMMEN]: Objection, leading.

10 TC [MR. MILLER]: No, I just asked "did you."

11 MJ [Col SPATH]: Hold on. Hold on. "Did you" certainly
12 can be leading. Again, it's foundational matters. It is much
13 easier to move through this and -- for this, I'm going to
14 allow leading questions. I know you will correct if
15 anyone tries to say anything that you don't believe is
16 accurate. Don't hesitate, okay?

17 WIT: Yes.

18 MJ [Col SPATH]: You may proceed. Overruled.

19 Q. Whose date did you use?

20 A. Jane's.

21 MJ [Col SPATH]: All right. Stop. There's no need to
22 laugh. We need to have some decorum in here. And I've let it
23 go on and I'm going to stop now. No. I'm going to stop now.

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1 You're not going to say anything. There's nothing funny about
2 what we're doing here. Again, I'm not oblivious to the
3 mistakes that we're talking about, but we're going to knock it
4 off. You may proceed.

5 TC [MR. MILLER]: Thank you, Your Honor.

6 Q. I'm going to show you what has been marked as
7 Prosecution Exhibit numbered 3C. Do you recognize that,
8 ma'am?

9 A. Yes.

10 Q. Does it indicate that you see your -- do you see your
11 signature?

12 A. I do.

13 Q. Which line?

14 A. Second.

15 Q. All right. And does it indicate when you received
16 that evidence?

17 A. Yes.

18 Q. And when is that?

19 A. It indicates the 18th.

20 Q. And it was for item number 1B641, DK02-102, correct?

21 A. Yes.

22 Q. I show you Prosecution Exhibit 4C for Identification
23 and ask you if you recognize that, ma'am?

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1 A. Yes.

2 Q. Do you recognize your signature?

3 A. I do.

4 Q. And when did you receive this piece of evidence?

5 A. October 16.

6 Q. All right. That's your signature on the second line,
7 correct?

8 A. Yes, it is.

9 Q. It's for item 1B659, item DK02-123, correct?

10 A. Yes, correct.

11 Q. Showing you, ma'am, Prosecution Exhibit 6C for
12 Identification. Ask you if you recognize that, ma'am?

13 A. I do.

14 Q. And do you recognize your signature?

15 A. Yes.

16 Q. Which line?

17 A. Second.

18 Q. Does it show when you accepted this piece of
19 evidence?

20 A. Yes. October 16.

21 Q. What time?

22 A. 4:00.

23 Q. And it is for item 1B609 -- excuse me. Item 1B609

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1 and item number DK01-112, correct?

2 A. Yes.

3 Q. Show you Prosecution Exhibit numbered 8C for
4 Identification. Do you recognize that, ma'am?

5 A. I do.

6 Q. All right. And on that particular exhibit, it shows
7 that you accepted it for storage?

8 A. Yes.

9 Q. On what date?

10 A. October 16, 5:00.

11 Q. All right.

12 MJ [Col SPATH]: Leave that one up there for just a
13 second. Just so I know the process, I see the item number up
14 there, DK01-123.

15 WIT: Right.

16 MJ [Col SPATH]: Recognizing you probably don't remember
17 filling out this particular form this much later ----

18 WIT: Right.

19 MJ [Col SPATH]: ---- your practice as you were working
20 with these forms, was it to look at the evidence bag at the
21 same time or how -- how do you fill this out when you're
22 filling out the second line down here?

23 WIT: It can vary.

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1 MJ [Col SPATH]: Okay.

2 WIT: So sometimes I have the bag and I have the forms and
3 I'm just going and following the form. And sometimes I'm with
4 the bag, so it's all right there. But it just depends,
5 because I'm doing a whole slew of them at once. And I have
6 another person with me and you will notice that there's
7 different handwriting. So I have other -- sometimes the
8 person ahead of me will actually fill in the date and the time
9 right next to me and I'll sign it just for ex -- to expedite
10 the process, and then I will sign it. And sometimes the
11 person who's assisting me might do the date and times for me,
12 you know, right there. It's kind of like a little assembly
13 line.

