IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

July 12, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 1:42 p.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 1
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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MS. KAREN D. WHATLEY, Assistant U.S. Attorney
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On Behalf of Defendant Randeep Mann (1):

MR. JACK T. LASSITER, Attorney at Law
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813 West Third Street
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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

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(Proceedings continuing in open court at 1:42 p.m., jury present.)

THE COURT: Well, we've qualified 38 jurors to serve. Our plan this afternoon is to seat 12 and then three alternates and then we'll proceed right into opening statements. But before we do that, are there -- and I understand that the lawyers don't have any *Batson* challenges?

MR. HENDRIX: That's correct, Your Honor.

MR. GORDON: That's correct, Your Honor.

THE COURT: And are there any motions that we need to renew before we seat the jury?

MR. HENDRIX: Yes, Your Honor, if you don't mind.

THE COURT: You can do that now.

MR. HENDRIX: The same ones, Judge. May I approach just briefly?

THE COURT: You may.

(Bench conference reported as follows:)

MR. HENDRIX: I just didn't want to say that in front of the jury.

THE COURT: I will tell you what I planned to do is keep the jury out and to do all this before we came in, but I realized we didn't have any *Batsons* to take up.

MR. HENDRIX: It's the main thing, the severance motion part of the process from the Eighth Circuit, I believe, is the necessity of renewing the motion before the evidence

begins. Yeah, we probably ought to also renew the motions for continuance regarding the Court's lack of facts on Count 7. So, based on the lack of information on Count 7 and Count 1, we renew our motion for continuance. I think there was one on one other, just to join in Tim's motion on the bill of particulars or your response, I guess.

MS. CASSINELLI COUCH: And I filed something on that.

MR. HENDRIX: Just those motions, Your Honor.

THE COURT: I will take your motion not only as renewing those particular motions, but renewing every motion you've made to this point that I've denied and I will deny those now just to make our record.

MR. HENDRIX: Thank you, Judge.

THE COURT: Is there anything else we need to do?

MR. HENDRIX: We're about ready to go.

THE COURT: Let's go.

MS. CASSINELLI COUCH: You know, we might want to see the jurors just to be sure nothing's happened. Some of these jurors have been gone for five days.

THE COURT: We'll ask them very briefly and move on.

(Proceedings continuing in open court at 1:45 p.m.)

THE COURT: All right. Call the first 15 names.

(Whereupon a jury of 12 and three alternates were seated and sworn in.)

THE COURT: You can be seated. Now, ladies and gentlemen, here we are, we finally have come to the point that we've talked about for a week. Before we get started with the panel that we've selected, those of you who were not selected, would you please stand. The people who have not gone through this process don't understand just what you've gone through. We've poked and prodded for over a week to try to get all of you to give us information that you normally wouldn't give. I'm going to tell you I really thank you for that. I tell people all the time, juries all the time that, you know, one of the only times that you're going to be able to participate in the federal government or even state government, for those of you who are not government employees, is through jury service.

Our system would come to a grinding halt if we did not have people willing to come down here and sit for jury service. We had some people who it was very obvious did not want to be here, and would say or do anything to get out of service. For those of you, the 38, well, those who are remaining and these, the full 38, I appreciate you for not doing everything you could to be released, for doing your civic duty. Like I said when we got started, this process depends on people who are willing to come down here and put aside any beliefs, feelings that you have, listen to the evidence and make a -- render a verdict based strictly on the evidence, and I appreciate you for that. All right. I'm going to let you go. Your jury

service is concluded. Thank you.

Those of you who remain, please don't look at the door. You're looking at those people leaving and it looks like you want to go so bad. It's not that bad. It's okay. All right. We'll start, I'm going to give you some preliminary instructions and then I'm going to turn it over to the lawyers to do their opening statements. Ladies and gentlemen, I'll take a few moments now to give you some initial instructions about the case and about your duties as jurors. At the end of the trial, I'll give you further instructions. I may also give you instructions during the trial. Now, unless I specifically tell you otherwise, all such instructions, both those I give you now and those I give you later are equally binding on you and must be followed.

As you probably already know, this is a criminal case brought against Dr. Randeep Mann and Sangeeta Mann by the United States government. The charges are set forth against them in the second superseding indictment which I'll read again to you. I read this to you on the first day, but I feel like I should read it again. This indictment was handed down on January 6, 2010, and it is the second superseding indictment, and it reads as follows: Count 1, from in or about February 2008 until on or about February 4, 2009, in the Eastern District of Arkansas, the defendant, Randeep Mann, aided and abetted by a person or persons unknown to the grand

jury, did, without lawful authority, knowingly use and attempt to conspire to use a weapon of mass destruction against a person or property within the United States, and the offense and the results of the offense affected interstate commerce. That's all in violation of Title 18, United States Code, Section 2332(a).

Count 2, on or about February 4, 2009, in the Eastern District of Arkansas, the defendant, Randeep Mann, aided and abetted by a person and persons unknown to the grand jury, did maliciously damage destroy and attempt to damage and destroy by means of an explosive, a vehicle, to wit: A white 2005 Lexus VIN JTJHW31U 982853031, used in interstate commerce and in an activity affecting interstate commerce, and such conduct directly and proximately resulted in personal injury to a person known to the grand jury, all in violation of Title 18, United States Code, Section 844(i). Count 3, from a date unknown to the grand jury until on or about March 3, 2009, in the Eastern District of Arkansas, the defendant, Randeep Mann, did knowingly possess one or more firearms as defined in Title 26, United States Code, Section 5845, to wit: Approximately 98 40-millimeter HE M406 grenades which were not registered to him in the National Firearms Registration and Transfer Record, all in violation of Title 26, United States Code, Section 5861(d).

Count 4, on or about March 4, 2009, in the Eastern District of Arkansas, the defendant, Randeep Mann, did

knowingly possess a firearm as defined in Title 26, United States Code, Section 5845, to wit: An Interord Corporation Model USAS-12 12-gauge shotgun, serial number A002089 SA, which was not registered to him in the National Firearms Registration and Transfer Record, all in violation of Title 26, United States Code, Section 5861(d). Count 5, on or about March 4, 2009, in the Eastern District of Arkansas, the defendant, Randeep Mann, did knowingly possess a firearm as defined in Title 26, United States Code Section 5845, to wit: A 7.62 caliber machine gun, serial number BM-0834, which was not registered to him in the National Firearms Registration and Transfer Record, all in violation of Title 26, United States Code, Section 5861(d).

Count 6, on or about March 4, 2009, in the Eastern District of Arkansas, the defendant, Randeep Mann, did knowingly possess a machine gun as defined in Title 26, United States Code, Section 5845(b), to wit: A 7.62 caliber machine gun, serial number BM-0834, all in violation of Title 28, United States Code, Section 922(O)(1). Count 7, from on or about March 4, 2009, until on or about August 6, 2009, in the Eastern District of Arkansas, the defendant, Randeep Mann, and Sangeeta Mann, a/k/a Sue Mann, did conspire with each other to corruptly instruct, influence, and impede an official proceeding in violation of Title 18, United States Code, Section 1512(c)(2).

Count 8, from on or about March 4, 2009, until on or about May 5, 2009, in the Eastern District of Arkansas, the defendants Randeep Mann and Sangeeta Mann, a/k/a Sue Mann, aiding and abetting one another did corruptly conceal and attempt to corruptly conceal one or more of the following documents and objects, to wit: A special power of attorney, a general power of attorney, and pre-signed blank checks and other financial documents or objects related to a bank account ending in account numbers 8796 with the intent to impair the document's and other object's availability for use in an official proceeding, all in violation of Title 18, United States Code, Sections 1512(c)(1) and (2). Count 9, on or about April 8, 2009, in the Eastern District of Arkansas, the defendant, Sangeeta Mann, a/k/a Sue Mann, while under oath in a proceeding before the grand jury of the United States in the Eastern District of Arkansas knowingly made a false material declaration.

That is to say, 2, in the time and place aforesaid, the grand jury was conducting an investigation of Randeep Mann, the husband of Sangeeta Mann, a/k/a Sue Mann, for violations regarding possession of unregistered firearms. At the time of the grand jury proceeding, Randeep Mann had been incarcerated for a period of time and the actions and directives of Randeep Mann during his incarceration were material to a proper matter of inquiry for a grand jury; 3, at the time and place alleged,

Sangeeta Mann, a/k/a Sue Mann, appearing as a witness under oath at a proceeding before the grand jury, knowingly made the following declarations in response to questions with respect to the material matter alleged in paragraph 2 as follows:

"Question: Did you remove anything else from the clinic? Answer: No. Question: Specifically did you take anything out of your husband's desk and take it to Tim, or Mr. Gulu? Answer: You asked me about -- well, you asked me about two things in the office and I was thinking more in terms of, you know, mail, bills, records, things like that, but then when you said my husband's desk, I did remember, and I apologize, it just slipped my mind that my brother-in-law had some checks that had left with my husband and they were in his desk, and I apologize. It completely slipped my mind, but I did take those, because, you know, the office, the clinic is empty. There's nobody in there and I just didn't feel that that would be a safe place, so I did bring those home. Question: What did you do with those checks when you took them out? Answer: They're at home. Question: So you still have them? Answer: Yes. I just thought it would be safer. Question: So you removed something because you thought it would be safer? Answer: Yes. Question: Is that the only reason you removed them? Answer: Yes. Yes." Four, the aforesaid underscored testimony of Sangeeta Mann, a/k/a Sue Mann, is she then and there well knew and believed was false and that the checks had

not been removed from the clinic because she thought it would be safer but because she had been instructed by Randeep Mann to remove the items, all in violation of Title 18, United States Code, Section 1623. Now, there are a number of forfeiture allegations, but I won't read those to you again.

Ladies and gentlemen, I mentioned the word "evidence". Evidence includes the testimony of witnesses, documents, and other things received as exhibits and facts that have been stipulated, that is, formally agreed to by the parties, and any facts that have been judicially noticed. That is, facts which I say to you may, but are not required, to accept as true even without evidence. Certain things are not evidence. I'll list those things for you now. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence. And we've discussed that. Nothing that the lawyers say is evidence. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objections.

If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been. I think I explained to some of the panels that came back, the lawyers have a job to do and they will, from time to time, object. Once they object, if I sustain that objection, you can't go behind the objection and try to figure out what's going on. You understand that? Okay. Testimony that I strike

from the record or tell you to disregard is not evidence and must not be considered. Anything you see or hear about this case outside the courtroom is not evidence unless I specifically tell you otherwise during the trial.

Now, since all of you were interviewed, have any of you heard, read or seen anything else about the case that you need to bring to my attention? And I will consistently say it over and over and over. Nothing you read here or view outside of this courtroom is evidence. As we discussed, the evidence in this case will only come in on the witness stand and through documents and exhibits that I accept into the record. Do you understand that? Okay. Furthermore, a particular item of evidence is sometimes received for a limited purpose. That is, it can be used by you only for one particular purpose and not for any other purpose. I'll tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence". I think we had whole question and answer conversations about direct evidence and circumstantial evidence. Now, you're instructed that you should not be concerned with those terms. Don't be concerned with it. Regardless of what we talked about, don't be concerned with it. The law makes no distinction between direct evidence and circumstantial evidence. You should give all

evidence the weight and value you believe it's entitled to. So that's up to you to weigh all the evidence that you hear and give it the weight that you deem appropriate.

Now, in deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said or only part of it or none of it at all. In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness has or had to have seen or heard the things testified about, the witness's memory, any motives the witness may have for testifying a certain way, the manner of the witness while testifying, whether the witness said something different in an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

At the end of the trial, you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to play back or read lengthy testimony. You must pay close attention to the testimony as it is given. If you wish, however, you may take notes, and I believe you all have been given note pads, or we have them back there to hand out to you once I get finished. Now, if you do take notes, please keep your note pads to yourself and keep your notes to yourself and don't share them among the other jurors. You'll

have a chance to talk about, you know, what you believe and what you thought and your notes when you go back to deliberate. Don't let the note-taking distract you. This is a major point. Sometimes we're so busy writing that we're not listening to what the evidence is or what the witnesses are saying, so make sure you pay attention to what the witness is saying and take notes at the same time. When you leave at night, your notes will be secure and they won't be read by anybody so you have to leave those here. You can't take them with you.

During the trial, it may be necessary for me to talk with the lawyers out of the hearing of the jury either by having a bench conference here while the jury is present in the courtroom or by calling a recess. Please understand that while you're waiting, we are working. Understand that. If we're back in the back, we're not back there drinking coffee and having a good time, we're actually discussing the case and seeing what needs to be done. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number of these conferences short, and we'll have as few of these conferences as we can and keep them as short as we can.

Finally, to ensure fairness, you as jurors must obey the following rules. First, do not talk amongst yourselves about the case or anyone involved with it until the end of the case

when you go to the jury room to decide your verdict. Second, do not talk with anyone else about this case or about anyone involved with it until the trial has ended and you have been discharged as jurors. Third, when you're outside the courtroom, do not let anyone tell you anything about the case or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone tries to talk to you about the case, please bring it to my attention. Four, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses in the case. And we have discussed that. I know that you wouldn't go over and start talking with people about the facts of the case. But not only do we have to have a fair process, it has to appear to be fair. So I don't want you out in the hallway saying hi to the witnesses or the parties or to the lawyers.

Fifth, do not read any news stories or articles about the case or about anyone involved in it or listen to any radio or television reports about the case or about anyone involved in it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all and avoid listening to any TV or radio newscasts at all. We've spent a week talking about this so I'm not going to go into great detail with you, with the reasons why I want you to stay away from the media, but you understand why. Sixth, don't do any research or make any investigation about the case on your own.

That's not the role of the jury to go out and do an independent investigation and be private investigators. Just listen to the testimony as it comes in at trial. Seven, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have had a chance to discuss the evidence.

Now, the trial will proceed in the following manner. First, counsel for the government will make an opening statement. Next, counsel for the defendants may, but they're not required to, make an opening statement. Now, an opening statement is not evidence, but it's simply a summary of what the attorneys expect the evidence to be. The government will then present its evidence, and counsel for the defendants may cross-examine the government's witnesses. They're not required to, but they may choose to. Following the government's case, the defendants may, but don't have to, present evidence, testimony or call witnesses. Now, if the defendants call witnesses, the government may then get up and cross-examine their witnesses. After presentation of the evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you.

As with opening statements, closing arguments are not evidence. I'll then instruct you further on the law, and after that, I'll send you back to the jury room to deliberate. Now,

do we have any witnesses in the courtroom that we need to have sworn in? Do either of the parties require the rule?

MR. DUDLEY: Yes, Your Honor.

THE COURT: Ms. Whatley?

MS. WHATLEY: Yes, Your Honor.

THE COURT: You may make your opening statement.

MR. GORDON: Your Honor, we ask that Agent John Norris be excused from the rule.

THE COURT: Any objection to that?

MR. DUDLEY: No objection to that, Your Honor.

THE COURT: That's granted.

MS. WHATLEY: May it please the Court, counsel, ladies and gentlemen of the jury. On February 4th, 2009, Dr. Trent Pierce was severely injured in an explosion in his driveway in West Memphis, Arkansas. Now, while the explosion and the bombing happened that day, the story behind the bombing actually began in 2003 when the defendant, Randeep Mann, was first disciplined by the Arkansas State Medical Board. I anticipate you will hear that the Arkansas State Medical Board is the entity in the state of Arkansas which licenses and disciplines doctors. And you will hear that in 2003, the defendant, Randeep Mann, was first brought before the Board and was first disciplined. He lost his ability to prescribe controlled substances.

I anticipate you will hear that in 2004, that

disciplinary action was lifted. But in July of 2006, the defendant was once again brought before the Board and he was once again disciplined, this time for over-prescribing medications. The defendant, Randeep Mann, once again lost his ability to prescribe controlled substances. He lost what is referred to as his DEA permit, DEA standing for Drug Enforcement Administration. Almost immediately after that ruling, through letters which I anticipate you will see, the defendant began petitioning the Board for reinstatement of his DEA, and that request was denied again and again and again.

So what does a disciplinary action before the Arkansas State Medical Board have to do with a bombing in West Memphis, Arkansas? Ladies and gentlemen, I submit to you that it had everything to do with that bombing. The victim of the bombing, Dr. Trent Pierce, is the chairman of the Arkansas State Medical Board and has been the chairman since December of 2006. He's actually been on the Board since 1997. I anticipate the evidence will be that the defendant, Randeep Mann, had an animosity toward Dr. Pierce and that animosity will be shown in a number of exhibits which the United States intends to introduce during the course of this trial. It was an animosity that resulted in the bombing.

So what was the proverbial straw that broke the camel's back? I anticipate you will hear that in January of 2009, the defendant, Randeep Mann, learned he was once again being

investigated by the Arkansas State Medical Board, this time for dispensing controlled substances without a DEA permit. I anticipate that you will hear that if the Arkansas State Medical Board determined that the defendant was actually prescribing controlled substances, the only option they had was to take away his medical license. It was the ultimate punishment that the Board could give. The defendant would no longer be able to practice medicine in the state of Arkansas. I anticipate you will determine that the defendant, Randeep Mann, had all the motive in the world to do the bombing, to cause the bombing. It's a motive that he voiced to other people, people that you will hear from. Ladies and gentlemen, the defendant had a motive to harm.