14 MJ [Col SPATH]: Assembly line.

15 WIT: Yes.

16 MJ [Col SPATH]: I think you mentioned somebody's name,
17 Ignacio Mendizabal.

18 WIT: Mendizabal, yes.

19 MJ [Col SPATH]: Is that person in the FBI?

20 WIT: Yes. He is. He's not an agent. I'm not sure what
21 unit he was with at the time, but he was assigned to help me
22 and we were sort of all just fill something out and then I
23 would sign it. The key is my signature signing it accepting

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1 it, you know, and then the date and time. But the key is my
2 official signature.

3 MJ [Col SPATH]: On the second line of the 192.

4 WIT: It's always my official signature. Somebody else
5 may have wrote storage or the date, but I'm looking at it, I'm
6 signing it, I'm take the evidence.

7 MJ [Col SPATH]: And the other person, not an agent.
8 Mendizabal.

9 WIT: Mendizabal.

10 MJ [Col SPATH]: Was he from the New York Field Office?

11 WIT: You know, I think he might have been from the
12 laboratory, like an explosives assistant or something. I
13 think he was from the Explosives Unit.

14 MJ [Col SPATH]: Do you happen to know how to spell his
15 last name?

16 WIT: I can give it a try.

17 MJ [Col SPATH]: All right.

18 WIT: M-E-N-D-I-Z-A-B -- Z-I-B-A-L, Mendizabal. It's
19 either Z-A or Z-I-B-A-L.

20 MJ [Col SPATH]: Got it. Thank you.

21 WIT: Yes.

22 MJ [Col SPATH]: Sorry, Mr. Miller. You may proceed.

23 TC [MR. MILLER]: No, thank you.

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

2 Q. Can you pull the microphone a little closer to you.

3 It might be ----

4 A. Is that better?

5 Q. Thank you, ma'am, appreciate it. To clarify the
6 record, this is Prosecution Exhibit 8C for Identification. Do
7 you recognize your signature on the second line?

8 A. Yes.

9 Q. Is that for the evidence with number 1B620, item
10 number DK01-123, correct?

11 A. Yes.

12 Q. I show you what has been -- I show you Prosecution
13 Exhibit 11C for Identification. Do you recognize that, ma'am?

14 A. Yes.

15 Q. And do you recognize your signature on the second
16 line?

17 A. Yes.

18 Q. It shows that you took possession of that item on
19 October the 16th at 4:00 p.m.

20 A. Yes, I did.

21 Q. And for what item number?

22 A. Item number DK04-116 and 1B7, looks like 52.

23 Q. Show you Prosecution Exhibit 12D for Identification.

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1 Ma'am, do you see your signature on that piece of paper?

2 A. I do.

3 Q. And is that the second line?

4 A. Yes.

5 Q. Does it show you took possession of the -- this
6 particular piece of evidence?

7 A. I did, on 10/16 at 5:00.

8 Q. And specifically what is the identifiers for that bag
9 of evidence?

10 A. Item number DK03-147, 1B708.

11 Q. Showing you Prosecution Exhibit 13C for
12 Identification. Do you recognize your signature on the second
13 line?

14 A. I do.

15 Q. Does it show that you accepted that evidence on a
16 certain date?

17 A. Yes, it does. 10/16, 2:00.

18 Q. The piece of evidence for which -- the piece of
19 evidence that you received?

20 A. Item number DK04-117, 1B753.

21 Q. Ma'am, I am placing on the ELM0 Prosecution
22 Exhibit 18C for Identification, ask you if you recognize your
23 signature on that exhibit.

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1 A. I do.

2 Q. Second line?

3 A. Yes.

4 Q. All right. And does it show that you accepted a
5 piece of evidence?

6 A. Yes. 10/18, 2:00.

7 Q. And the specific piece of evidence -- or bag of
8 evidence, item of evidence?

9 A. DK02-118, 1B655.

10 Q. Ma'am, I'm placing on the ELMO Prosecution
11 Exhibit 20C for Identification, and ask you if -- well, can
12 you make this one out?

13 A. Yes. I can see my name on the second line, 10/22,
14 2:50, it looks like.

15 Q. All right. So you accepted that piece of evidence.
16 And what particular piece of evidence was it that you
17 received?

18 A. It looks like W113.

19 Q. All right. And the 1B number?

20 A. 1B880.

21 Q. Thank you.

22 MJ [Co1 SPATH]: The W ----

23 WIT: Water.

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1 MJ [Col SPATH]: ---- indicates to you water, correct?