Let's talk about the bombing. Let's talk about what you will hear and what you won't hear. First, what you won't hear. I'll go ahead and tell you, you won't hear any person say that they saw the defendant, Randeep Mann, at the scene of the bombing either the night before or the morning of. You won't hear any forensic evidence linking him to the bombing. The government is not alleging that he planted the bomb, but that doesn't mean that he is not guilty of aiding and abetting or conspiring to commit the bombing. It doesn't mean he didn't know about it, and it doesn't mean he didn't do things to help cause it. So what will you hear about the bombing? I anticipate that the evidence will be that on February 4th,

2009, Trent Pierce left his house in West Memphis, Arkansas with the intention of going to his medical clinic.

You will hear that he planned to spend part of the day at the medical clinic and then drive to Little Rock for meetings before the Arkansas State Medical Board, but he never got to either place. Instead, he ended up at the Crittenden Regional Hospital in West Memphis, Arkansas, and within an hour, at the Regional Medical Center, the Med in Memphis, Tennessee. He had severe injuries to his face, his arms, his legs, and he underwent numerous surgeries that first day. He had injuries which I anticipate you will hear about and some of which you will see. I'm just going to go ahead and warn you, some of what you will hear about, some of what you will see will be gruesome, but ladies and gentlemen, what caused these injuries is also gruesome.

The injuries were caused by an MK3A2 hand grenade attached to a spare tire, a spare tire that was placed in front of Dr. Pierce's 2008 Lexus, a Lexus that he drove to medical board meetings and in fact still drives to medical board meetings today. A spare tire that he moved and when he moved it, it caused the bombing. That spare tire was placed there sometime between 8:30 p.m. on February 3rd, 2009, and 6:30 a.m. on February 4th, 2009. You will hear from witnesses who drove past Dr. Pierce's house that morning and who saw the tire, they'll tell you what they saw. And you will also hear from a

witness who was driving by when the explosion happened. I anticipate she will tell you what she saw, what she heard, what she smelled.

It's an explosion that witnesses will tell you could be heard from blocks away. In fact, Mrs. Pierce will tell you that it shook the entire house, it broke things in their house, and it caused pictures to fall off the walls. I anticipate you will hear from numerous law enforcement personnel that showed up at the scene of the bombing, 411 Avalon, West Memphis, Arkansas.

I anticipate you will hear about what they located at the scene and also what surgeons removed from Dr. Pierce's body. I anticipate you will hear how the people at the scene were able to use the things they found in order to put together what happened and how ultimately all this was sent to the ATF lab where lab personnel determined the device that was used to make the bomb, an MK3A2 hand grenade, a military offensive grenade, a grenade you will learn the defendant had access to. I anticipate you will hear that law enforcement agents began trying to determine who would have a motive to commit this offense, and that Randeep Mann, due to his history with the Arkansas State Medical Board, was actually interviewed on the night of the bombing. He was interviewed at his home in London, Arkansas. And present at that interview was his wife, Sangeeta Mann, Sue Mann.

I anticipate you will hear that when law enforcement arrived at the house to conduct the interview, he said he knew what they were there for. So that's how the interview began, with the defendant stating he knew why the agents were there. And the interview ended with the defendant, Randeep Mann, showing the agents his extensive gun collection. I anticipate you will hear a lot about that collection. It's a collection that included over 100 machine guns and approximately 100 semiautomatic weapons, a collection which included grenade launchers, grenade launchers capable of launching 40-millimeter high explosive grenades, the same type of grenades that were located nearly a month later buried in an ammunition box approximately 875 feet from the defendant's house.

These grenades, 98 in total, were not found by law enforcement agents snooping around the defendant's area trying to find dirt on him, but you will hear that they were actually found by London city workers or a London city worker who actually stopped in a wooded area to urinate. The area that he found the grenades in was approximately 60 feet off the road, a road that ended in a cul-de-sac, a road that only has one house on it, and a road that can be seen from the defendant's residence.

These are the grenades that the United States will argue were buried because the defendant knew we were coming. He knew we would show up when the bomb went off. After these grenades

were located, law enforcement was contacted and that led to a search warrant being executed at the defendant's house, a search warrant that he said he had been expecting. I anticipate you will hear a lot about those search warrants and that search warrant and the search warrants that followed. I'll go ahead and tell you, no forensic evidence linking him to the bombing or to the grenades was located. That's true, the defense is going to tell you that. But he knew we were coming.

That first search warrant led to the discovery of two firearms which were not registered to the defendant, the two firearms with which he is charged, and the judge has read you the indictment, also led to other evidence being located at the defendant's house. It led to the discovery of 40-millimeter practice grenades. It also led to the discovery of a number of ammunition cans, one of which is identical to the can found buried 875 feet from the defendant's house containing 98 40-millimeter high explosive grenades. I anticipate you will also learn that grenade manuals were located at the residence, grenade manuals giving information not only about 40-millimeter grenades, but also about MK3A2 hand grenades, the type of grenade used in the bombing of Dr. Pierce.

I anticipate you will also hear that controlled substances were found in a gun safe, not a medicine cabinet, a gun safe at the defendant's residence. I anticipate you will hear that after that search warrant was executed, the defendant

was arrested for possession of unregistered grenades. In the days after Randeep Mann was arrested, he made numerous phone calls to his wife, telephone calls that, per jail policy, are recorded, telephone calls that the defendants knew were recorded. I anticipate you will hear portions of some of those telephone calls, calls in which the defendants discuss upcoming search warrants and how they anticipate search warrants will be executed at different locations, and the need to remove items from those locations prior to the time law enforcement arrives. I anticipate you will also hear the defendants discuss witnesses and the need for certain witnesses to remain on their side. You're going to hear from some of those witnesses. I anticipate they will tell you what Sue Mann told them and what she asked them to do. And all of this shows the defendant's attempt to obstruct justice and conceal evidence from the investigation.

I anticipate you will hear that Sue Mann testified before the grand jury and that she lied. I anticipate you will see a transcript of that testimony and that you will see how her testimony before the grand jury differs significantly from her conversations with her husband. Ladies and gentlemen, there's going to be a lot of exhibits in this case and you're going to hear from a lot of witnesses. Now, I have not told you about every piece of evidence you're going to see or every witness you're going to hear or everything you're going to hear in this

case, that's not my job. That's the witnesses' job who sit in that chair. It's their job to tell you all of this. And I promise you they will. Sometimes what they tell you won't be easy to hear, sometimes the exhibits that we present will not be easy to see. But this case is not hard. It is not complicated.

It is a case about a man who was obsessed with firearms, who had access to explosives, who did not follow the law when it came to those firearms. It's a man who was intent on harming someone else through what he had and what he had available to him, and this case is about two people's desire to cover all that up. Ladies and gentlemen, I want to thank you for your service, I want to thank you for your patience over the next few weeks. I ask that you listen to the evidence presented through testimony and exhibits. At the end of this trial, the United States will stand before you and will set out and show you, element by element, crime by crime, how the defendants are guilty. And we will ask you to return verdicts of guilty as to each defendant for each count with which they are charged. Thank you.

THE COURT: Mr. Lassiter.

MR. LASSITER: Thank you, Your Honor. Good afternoon. A number of you I have not seen since last Tuesday. I was in and out of voir dire working on this case back at the office while y'all were being asked all those questions that

eventually led to you being placed in the box here today. I want to remind you that opening statement, the stage we're at now, is not evidence in this case. Statement of counsel does not constitute evidence or testimony. That comes from the witness stand. The purpose of opening is to outline what we expect the proof to be at trial.

I want to tell you that it is a privilege to represent Dr. Mann. He grew up in India, graduated from med school, pardon me, med school in 1980 at the Armed Forces Medical College, which is one of the better medical schools in India. After med school, for the next couple of years, he fulfilled his national obligation by working in a military hospital, and then following that, in rural health care, a difficult job. It's part of the obligation of becoming a doctor in India that you repay your country for the opportunity and privilege to practice medicine. He married Sue in 1983 and they emigrated to the United States, they became U.S. citizens in 1986. They are parents. They have four children: Shivanni, age 23, she is a psych major at the University of Arkansas at Fayetteville; Dan, who is, I believe, 21, a UCA graduate; Dashaunt, who is a senior at UALR; and then their youngest, Serena, who is at college at Fayetteville.

After moving to the United States, Dr. Mann, for the next four or five years, participated in three or four different programs, internships and residency. He started in 1984 as a

research externship in Providence, Rhode Island. The next year, he participated in an internship at Mount Sinai Medical Center in Wisconsin, and then from '86 to '89, he participated in a program with internship and residency in Baltimore at Good Samaritan and Johns Hopkins in internal medicine. He then went to St. Louis, Missouri where he participated in a program dealing with pulmonary care. He's board certified in internal medicine and was certified in 1990; in emergency medicine in 1996; and then pain management in 2002.