2 WIT: [Nods head].

3 Q. Placing on the ELM0 Prosecution Exhibit 21C for
4 Identification. Do you recognize your signature on that?

5 A. Yes. Signature is on the second line. Recovered
6 10 -- or signed on 10/20, 4:00.

7 Q. All right. And what particular piece of
8 evidence ----

9 A. Item W121, and 1B873.

10 Q. Placed on the ELM0 Prosecution Exhibit 32C for
11 Identification. Do you recognize your signature on that?

12 A. I do, on the second line.

13 Q. Does it show that you received a piece of evidence?

14 A. Yes. 10/17, 12:00.

15 Q. And specifically the item number and the 1B number?

16 A. DK01-118, 1B615.

17 Q. And just one question: The evidence that you
18 received, would it be sealed?

19 A. Most of the time, it would probably be sealed, yes.
20 There may have been an occasion where it wasn't, like if it
21 was still wet or something, and that's when I might have to
22 dry it.

23 Q. If you had to dry it, when did you officially mark

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1 that you had received it, when you got it wet or when you put
2 it away dry?

3 A. When I received it.

4 MJ [Col SPATH]: So when you ultimately put it into the
5 bag and sealed it?

6 WIT: Yeah. If on those occasions I may have had to -- I
7 would have had to seal it, yeah. So there could have been
8 some like that. I don't recall specifically, but I know I do
9 have some that I probably dried and I would try to put them in
10 the bag and seal them.

11 MJ [Col SPATH]: Okay.

12 WIT: But I would sign the chain when I received it.

13 MJ [Col SPATH]: So when you put it on the table where you
14 would let it dry, you would ----

15 WIT: Yeah. I had already signed it in because it was in
16 my custody at that time.

17 MJ [Col SPATH]: All right.

18 Q. Is that part of that making do that you were talking
19 about?

20 A. No. That's not very -- that's not really completely
21 uncommon. Sometimes at a scene, you can't seal up an item
22 because it's still wet and you don't want to put it in a bag
23 and seal it up completely wet, and you might have to take it

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1 and lay it out and dry it and then seal it up. But in that
2 case, yeah.

3 Q. Placed before you -- put on the ELMO Prosecution
4 Exhibit 34C for Identification. Do you see your signature on
5 that?

6 A. Yes, I do, second line.

7 Q. And when does it show that you received this piece of
8 evidence?

9 A. On 10/18 at 2:05.

10 Q. And if you could identify that piece of evidence.

11 A. DK02-103, 1B642.

12 MJ [Col SPATH]: Sorry, Mr. Miller, would you put that one
13 back. Just easier if I ask while we're going through them to
14 stay in line with --

15 This doesn't indicate it came from the water, I
16 understand. But presuming that it was something you had to
17 dry ----

18 WIT: Uh-huh.

19 MJ [Col SPATH]: ---- the signature here, the 10/18 at
20 2:05, that is when you would have accepted it into the area
21 you were using to store evidence ----

22 WIT: Right.

23 MJ [Col SPATH]: ---- and placed it to dry?

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1 WIT: Right.

2 MJ [Col SPATH]: And so you don't know what Mr. Davitch --
3 where he kept it from when he indicated he accepted it or
4 collected it on 10/16 at 10:30 until it was turned over to
5 you?

6 WIT: Right. No, he collected it on 10/16 at 10:30 but,
7 yeah, I only know when I get it.

8 MJ [Col SPATH]: Okay. Thank you.

9 Q. Prosecution Exhibit 38C for Identification. Ma'am,
10 do you see -- Agent, do you see your signature on that?

11 A. Yes. Second line.

12 Q. All right. Does it show that you accepted this piece
13 of evidence?

14 A. Yes, 10/18, 3:00.

15 Q. And could you identify it, please?

16 A. Item DK03-162, it looks like, 1B722.

17 Q. Showing you Prosecution Exhibit 47D for
18 Identification. Do you recognize your signature on that ----

19 A. Yes, second line.

20 Q. ---- form? Excuse me.

21 A. The second line, yes, I do.

22 Q. Does it show when you accepted this piece of
23 evidence?

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1 A. 10/16, 4:00.