In 1992, the Manns and their family moved to Memphis where Dr. Mann worked in the Navy hospital at the naval base at Millington and also in emergency rooms in that area of Memphis to Jonesboro. He applied to be licensed in the state of Arkansas in 1994. In 1998, he was involved in a bad motorcycle wreck, sustained a very serious back injury, and that pretty much ended his career as an emergency room doctor. He was unable to stand on his feet for long periods of time. He and his wife thought about what they might want to do next and since they pretty much all their lives have been in cities with a lot of people, they decided they might move and considered and did move to a rural area or a smaller area, I should say, and so they relocated in Pope County, Arkansas.

He opened a clinic in Russellville, they bought a home near the lake in London, Arkansas. He opened a clinic in Russellville on the same lot as an established clinic, the

Millard Henry Clinic, which has been around for years, over 60 years anyway, and settled in to practice medicine in that area. But they stood out. Pope County, according to the 1990 census, was about 94 percent white, so we have an Indian doctor who opens up a clinic in Russellville across the street from an established clinic, a doctor with a very large gun collection, lives on the lake and near nuclear waste, so we all know what happens next. The gossip starts. And it was malicious and it continued.

Unfortunately, people in positions of authority and responsibility in that area bought into it, including law enforcement. We're talking the time period now around 2000 and 2001. You'll hear testimony, I believe, about even some amateurish attempts to set Dr. Mann up, which were, of course, unsuccessful. But this continued and continued and culminated in the first complaint or the first investigation of the medical board that Ms. Whatley referred to in her opening statement. So let me address that for you.

I think the testimony is going to reveal the following. I believe that the government will present a witness here who's associated with the medical board that we can ask these questions of and we can produce documents to support what I'm about to tell you here. But in early February of 2001, the executive director of the medical board sent a memo to an investigator that essentially said we got a lot of complaints

here. And I'll just say it, it was scandalous as to what Dr. Mann had been accused of. So the director of the medical board asked an investigator to take a look into this. This ultimately resulted in a hearing. And so when all these crazy allegations were subjected to the sunshine in the adversarial process in the hearing before the medical board, this stuff was seen for what it was.

We'll go into detail with this when the witness goes to the stand and we'll look at the documents. But after a full hearing on this, the medical board reached a conclusion and eventually there was an agreement between the Board and Dr. Mann in which he admitted this, that he had prescribed medications for an ADHD patient without getting a second opinion for the prescription, a requirement of the medical board at that time, and I guess it still is. But it's all these other allegations like he's over-prescribing and caused the death of a patient or he's done all these improper things that you'll hear about in the complaint that was filed, there was no evidence of that. Or, to the contrary, there was evidence that disproved it. So this all culminated from all this hysteria around the Russellville area at the time.

So, in 2003, his prescription rights were returned, he returned to practice at his clinic. And then in 2006, there was a second proceeding and in that proceeding, Dr. Mann agreed that he had over-prescribed for certain patients, and his DEA

permit, as part of the agreement, was surrendered with the agreement that he could reapply for it at any time. And he did. It's the government's theory that this sets the stage for the motive to be involved in what caused this bombing that occurred in February of last year. And I'll talk more about that in a moment. But in the flow of events at the medical board, we talk about motive, some things that the evidence is going to show you.

Evidence is going to show you that when he asked for his prescription permit back in 2007, in August of 2007, there was a motion made and seconded before the Board not to give that privilege back to him. Dr. Pierce didn't make that motion, Dr. Pierce didn't second that motion. Six or seven months later, Dr. Mann applied again, and again he was turned down. Dr. Pierce didn't make the motion to deny it; Dr. Pierce didn't second the motion. Two months before the bombing in December of 2008, the Board agreed to consider allowing Dr. Mann to reapply for his prescription privilege and set that on their agenda for June of 2009, and this was a unanimous vote. There are 14 members of the Board.

As to the Board's actions in 2009, sanctioning doctors, in that year the evidence will show you that 39 doctors were disciplined by the Board. In 2008, there were 17. In 2007, 22. In 2006, there were 39. We believe the evidence will show that there were a minimum of 40 physicians who had been

sanctioned in some form or fashion during the time that Dr. Pierce was chairman of the medical board. Ms. Whatley mentioned that you will hear evidence concerning Dr. Mann's firearm collection, which I want to talk about that for a moment. He is a federal firearms licensee. He collected firearms for a number of years. He started doing it, I believe, when he was in Memphis, or perhaps in St. Louis before he moved to Memphis.

With the authority of the federal firearms license that he got in 1990, he began acquiring these firearms, and I believe they're going to bring them in here and show them to you. And it's an impressive collection, from 13 different countries. This was his passion, this was what he enjoyed doing, and it's also a good investment. You will hear evidence that at one point in time, this collection was insured for about $1.5 million. So it was a substantial investment. You'll see firearms that are from the World War II era, from the Vietnam War era. You'll hear about a French firearm that's very rare that's worth quite a bit of money, probably in excess of $50,000. So this is the collection. You won't hear any evidence that it was possessed with the intent to go to war with it. There are a lot of people that collect these firearms. Some of you may know people that collect firearms.

There are a lot of people in this state or businesses that have federal firearms licenses. There are about 1,000 in

Arkansas. And I think you'll hear evidence that there are 17 in the Russellville area. I want to talk a little bit about what the evidence will show or won't show concerning the counts in this case, but before I do that, I want to tell you a little bit about how our system works in federal court. Mr. Gordon, during voir dire, a couple times when I was present made the statement that we are in federal court and this is a serious matter. This is indeed a very serious matter. I want to tell you a little bit about how this process works in federal court.

So when you hear me say in a moment, we don't know what this witness is going to say when he or she testifies, this important witness, you're going to know why. We operate under a system controlled by the Federal Rules of Criminal Procedure first passed back in 1946, some substantial amendments in the '70s, been amended every few years. These rules apply in every courtroom in the country in federal court. So what I'm trying to tell you is, here, the same rules applies if I'm trying a case in Pensacola or Tulsa or Phoenix or New York City. And there are certain things that those rules don't provide for that are allowed in civil cases. Specifically what I'm talking about is this. Some of you may have been involved in a civil suit before, some of you may have been on a jury in a civil suit before. You may have heard the term "depositions" and "interrogatories".

Say we've got a lawsuit over who owns an acre of land or

the heirs are fighting, Aunt Mary's passed away and there's a big fight about who gets the estate, or there's been a fender bender out here and somebody's alleging that they have a personal injury. If you're in the course of that case in preparation for it, the lawyers can take depositions of the witnesses. They can notice them in to a place, sit down with a court reporter, put them under oath and find out what that witness is going to say. They can do the same thing with parties on the other side. And they can send interrogatories to the parties on the other side. We are not authorized to do that under the Federal Rules of Criminal Procedure. We can't send interrogatories, we cannot take depositions. So how do we find out what a witness is going to say? We've got two ways to do that. One, by interviewing the witness, or one, from reviewing the statement that that witness has given to the government investigator or to the grand jury. But there's some things that we can't do.

We can't make the witness talk to us. We can't subpoena them to our office. If the witness says I don't want to talk to you, that's the end of it. We can't talk to them. And we cannot make the government give us their interviews. In this case, I will tell you the government lawyers have told us that they will let us see interviews of witnesses or what we call *Jencks* material three days before they testify, but there are certain important witnesses in this case that will not talk to

us, we've not seen their government interviews, and I stand here before you in opening statement, I do not know what they are going to say.

I'll give you some names that you're going to hear in this case. Tim Harrell, Gerald Riley will not talk to us. We've not seen their government interviews. An individual by the name of Kimberlin, I think, is going to be a government witness. He won't talk to us. We haven't seen his interview. The government witness by the name of Hahn who you're going to hear about who I anticipate will testify here, he has talked to us to some extent, I will tell you that. He also made it clear to us that he wasn't going to tell us anything. So I want you to understand when I tell you in a moment when we go through these counts, I don't know what the government's evidence is going to be, why I don't know what the government's evidence is going to be on these counts.

I also anticipate that as part of the evidence in this case, the government may put on some what we call jailhouse witnesses, individuals that either have been sentenced in the federal system or are about to be sentenced or some way or another are incarcerated in the federal system or in the state system. I believe that part of the evidence, the government will put these people up here and they will be the individuals that testify about something that they said or heard that Dr. Mann said. The evidence will show you that these people

come to you credibility impaired, that they have some expectation of gaining something from their cooperation with the government, some lesser sentence, some other expectation. So that, I believe, will be part of this process also.

We have four areas in the indictment: Possession of unregistered grenades, possession of two unregistered firearms, a shotgun and a machine gun, obstruction counts, and then the two counts that are related to the bombing. So let me address those. Like Ms. Whatley, it's not my purpose here to tell you what I think all the evidence is going to be in this case that I know about. I just want to touch on it briefly and outline what I think is in the future concerning some of these counts. On the counts involving the grenades, she correctly states that these grenades were found in a green ammo box, I believe about 300 yards from the Mann residence. I'll tell you some things that the evidence won't show.

I do not believe the evidence is going to show when that box was placed there or who placed it there, there aren't any fingerprints on that box, there won't be any DNA recovered from that box, but there were some scientific tests run on that box. I heard one of the government lawyers say during voir dire, we don't have a gizmo 5,000, we're not like on Law and Order, we don't have a test for everything, but I'll tell you ATF has a lot of gizmos and they can run a lot of tests, and one of the tests they ran here -- this box contained some plastic sheeting

and some duct tape. So they ran some tests comparing the plastic sheeting in that box to plastic sheeting they found inside the Mann residence. By that I mean black plastic sheeting like a garbage bag you put in or black plastic sheeting you might use out in the flower bed, they compared it against plastic sheeting they found in the Mann residence.

And one of the searches, the results came back that there was no match, but the tests will say and what the forensic chemists will say or the criminalist is that they are of different origin, so they're not the same. ATF went back on another occasion with a search warrant because they had, I guess, developed some evidence that there was some black sheeting in a flower bed or rock bed out in the yard so they went back and dug the yard up and got that black sheeting and compared it. It was not a match. That was from a different source also. So the match on the duct tape's not in anything recovered from the search. We'll learn more about this count, as with the others, as we go along.

We're going to learn a lot about this case at the same time you learn about it because of these witnesses that I mentioned and probably others that we are unaware of what their testimony's going to be. In the gun counts, there are two firearms involved. Out of this huge collection worth $1.5 million at some point, over 100 firearms, machine guns from 13 different countries, through all of that, they find two

guns they've got a problem with. Those are our count guns here. The first firearm is a shotgun. At this time, it is a 12-gauge shotgun and it is classified now as a destructive device. It was not at one point in time. It's a 12-gauge shotgun that was configured in such a way that it's not useful for hunting purposes.

At some point in time in 1994, ATF decided that this was a destructive device and took the position that it had to be registered with them. And it extended about a seven-year grace period, for lack of a better word, for that particular firearm to be registered. You're going to hear -- I believe you're going to hear we were provided with a transcript of this recording, one of the recordings between Dr. Mann and Sue Mann after he was arrested in which he talks about this firearm and explains what he was told and relied on and why it had not been registered. You'll hear that, I believe, you'll hear a tape of that during the course of this case. The other two counts, 5 and 6, deal with a machine gun.

This is an unusual firearm in that it's what's called a Hahn reweld machine gun. This is a machine gun that had been literally cut in two through the receiver and was then welded back together again by Mr. Hahn, as I'm sure they'll put on during the course of this case. The indictment sets forth a certain serial number, and the indictment states that that serial number is not registered with ATF. Let me digress. In

the FFL, there's certain things you have to do. If you're going to transfer a firearm, you've got to fill out a standard form that shows who you're transferring it to with certain guns.

Machine guns, you got to get the transfer approved by the ATF, you got to keep a book kind of like a spreadsheet that shows when you acquired the firearms and when you transferred the firearms. So when we talk about the paperwork associated with the firearms transaction, that's basically it. It's more complicated than that, but that's typically what we talk about. This machine gun that was manufactured that is welded back together by Mr. Hahn was transferred to Dr. Mann in 2001. There is -- there are an additional four numbers that appear on this firearm different from the serial number that's stamped into the firearm and appears in the indictment. Those numbers are 1442. This firearm appears in Dr. Mann's paperwork under the serial number 1442. So with that serial number, it appears in his paperwork, it appears in the ATF paperwork, and it appears to be properly registered.

Now, I suspect that Mr. Hahn is going to testify about that firearm. I believe that's what the evidence will be. I don't know. We haven't seen his interview. But I'm assuming that Mr. Hahn will address that. And you'll also learn when he testifies, the evidence will show you that he is an immunized government witness. That, as the evidence will show you, is

that the government has promised him that they won't charge him, pardon me, that they will not use any of the information that he gives them or that he had already given them or they won't use his testimony here in this courtroom to charge him with an offense.

There's a second count that involves the same firearm, it's a second machine gun count which alleges that Dr. Mann unlawfully possessed the machine gun. All I'm going to say about that now is that a federal firearms licensee may possess lawfully a machine gun if he meets certain criteria. We believe the evidence will meet those criteria and that the evidence will demonstrate that he lawfully possessed that machine gun. There are two obstruction counts, 7 and 8. Mr. Dudley's going to talk to you about count 7, I would anticipate, and I will defer to him about that. There's no reason to put you through that in our opening statement about that twice. I'm sure he will address that thoroughly.

I just want to say as to that obstruction count, the Manns conspired to impeach an official proceeding, that we are faced with the same issue there in opening as we are in some of the other counts. Mr. Riley and Mr. Harrell, they will be witnesses on those counts, and we do not know what they will say. Count 8 involves an obstructing count as to certain documents that were removed from the clinic, financial documents. The judge read that to you a moment ago, the power

of attorney, pre-signed checks and other financial documents dealing with the bank account, which, based on the allegation, doesn't sound like it had anything to do with grenades or firearms or a bombing. And the evidence may well demonstrate to you that removing those items from the clinic was a prudent act. I believe the evidence will show you that the government got these documents at some point in time anyway.

That brings me to the bombing. I want to talk about that a little bit, the two counts on that. First I want to say that every lawyer in this courtroom hopes and prays for Dr. Pierce's continued recovery from this terrible, terrible event. We have, through the course of discovery, looked at medical records, and his recovery from those injuries are both remarkable and inspiring. Ms. Whatley accurately described what happened that morning when the bomb went off. I anticipate that they'll produce witnesses that were at the scene.

There are some people that drove by, there were some people that were by the night before. You may hear testimony from some witnesses that didn't come forward for six months. The judge gave you a credibility instruction earlier and we'll give that to you at the close of the case. You might ask yourself about the reasonableness of their testimony when waiting so long to come forward, but as to the way this device was put together and what happened in the driveway that

morning, I don't think there's going to be any dispute in the development of the testimony. As she indicated, there's no forensic evidence that connects the bomb to any particular individual, but the government alleges in these two counts that this device was used against Dr. Pierce in his vehicle and affecting interstate commerce.

The first count, it's alleged that there was a conspiracy or there was an aiding and abetting implying the participation of a number of people, at least two people. If there's any evidence of individuals involved in this, again, we will learn that with you. I do not believe that there will be any testimony as to who placed the bomb there or who made the bomb. ATF has gone to great lengths to try and connect something forensically to Dr. Mann unsuccessfully. The bomb was in a Nissan spare tire and they've involved everybody that they could think of that had a Nissan spare tire without finding any connection to the bomb at all. We'll learn more about that as you do in terms of what their theory is. I want to ask you to wait until you've heard all the evidence and all the testimony and until you've had the judge's instructions and go to the jury room to deliberate before you start to reach any conclusion.

We ask you to do that because there's a psychological phenomenon called primacy. People just kind of tend to believe what they hear first, so I'm going to ask you not to do that

and refrain from reaching any conclusions until then. I know that you can do that. The government puts forward a series of circumstances that they have cobbled together to create a theory about this bombing. The evidence is going to show you that these circumstances could be arranged in a different way to reach a different conclusion or different theory or no conclusion at all. They have the burden of proof. You don't convict people in our country based on speculation and conjecture. It will take us a while to get through all this. I look forward to working with you and I thank you for your attention.

MR. DUDLEY: Your Honor, would you inquire and see if any of the jurors need a break before I start?

THE COURT: Any of you need a break before? Okay, we'll do that. This will probably indicate that we need to take a short break before we start Mr. Dudley's opening. I will tell you as I've told you all along, don't talk to anybody about the case yet and don't talk to any of us out front. As we've said before, not only do we want this process to be fair, we want it to appear fair. We'll be in recess for ten minutes.

(Recess at 2:58 p.m., until 3:14 p.m.)

THE COURT: Mr. Dudley.

MR. DUDLEY: Thank you, Your Honor. May it please the Court, members of the jury. Sue Mann is innocent. I'm going to say that again because I don't want there to be any

doubt in this case where we're coming from. Sue Mann is innocent of the charges against her. She's not just not guilty, which she is; she's innocent. And there's a difference. Not guilty just means the government can't prove their case against her, and they can't. Innocent means she didn't do what she's charged with. And in this case, Sue Mann is innocent.

Barry Goldwater received the Republican nomination for president in 1964. There are a lot of things I didn't agree with that Barry Goldwater said, but in his acceptance of the nomination in 1964, he said something I wholeheartedly agree with. He said, "Moderation in the pursuit of justice is no virtue." I agree with that. I tell you that because I'll tell you on the front end, I will be very vigorous in the pursuit of justice in this case. If there's a witness that gets on this stand and says something I don't think's true, you're going to see me try to show you vigorously that what that witness is saying is not true. So don't hold it against Sue if I get too vigorous in my representation of her, but I go back to what Goldwater said. Moderation, when you're trying to get justice, is no virtue. And we're trying to get justice in this case.