2 Q. And the piece of evidence, if you could identify it,
3 please?

4 A. DK04-105, 1B741.

5 Q. All right. And DK, of course, would be Deck 04,
6 correct?

7 A. Yes.

8 Q. Showing you Prosecution Exhibit 62C for -- 62C for
9 Identification, ma'am. Do you see your signature on this
10 form?

11 A. Yes, I do, on the second line.

12 Q. All right. And the second line indicates that you
13 received it when?

14 A. October 17, 11:00.

15 Q. All right. And which piece of item -- or, excuse me,
16 which piece of evidence did you receive?

17 A. MDK-109, 1B796.

18 Q. Placing before you Prosecution Exhibit 64C for
19 Identification. Do you see your signature on that?

20 A. Yes, I do.

21 Q. And second line?

22 A. Second line, yes.

23 Q. And does it indicate when you received this piece of

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1 evidence?

2 A. 10/16, 5:00.

3 Q. And is -- could you identify the specific piece of
4 evidence which you received?

5 A. DK01-107, 1B603.

6 Q. Showing you Prosecution Exhibit 65C for
7 Identification. Again, is that your signature on the second
8 line?

9 A. Yes, on the second line is my signature.

10 Q. Does it show a time and date when you received this
11 evidence?

12 A. 10/16, 4:30.

13 Q. And the specific piece of evidence that you received?

14 A. DK02-121, 1B657.

15 Q. Placing before you Prosecution Exhibit 68C for
16 Identification. Ma'am, do you see your signature on this
17 exhibit?

18 A. Yes, I do. I see my signature on the second line.

19 Q. Does it show that you received this piece of
20 evidence?

21 A. Yes. 10/16, 2:00.

22 Q. And if you could, specifically, what piece of
23 evidence?

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1 A. DK04-123, 1B759.

2 Q. Showing you Prosecution Exhibit 69C for
3 Identification. Ma'am, do you see your signature on this?

4 A. Yes, I do, on the second line.

5 Q. Does it indicate that you received the piece of
6 evidence?

7 A. Yes, it does. 10/16, 4:00.

8 Q. And if you could identify that piece of -- or bag of
9 evidence?

10 A. DK04-106, 1B742.

11 Q. Placed on the ELM0, Prosecution Exhibit 74C for
12 Identification, ma'am. Do you see your signature on this
13 form?

14 A. Yes, I do, on the second line.

15 Q. Does it indicate that you received the piece of
16 evidence?

17 A. Yes. 10/16, 1530.

18 Q. Does it indicate, if you could, what specific piece
19 of item -- specific piece of evidence that you seized?

20 A. DK06-104, 1B728, it looks like. Might be 228.

21 Q. Give me the bag. Are you having difficulty? You're
22 confident, however, it is DK06-108 -- 104?

23 A. On that one, yes, I can't tell if it's a 2 or a 7.

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1 Q. On the 1B number?

2 A. Yes.

3 Q. All right. But as you've testified, the DK number is
4 also an identifying number?

5 A. Yes.

6 Q. Place before you Prosecution Exhibit 79C for
7 Identification. Agent, do you see your signature?

8 A. Yes, I do, on the second line.

9 Q. Does it show that you received the piece of evidence?

10 A. It does. 10/16, 5:00.

11 Q. If you could identify that?

12 A. DK01-116, 1B613.

13 Q. Placed on the ELM0, Prosecution Exhibit 80C for
14 Identification. Do you see your signature on that, ma'am?

15 A. Yes, I see it on the second line.

16 Q. And does it indicate that you received the piece of
17 evidence?

18 A. 10/17, 12:00.

19 Q. And if you could identify that specific piece of
20 evidence?

21 A. DK01-117, 1B614.

22 Q. Placing on the ELM0 Prosecution Exhibit 81C for
23 Identification. Do you recognize that, ma'am?

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1 A. Yes, my signature on the second line.