Let me tell you a little bit about Sue. Sue was born in India, as you know. In 1970, she was 8 years old, her dad came to the United States. He came to the United States without Sue and the rest of her family and worked for three years saving

money so that he could bring the family over. In 1973, he brought Sue to the United States when she was 11 years old. Sue grew up in Boston. She went to Catholic schools in Boston. She attended Boston University and received an undergraduate degree there. She attended Boston University and received a Master's of Business Administration from Boston University. She married Dr. Mann in 1983, and Mr. Lassiter has told you the rest of their history and I won't repeat that. Except I want to add a little bit to what Mr. Lassiter has told you.

It's true that the Manns have four children. Three of those children are natural born children. The fourth, they adopted and it is the son of Dr. Mann's brother. You will hear about this later, but Dr. Mann has a brother who's now in India named Sandip, they call him Sunny. He was in the United States, but he was deported in, I think, 2002, I may be off on the year. When he was deported, his son stayed in the United States with the Manns. This will be important later. And the Manns eventually adopted him and he is now their son. Let me talk to you about the charges in this case. I've already told you and you know there are three counts against Sue in this case.

I want to talk about all three of them, but I want to talk about count 7 and 8 together because they're related. Count 7 charges that Dr. Mann and Sue Mann conspired with each other to corruptly obstruct, influence, and impede an official

proceeding. Count 8 charges Dr. Mann and Sue Mann with aiding and abetting one another to corruptly conceal and attempt to corruptly conceal one or more of the following documents and objects: A special power of attorney, a general power of attorney and pre-signed blank checks and other financial documents or objects relating to a particular bank account. What's the basis, what's the evidence to support those two charges?

I think you will learn during this trial that the primary reason the government brought these charges is based upon tape-recorded telephone conversations between Dr. Mann and his wife. You will hear that. Dr. Mann was arrested on the firearms weapons charges and was held in jail pending trial. Every call that he made or received from jail was recorded. Dr. Mann knew his calls were recorded. Sue Mann knew those calls were recorded. They had to talk about things both personal and business wise on the phone that Sue Mann needed to take care of because she wasn't held in jail pending trial. And they talked in shorthand. They talked in code.

They did not want to spread their personal business and their business affairs in tape-recorded conversations for all the world to hear or for whoever to hear that they knew were going to listen to those conversations. So they talked in snippets, and some of what they say sounds funny. Let me give you an example. For example, in Count 7, they're charged with,

according to the government, attempting to hide documents relating to Dan Mann. That's their son. One of the things that the government says they attempted to conceal or they conspired to conceal are documents related to Dan Mann. There is a conversation on one of the tape-recorded phone calls about Dan Mann. Dr. Mann asked Sue something to the effect of, did you take care of Dan's documents.

Now, that may not be a direct quote, but it's something to that effect. Did you take care of Dan's documents. Sue said, yes, we did good, we did good. And the government's claiming that conversation is evidence of a conspiracy to conceal, to corruptly conceal from the grand jury these documents about Dan Mann. You know what they were? They were his medical records. His medical records. Dr. Mann's asking Sue did you get Dan's medical records. And she said, yes, I did good.

If they were conspiring to conceal the medical records from the grand jury, why? The grand jury was investigating Dr. Mann for weapons violations at that time. What did Dan Mann's medical records have to do with any of that? What motive would Dr. Mann and Sue Mann have to hide their son's medical records from the grand jury when the grand jury wasn't investigating a thing that had anything to do with Dan's medical records?

Give you another example. One of the charges in Count 7

is that Dr. Mann and Sue Mann conspired to influence witnesses, corruptly conspired to influence witnesses who might testify before the grand jury. Two of the witnesses they're charged with attempting to influence are Rita -- and I'll butcher this name -- Barthelme, I think is the way it's said, and Phil Barthelme. On one of these tape-recorded conversations, they talk about Rita. And Dr. Mann says something to the effect, well, have you talked to Rita. Sue says, yes, I have. Dr. Mann says, is she standing behind you or is she supporting you, something to that effect. And Sue says yes.

And based on that, they're now charged with corruptly conspiring to attempt to influence the testimony of Rita Barthelme. If you listen to that whole tape-recorded conversation, you know what they were talking about? Rita and Phil Barthelme had bought some equipment from Dr. Mann. They bought a motorcycle, I think, a trail bike, and I think they'd bought a trailer to haul lawnmower equipment stuff around in. And they were paying them monthly. And Dr. Mann was essentially asking in the shorthand code are the Barthelmes making their payments, and Sue was saying, yes, the Barthelmes are making the payments on the equipment they bought from us. And they're charged with trying to influence their testimony before the grand jury based on that conversation about whether they were making their payments because they were talking in this personal code, shorthand, and it sounds funny. But that's

the basis for that charge.

One of the folks, two of the folks they're charged with attempting to influence are Pete Patel and Alka Patel from Memphis, Tennessee. And you'll hear some conversation on the tape about Pete and Alka Patel. They owe Dr. Mann a great deal of money, and Dr. Mann was basically asking Sue in the telephone conversation, have you gone and talked to them? Yes, I have. Are they going to stand behind me, are they going to support me? Yes, they will. She had gone to talk to them, she asked them if they were going to make the payments on the money that they owed Dr. Mann and they told her that they would. And she was telling Dr. Mann everything's okay, they're going to do what they said they were going to do. Because it sounds funny on the tape, they're charged with conspiring to corruptly influence their testimony.

A conspiracy, as charged in Count 7, is an agreement. The government is going to be required to prove there was an agreement between Dr. Mann and Sue Mann that they would attempt to hide things from the grand jury or corruptly influence the witness's testimony. I ask that you listen closely to the evidence in this case to see whether there's any evidence presented to you that there was any agreement between Dr. Mann and Mrs. Mann to do any of those things, because my prediction flat-footed right now, you won't hear one iota of evidence to support that. And these government lawyers are making notes

about what I say and they can come back in closing argument, if I'm wrong, they can show you where I'm wrong, but I predict flat-footed, 100 percent right now, you will not hear any evidence of any agreement between Dr. Mann and Mrs. Mann to do any of these things.

What about this Count 8, aiding and abetting each other to corruptly conceal checks, power of attorneys, and other financial documents. Aiding and abetting means doing something to help each other. It's not like conspiracy, they don't have to prove an agreement on this one, but they do have to prove they helped each other to conceal these checks, power of attorneys, and other financial documents from the jury. Well, let's talk about what these documents are. The primary thing I think they're talking about in this case are some pre-signed checks. They were checks that Sunny Mann left with Dr. Mann when he was deported from the country in 2002.

Because, remember, when he left, his son stayed here, lived with the Manns, and Sunny had left checks for the support of his son, who was staying with the Manns. And also Sunny had business interests in the United States. When he was deported, he left checks here and left Dr. Mann in charge of his business interests here. Part of doing that was to execute a power of attorney so Dr. Mann could take care of his business here when he got deported. So these are the documents the government's talking about in this case, the pre-signed checks Sunny signed

and these power of attorneys that Sunny signed so that Dr. Mann could take care of his business when he got deported.

What's the basis for the charge that Dr. Mann and Sue attempted to conceal these things from the grand jury? When Sue Mann testified before the grand jury, she was asked about these documents, and she told the grand jury about them. She told the grand jury they were these checks that were in Dr. Mann's office in his clinic. I don't remember if she talked about the power of attorney or not. She may or may not have, I just don't remember. But what happened was the Manns' house was searched, and I'm sorry, I'm terrible with dates, I don't remember the date, but the Manns' house was searched. After the Manns' house was searched, the clinic, the medical clinic was searched, and I think it was about a week later.

Between the time the house was searched and the time the clinic was searched, Sue went to the office and took the checks that Sunny had signed and some other documents related to Sunny from Dr. Mann's desk at the clinic and took them home. And that apparently is the basis for the charge that they aided and abetted each other in concealing these things from the grand jury. Now, the government will give you one of these recorded telephone calls when Dr. Mann was in jail where Dr. Mann did say something to the effect of, have you taken care of Sonny's papers. Or he may have said go take care of Sonny's papers. Sue took those pre-signed checks because the clinic was closed

down, Dr. Mann was in jail. He was the only doctor in that clinic. The clinic was closed.

There are these checks signed there and she didn't think it was a good place to leave signed checks when nobody was in the clinic. But she takes them home. Well, was she attempting to conceal them from the grand jury? Well, guess what? When the government asked for them, she gave them to them. Why would she take these things from the office, attempting to conceal them from the grand jury, and then when the government asked for them or subpoenaed them, she handed them over, everything they subpoenaed. In fact, I'll stand flat-footed on this one more time. You won't hear any evidence in this case that Sue Mann ever refused to give the government anything they asked for. If they asked through her lawyer, if they issued a subpoena, if she had it, she gave it to them. And there won't be any evidence contrary to that.

Think about this. Most people do things for a reason. So if she was going to conceal these checks that Sunny had signed, blank checks that he had just signed or these power of attorneys that Sunny had signed, if she'd wanted to conceal them from the grand jury, what was her reason for wanting to do that? People don't corruptly do things unless they have some reason to be corrupt.

So what was her reason? Was it because she was afraid if the grand jury got those things, it was going to sink Dr. Mann?

Those checks didn't have anything to do with the weapons charges against Dr. Mann or against any claim that he did the bombing in Memphis, not a thing. Those power of attorneys had nothing to do with that. So why? I'll ask you to listen for any evidence in this case that gave Sue Mann a motive to hide those documents from the grand jury, because there wasn't any.

Count 9, this is the perjury count. It's actually called making a false declaration to the grand jury, but the same thing. It's telling a lie under oath. And I know you've heard this charge read twice, but it's a little bit difficult to understand the charge from listening to the judge read it because the part of the testimony that the government claims is false is underlined in the indictment. So I'm not going to read all that testimony again, but I want to read to you what the government contends is false testimony. They had the discussion about the checks, and she was asked, "What did you do with those checks when you took them out? Answer: They're at home. Question: So you still have them? Answer: Yes, I thought it would be safer. Question: So you removed something because you thought it would be safer? Answer: Yes. Yes is underlined. Is that the only reason you removed them? Answer: Yes, yes." And yes, yes is underlined.

Now, those two yes answers is what the government claims is false testimony in this case. That's all, when she said I removed those checks because I thought it would be safer and

that's the only reason I removed them. And she said yes. That's the testimony that the government claims in this case is a lie. And the government claims it's a lie, and this is in the indictment, because, according to the indictment, the checks had not been removed from the clinic because she thought it would be safer but because she had been instructed by Randeep Mann to remove the items. So the charge is she didn't remove those checks because she thought it would be safer for them to be at home, she removed those checks because Dr. Mann told her to.

Well, then first, it seems to me the government needs to prove Dr. Mann told her to. What proof of that is there? There's a tape-recorded call when Dr. Mann was in jail. Now, you will not hear any tape-recorded call where Dr. Mann says anything to the effect of, Sue, go get those pre-signed checks that Sunny signed out of my desk and get rid of them. You won't hear that. What you will hear is what I talked about briefly before, and that is, there was a conversation in which Dr. Mann says, Have you taken care of the Sunny stuff, or Take care of the Sunny stuff, something along that line. But he never mentions pre-signed checks. He talks about the Sunny stuff, the Sunny papers, the Sunny documents.

But assume that he had instructed her to go take those pre-signed checks out of his desk. Does that mean when she said yes, the reason I took them was because it was safer is a

lie? You know, even if Dr. Mann told her to take those checks, does that mean she couldn't think in her own mind those checks aren't safe there and the reason they need to be moved out of that clinic is because they'll be safer? And what about this? Who in this world knows what Sue Mann believed when she gave that testimony to the grand jury?

Does the government know? Not unless they're better than I am because I don't know. I'm not a mind reader. I don't think the government's a mind reader. I think the only person in this world who knows what Sue Mann was thinking when she said she removed those checks because it was safer is Sue Mann. And I don't think you'll hear any evidence in this case to show you that what Sue Mann said when she said she removed those checks because it was safer was not true. I think when we get to the end of this case, that you'll scratch your head and wonder why Sue Mann's in this courtroom. Because the government can't touch hide nor hair of proving guilt beyond a reasonable doubt in this case.

They want you to take tape-recorded calls, people talking in shorthand and code about their business affairs and their personal business when they knew they were being tape-recorded and make it mean something that it absolutely didn't mean and was never meant to mean. And when it's over, I'm going to ask you to find that the government ain't proved it; that Sue is innocent. Thank you.

THE COURT: All right. Ladies and gentlemen, we're going to recess for today and we're going to start up with our testimony in the morning. Therefore, I caution you, as I have from day one, until the case is submitted to you for deliberations, you must not discuss it amongst yourselves or with anyone else or remain within hearing of anyone discussing it. After this case has been submitted to you, you must discuss it only in the jury room with all members of the jury present. You are to keep an open mind and you must not decide any issue in this case until the case is submitted to you for deliberation, after I have instructed you. I ask that you keep this admonition in your mind the whole time. Also, I've said before, when you leave the courtroom, do the best you can not to listen or read or watch anything about the case on the news.

As I've said before, and you're going to say, you're like a broken record, every time somebody figures out you've been down here on this case, they're going to want to talk to you about it and they're going to want to tell you what's going on at the courthouse, although they have no clue what's going on down here. So try your best not to talk to anybody about it. Also, if you see us out in the hallway, like I said, you can say hi to me because I have no interest in the case, I'm not on either side, but if you see any of the lawyers, if you see any of the people coming out of the courtroom who might be witnesses, see any of the parties in the case, don't talk to

them, don't even say hi to them.

Although I know you wouldn't talk to them about the facts in the case, if someone were to see you talking to anybody involved in the case, they would say it doesn't look right. We not only want the process to be fair, but we want it to appear to be fair. I have an appointment at 8:30 over at the Capitol in the morning, so I won't be over to the courthouse until about 9:30, 9:45. So we're going to get started tomorrow at 10:00. I request that you return to the courthouse at 9:45 so we can bring you into the box by about 10:00. Can you do that for me? Okay. We can have the jury taken out. I want to meet with the lawyers before they leave.

(Jury exits the courtroom.)

THE COURT: I just wanted to see if the lawyers had anything they wanted to address before we leave for today. Anything we need to take up?

MR. GORDON: No, Your Honor.

THE COURT: As I told the jury, I guess this was the first time you heard it too, I have to be over for a swearing in tomorrow at 8:30 in the morning. Should be back around 9:30, but just to be cautious, let's have our witnesses here and ready to go at 10:00. What I would tell the government is that if we can bring all the witnesses in early who are going to be here that you have tomorrow, we'll swear as many of them in as we can so that we can just keep it rolling once we get

started. We'll recess until ten o'clock tomorrow.

(Overnight recess at 3:41 p.m.)

C E R T I F I C A T E

I, Karen Baker, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Karen Baker, RMR, CRR, CCR

United States Court Reporter

Date: March 10, 2011

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and SANGEETA MANN, a/k/a SUE MANN (2), July 13, 2010 Little Rock, Arkansas 10:02 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 2
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

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On Behalf of Defendant Randeep Mann (1):

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[Continued]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - VOLUME 2 (July 13, 2010)

WITNESSES FOR THE GOVERNMENT:	Direct	Cross	Redirect	Recross
MELISSA PIERCE	63	98	111	114
VELMA GALES	119	139	161	166
JOHN WAH	173	181		
AMANDA OAKLEY	183	188	189	
LYNE COURTNEY	190			
JIMMY EVANS	205			
MARK GIBSON	221			
SHAKEB HASHMI	234			
ANITA BRINKLEY	246			
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(Proceeding at 10:02 a.m., jury present, as follows:)

THE COURT: Are you ready to call witnesses this morning?

MS. WHATLEY: I am, your Honor.

THE COURT: Call your first witness.

MS. WHATLEY: Would you like for me to bring all the ones here to be sworn?

THE COURT: Yes.

MS. WHATLEY: Right now we have available Melissa Pierce, Velma Gales, John Wah, Amanda Oakley, and Lyne Courtney.

THE COURT: Okay. Come on up. I want to get all sworn in at one time.

(Witnesses present sworn in.)

THE COURT: Let me tell you, the rule has been called for in this case, and what that means is that any witness who testifies cannot then leave the courtroom and tell the other witnesses what the testimony was. We want each witness to testify independently of what other witnesses say and not be influenced. So as you testify and you leave the room, please don't talk to the other potential witnesses or witnesses about your testimony. Will you do that for me?

Thank you.

Who is your first witness, Ms. Whatley?

MS. WHATLEY: Ms. Pierce.

THE COURT: Have a seat right here, and the rest of

you can have a seat back in the witness room.

MELISSA PIERCE, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good morning.

A. Good morning.

Q. Would you please state your name for the record and spell your last name.

A. I'm Melissa Pierce, P-i-e-r-c-e.

Q. Mrs. Pierce, where is home?

A. West Memphis, Arkansas.

Q. You're going to have to speak up.

A. West Memphis, Arkansas.

Q. How big is West Memphis?

A. About 28,000 people.

Q. Is there another town close to West Memphis?

A. Marion.

Q. How big is Marion?

A. I think it's about 10,000 people, maybe 8,000.

Q. When did you move to West Memphis?

A. Trent and I moved to West Memphis in 1983.

Q. You said Trent. Who is Trent?

A. Trent is my husband.

Q. Why did you move there?

A. Trent finished a family medicine residency in Charleston,

South Carolina, and we were wanting to come back home to Arkansas. Trent and I are both from the same hometown. We're both from Leachville.