2 Q. Does it indicate that you received that piece of
3 evidence?

4 A. 10/17, 11:00.

5 Q. If you could identify the specific piece of evidence
6 that you received?

7 A. DK01-119, 1B616.

8 Q. Showing you Prosecution Exhibit 87C for
9 Identification, ma'am. Do you recognize your signature?

10 A. I do, on the second line.

11 Q. All right. And does it indicate you received the
12 piece of evidence?

13 A. 10/16, 5:00, yes.

14 Q. And could you identify that specific piece?

15 A. DK02-135, 1B670.

16 Q. Showing you Prosecution Exhibit 88C for
17 Identification. Do you recognize your signature, ma'am?

18 A. Yes, I do, on the second line.

19 Q. All right. Does it indicate you received this piece
20 of evidence?

21 A. Yes, 10/18 at 1:39.

22 Q. All right. And could you identify that specific
23 piece?

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1 A. Yes, DK03-125, 1B689.

2 Q. Showing you Prosecution Exhibit 90C. Ask you,
3 ma'am -- Agent, do you recognize your signature on that?

4 A. Yes, I do, on the second line.

5 Q. And the date?

6 A. 10/18, 3:00.

7 Q. You received evidence at that -- on that date at that
8 time?

9 A. Yes.

10 Q. Could you identify that specific piece?

11 A. DK03-152, 1B713.

12 Q. Showing you Prosecution Exhibit 92C for
13 Identification. Do you recognize your signature on that?

14 A. Yes, on the second line.

15 Q. Does it indicate that you received evidence?

16 A. 10/17, 5:00, yes.

17 Q. And what specific piece of evidence did you receive?

18 A. DK03-141, 1B702.

19 Q. Showing you Prosecution Exhibit 92C for
20 Identification.

21 A. Yes.

22 Q. Do you recognize your signature?

23 A. Yes, I do, second line.

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1 Q. Does it indicate you received a piece of evidence?

2 A. It does, on 10/16 at 4:00.

3 Q. I'm sorry. That ----

4 MJ [Col SPATH]: Yeah. What's the number on that one?

5 TC [MR. MILLER]: I'm sorry, it's 93C. 93C. I apologize,
6 Your Honor.

7 Q. 93C. Again, let me go through that. Do you
8 recognize your signature?

9 A. I do, on the second line.

10 Q. Does it indicate that you received a piece of
11 evidence?

12 A. It does, 10/16 at 4:00.

13 Q. And does -- if you could identify the specific piece
14 of evidence that you received?

15 A. DK04-112, 1B748.

16 Q. Showing you Prosecution Exhibit 102C for
17 Identification. Do you recognize your signature on that?

18 A. Yes, I do.

19 Q. And is it on the second line?

20 A. Second line, yes.

21 Q. And does it indicate that you received a piece of
22 evidence?

23 A. Yes, at 10/18 at 3:00.

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1 Q. And could you identify the specific piece of
2 evidence?

3 A. DK03-160, 1B720.

4 Q. Showing you Prosecution Exhibit 103C. Do you
5 recognize your signature on that form?

6 A. Yes, I do, on the second line.

7 Q. And does it indicate that you received a piece of
8 evidence?

9 A. Yes, it does, 10/16, 4:00.

10 Q. And could you identify that specific piece of
11 evidence?

12 A. DK04-110, 1B746.

13 Q. Showing you Prosecution Exhibit 106C for
14 Identification. Agent, do you see your signature on that?

15 A. Yes, I do.

16 Q. And ----

17 A. Second line.

18 Q. All right. Does it indicate that you received a
19 piece of evidence?

20 A. Yes, it does, 10/15, 4:00.

21 Q. And if you could identify that specific piece.

22 A. Let's see. 1B597, and I do not see the item number
23 on this one.

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1 Q. All right. But again, the 1B number is a unique
2 number to that piece or that bag of evidence, correct?

3 A. It is, yes.

4 Q. Showing you Prosecution Exhibit 107C. Do you
5 recognize your signature on that form?

6 A. Yes, I do, on the second line.

7 Q. Does it indicate you received a piece of evidence?

8 A. Yes, 10/19 at 10:30.

9 Q. And if you could identify the specific piece.

10 A. RP-101, 1B732.

11 Q. Showing you Prosecution Exhibit 114C. Do you
12 recognize your signature on that?

13 A. Yes, I do, on the second line.

14 Q. All right. And does it indicate that you received
15 evidence?

16 A. It does, on 10/16 at 2:00.

17 Q. And could you identify that specific piece of
18 evidence?

19 A. DK04-118, 1B754.

20 Q. Showing you Prosecution Exhibit 118C. Do you
21 recognize your signature?

22 A. Yes, I do.

23 Q. And ----

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1 A. On the second line.

2 Q. And does it indicate that you received this evidence,
3 piece of evidence?

4 A. Yes, it does, on October 19, at 11:00.

5 Q. And could you identify the specific piece that you
6 received?

7 A. Yes, RP-103, 1B734.

8 Q. Showing you Prosecution Exhibit 124C for
9 Identification. Do you recognize your signature on that,
10 ma'am?

11 A. Yes, it's here on the second line.

12 Q. All right. And does it indicate that you received a
13 piece of evidence?

14 A. It does, on 10/17 at 5:00.

15 Q. And what specific piece -- if you could identify the
16 specific piece of evidence you took in your possession.

17 A. Yes, sir, that would be DK03-140, and 1B701.

18 Q. Showing you Prosecution Exhibit 129C. Do you
19 recognize that form, ma'am?

20 A. Yes, I do. My signature is there on the second line.

21 Q. Does it indicate that you received a -- you received
22 a piece of evidence?

23 A. It does, on October 19 at 10:30.

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1 Q. And could you identify the specific piece of evidence
2 that you received?

3 A. RP-102, 1B733.

4 Q. Placing before you Prosecution Exhibit 133C for
5 Identification. Do you recognize your signature on that?

6 A. I do. It's here on the second line.

7 Q. And does it indicate that you received a piece of
8 evidence?

9 A. Yes, it -- October 17 at 12:00.

10 Q. All right. And could you identify the specific piece
11 of evidence that you took into your possession?

12 A. Yes. DK01-124, 1B621.

13 Q. Showing you Prosecution Exhibit 140C and ask you if
14 you recognize that, ma'am?

15 A. I do. My signature is there on the second line.

16 Q. All right. And does it indicate when you received
17 that particular piece of evidence?

18 A. Yes, it does. 10/16, 5:00.

19 Q. All right. Or it indicates you received that piece
20 of evidence, correct?

21 A. Yes.

22 Q. 10/16 at 5:00?

23 A. Yes.

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1 Q. And what specific piece of evidence did you receive?

2 A. DK04-101, 1B736.

3 Q. Showing you Prosecution Exhibit 141C for
4 Identification. Do you recognize that?

5 A. Yes, I do. My signature is there on the second line.

6 Q. All right. Does it indicate that you received a
7 piece of evidence?

8 A. It does, October 17 at 4:00.

9 Q. All right. And could you identify that specific
10 piece of evidence?

11 A. DK06-100 ----

12 Q. Oh, I'm sorry.

13 A. 1B724.

14 Q. All right. Showing you Prosecution Exhibit 143C for
15 Identification. You can make that out, ma'am?

16 A. Yes.

17 Q. All right. And do you see your signature?

18 A. I do see my signature on the second line.

19 Q. All right. And does it indicate you received a piece
20 of evidence?

21 A. It does. I can't quite ----

22 TC [MR. MILLER]: May I approach, Your Honor, the witness?

23 MJ [Col SPATH]: Yes.

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1 A. That's better.

2 Q. Can you make it out?

3 A. Yes, that's better.

4 Q. All right.

5 A. 10/20 at 4:00.

6 Q. All right. And can you identify the specific piece
7 of evidence?

8 A. Yes. It's W115, 1B878.

9 TC [MR. MILLER]: Permission to approach to retrieve, Your
10 Honor.

11 MJ [Col SPATH]: You may. You don't have to ask
12 permission to approach.

13 Q. I'm placing on the ELM0 Prosecution Exhibit 152C for
14 Identification. Do you recognize your signature on that form?

15 A. I do. My signature is on the second line.

16 Q. And does it indicate you received a piece of
17 evidence?

18 A. Yes. On 10/19 at 10:30.

19 Q. All right. And could you identify the specific piece
20 of evidence?

21 A. Yes, RP-104, 1B735.

22 Q. Showing Prosecution Exhibit 155C for Identification.
23 Do you recognize that form, ma'am?

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1 A. Yes, I do. My signature is on the second line.

2 Q. All right. And does it indicate that you received a
3 piece of evidence?

4 A. Yes, on 10/16 at 4:00.

5 Q. And could you identify the specific piece of evidence
6 that you received?

7 A. DK04-113, 1B749.

8 Q. Showing you Prosecution Exhibit 158C. All right. Do
9 you recognize your signature, ma'am?

10 A. Yes, I do. It's on the second line.

11 Q. All right. And does it indicate that you received a
12 piece of evidence?

13 A. It does, on 10/16 at 4:00.

14 Q. All right. And could you identify the specific piece
15 of evidence that you received?

16 A. Yes. DK05-127, 1B557.

17 Q. Showing you Prosecution Exhibit 159C for
18 Identification. Do you recognize that, ma'am?

19 A. Yes, I do. My signature is on the second line.

20 Q. All right. Does it indicate, Agent, that you
21 received a piece of evidence?

22 A. It does, on 10/17 at 1330.

23 Q. And could you identify that specific piece of

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1 evidence?

2 A. DK05-123, 1B554.

3 Q. I have just a -- we've sort of gone through all of
4 them. A couple of the pieces of evidence I have a question,
5 if I can address it to you.

6 A. Okay.

7 Q. On 155, and this is by example, because this happened
8 on a couple of occasions ----

9 A. Yes.

10 Q. ---- the Prosecution Exhibit 155C indicates you
11 received the evidence when?

12 A. On 10/16.

13 Q. All right. I'm showing you Prosecution Exhibit 155B,
14 which is the evidence bag. If you look on the chain of
15 custody portion -- let me -- is that your signature on the
16 second line?

17 A. Yes.

18 Q. Now, do you -- can you explain the discrepancy
19 between what's on the chain of custody portion of the bag and
20 what occurred on the chain of custody 192?

21 A. So I reviewed these items. There are several that
22 have this on the bag. Most of the bags I did not sign on the
23 bag on the chain because generally it's not necessary. On

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1 these I did, and they're all consistent with the same date of
2 the 18th and a time period between 2:00 and 4:00 p.m. So it's
3 obvious to me that I did it for a particular reason and -- but
4 I don't recall what that reason was at this time. But it's
5 very consistent, and it's on particular grouping of items that
6 there's the 18th on the bag between 2:00 and 4:00 p.m. and
7 then on all of the chains there's -- I took it on the 16th.

8 MJ [Col SPATH]: So the blue handwriting down in the chain
9 of custody is yours?

10 WIT: It's mine. That's correct. All in the same pen and
11 the same blue writing and the same time period on those
12 grouping of items when I reviewed them all. But I do not
13 recall why I did that. It's obvious that there was a reason
14 when you look at them, but I -- I cannot recall why -- why it
15 was at that time that I did that.

16 If -- on the other bags, you will see that I did not
17 sign the bags for the majority of them because that is not the
18 official chain. We don't use that. Some people fill it out,
19 some people don't. It's not even on our bags anymore. But
20 for some reason on those particular items, I did write that on
21 there, and I do not -- I just do not recall why I did that at
22 the time.

23 MJ [Col SPATH]: And you said it was a particular group of

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1 items. Do you remember -- do you remember what the grouping
2 was or ----

3 WIT: No, I tried -- I looked at them to try and recall
4 and jog my memory as to, hey, maybe looking at the items
5 would -- would jog my memory, but, yeah, it didn't. But it's
6 just one set of items that I seem to have done that on. But
7 no, unfortunately, I do not recall what that reason was.

8 MJ [Col SPATH]: But when I'm looking through the
9 evidence, because I have the same photographs ----

10 WIT: Yes.

11 MJ [Col SPATH]: ---- it will look the same in the blue
12 writing.

13 WIT: You will see. You will see. It will be between
14 like 2:00 and 4:00 and it's all the 18th, all between 2:00 and
15 4:00.

16 MJ [Col SPATH]: All right. Thank you.

17 TC [MR. MILLER]: Thank you, Your Honor. I have no
18 further questions.

19 MJ [Col SPATH]: All right. Why don't we take ten
20 minutes. We'll come back for cross-examination. We're in
21 recess.

22 [The R.M.C. 803 session recessed at 1600, 15 March 2017.]

23 [END OF PAGE]