Q. Let me stop you there then. You said Trent is your husband.

A. Yes.

Q. How long have you all been married?

A. We've been married 32 years.

MS. WHATLEY: Okay. Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I just handed you what's been marked for identification purposes as Government Exhibit 1. What is this?

A. This is a picture of Trent.

Q. Do you have any idea when this picture was taken?

A. Yes. This was taken for the bank board. Trent serves on the Fidelity National Bank Board.

Q. Do you have any idea what year that was?

A. Oh, probably four or five years ago.

Q. Does it show -- is this a true and accurate depiction of what he looked like four or five years ago?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 1.

MS. CASSINELLI COUCH: No objection.

THE COURT: It's received.

(Government's Exhibit 1 received in evidence.)

BY MS. WHATLEY:

Q. Is it up there on your screen?

A. No.

Q. Mrs. Pierce, do you have that up there?

A. I do.

Q. How long have you and Dr. Pierce known each other?

A. Trent and I are hometown honeys. I started dating Trent when I was in the tenth grade. He was a senior.

Q. Dating an older man, huh?

A. Yeah.

Q. And where is home?

A. Leachville, Arkansas, is where Trent and I are both from.

Q. What year did you say you got married?

A. Trent and I got married in 1978.

Q. What were you doing in 1978?

A. We got married on April Fool's Day 1978 because I was just about to finish nursing school and it was spring break, and Trent was getting ready to start his junior year of medical school. And so -- I'm sorry. What was your question? What were you asking me?

Q. That's fine.

A. Okay.

Q. So he was in medical school at the time?

A. Yeah. I was just finishing nursing school. I was going to graduate in May, and so I was going to have a job, and so that's why we got to get married, because I was going to get a paycheck.

Q. What medical school did your husband go to?

A. Medical school here in Little Rock, UAMS.

Q. And I'll let you brag on him. Where did he graduate in his class?

A. He was first in his class.

Q. Tell us about Dr. Pierce's personality.

A. Trent's just good. I mean, he's good through and through. He's real -- he's real driven, very -- I don't know. You need to meet my husband. He's a --

Q. Is he practical?

A. Oh, he's very practical. He's very methodical. He's very regimented. You know, the tongue blades are in the same jar in the exam room. Everything is very predictable. Trent is a caregiver. He loads the dishwasher because I don't load it efficiently enough. He doesn't iron. He's just Trent. I mean, he's very predictable. He's all about taking care of business and doing what he's supposed to do and following through, and then -- he works hard and then plays hard after his -- after he works hard.

Q. After he graduated from medical school, I believe you alluded to this earlier, but where did you all go?

A. We moved to Charleston, South Carolina, for Trent to do a family medicine residency there. We lived in Charleston three years.

Q. Then after you lived in Charleston, is that when you came back to West Memphis?

A. We did. We wanted to come back to Arkansas. We looked at the Memphis area. We looked at the Fort Smith area. Like I said, Trent and I are both from Leachville, and so both of our parents were still living at the time. Honestly, we wanted to be a long-distance telephone call away, and we wanted to be -- we wanted to be far enough away from Leachville that if they wouldn't -- we loved our parents, but we didn't want them just to drop in. We'd been away a lot, and Trent and I are really very private people, and so -- and we had dear friends that Trent went to medical school with, Eddie Bryant, and he actually talked to Trent about West Memphis. He said, Trent, y'all really need to look at West Memphis. Memphis is next door, you've got a big city, you've got a small town. He said Dr. Hamilton is one of the -- and Dr. Denke were the only family practitioners in town at the time. They're older, getting ready to retire. This would probably be a great place for you.

So we came and looked at West Memphis, and Crittenden Primary Care at the time was a rural health kind of -- Robert Wood Johnson, rural health initiative thing, and so Trent met them and they needed a family doctor, and they hired Trent. And

a month later, they closed down, and so Trent and I stayed there because we liked it.

Q. So did he ultimately open his own practice?

A. Yes, we did, we did.

Q. And when was that?

A. Well, we moved there -- we moved there the -- the 2nd of July, and I had Meredith the 2nd of August. It's real easy for me to remember. We moved to West Memphis. I was pregnant.

Q. What year was that?

A. 1983.

Q. What is the name of your clinic?

A. Family Practice Center of West Memphis. It's a sole proprietorship doing -- I think it's Trent B. Pierce, M.D., doing business as Family Practice Center of West Memphis.

Q. Do you work at the clinic?

A. I do.

Q. What is your role there?

A. Well, I'm a nurse, actually a nurse practitioner. I don't function in that role all the time. I'm the office manager. I'm -- I'm whoever doesn't show up. I'm, you know, I'm pretty good at a lot of things, so we -- it's always been a partnership for Trent and I.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I just handed you what's been marked for identification purposes as Government's Exhibits 52-A and 52-B. What are these?
A. This is a picture of our office building.
Q. Are they both pictures of the office?
A. Yes, uh-huh, they are.
Q. And do these pictures fairly and accurately depict what the clinic looks like?
A. Yes. Absolutely it does.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 52-A and 52-B.
THE COURT: Any objections?
MS. CASSINELLI COUCH: No objections.
THE COURT: They're received.
(Government's Exhibits 52-A and 52-B received in evidence.)
BY MS. WHATLEY:
Q. What's on your screen right now, Mrs. Pierce, is 53-A. What is the address of the clinic?
A. 301 West Polk, West Memphis.
Q. 52-B?
A. Same thing, just different view of our office building, head on.
Q. Is your husband involved in any activities other than being a physician at his clinic in West Memphis?
A. You mean like the bank board?

Q. Right. You stated he was on the bank board earlier.
A. He serves on the Fidelity National Bank Board. He sings in the choir. Is that what you mean?
Q. Singing in the choir is good.
A. Okay.
Q. Is he a member of any board for the State of Arkansas?
A. Oh, the Arkansas State Medical Board. Sorry.
Q. Prior to February 4, 2009, what was your normal routine for closing the clinic?
A. Trent and I always left the office together. Our children are grown and they live away, and we like to work, and so we always leave the office together.
Q. About what time of the night do you normally leave?
A. When we got done. Trent does not do hospital work anymore. He quit doing hospital work probably, I don't know, seven, eight years ago. So he does only clinic work. His patients are admitted by either a hospitalist or by a specialist, wherever the patient needs to go. So he just does sole clinic work. We open the office at eight in the morning, and because you're in family medicine, Trent's philosophy was, we just worked until we got done. We -- obligated to see people. People can't plan a sore throat. And so we worked Monday, Tuesday, Thursday, Friday, and a half day on Wednesday. It was very common for us to -- it was absolutely what we did. We always saw patients until six or six-thirty at night, and once you see the last

patients, it usually takes about another 30 or 40 minutes to wind it down. So we pretty much always left the office between, I don't know, quarter of seven, sometimes we leave the office at eight o'clock. But we left together, and so it didn't matter. You know, I could always work on something in the back while he was doing what he was doing.

Q. Prior to February 4, 2009, was your husband pretty repetitive in his day-to-day activities?

A. Yes. My husband is still very repetitive. Yes, my husband is very methodical and very repetitive.

Q. Did he even have a certain way he drove out of his clinic?

A. Yes, yes, yes. Trent and I always went to the office in two cars. He parked in the same spot. Trent's routine was to go over the grass out Eddie Bryant's driveway, down, hit Avalon, go through the light, go home. That's the way he goes home, no matter what. I back out, I go on Polk, I hit Broadway, I go to the light. It's -- I didn't realize we did it that way until the -- yeah, that's the way -- that's exactly the way he did it. Uh-huh.

Q. What time did you and Dr. Pierce get home on February 3, 2009?

A. About -- we got home about eight o'clock. That night was just a little bit different. My mom's in the nursing home, and I always -- I always went to the nursing home to see my mother before I went home. She's in the nursing home in West Memphis.

It's easy just to do a real quick run-through, make sure she was okay, ten or 15 minutes, and I'd be home. By that time, Trent would have his car unloaded, and because our children were grown, we would go somewhere and eat.

I distinctly remember that night because I'd been on a diet and I'd been eating a lot of yogurt, and so, anyway, I was sitting in the nurse's station in the nurse's chair and I looked up at the clock and it was about ten till eight, and I said, "I'm not going to go see mother tonight. I'm starving to death. I'm going to go to the Big Star and get some steaks and cook." And I said, "If you'll go home and start the grill," I said, "we'll eat at home."

And he laughed because, really, we ate out a lot. And he said, "You're going to cook?"

I said, "Yeah." Okay. So I went to the Big Star, I got that, and that's why Trent's car was on the driveway differently. I -- my car was always the first car on and Trent's car was always the second car on. It's 99.9 percent of the time. We were in reversed order that night.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I just handed you what's been marked for identification purposes as Government's Exhibits 53-A through 53-Z. Have you seen these before?

A. These are pictures of my house.
Q. And what is the address of the house?
A. 411 North Avalon.
Q. And that's in West Memphis?
A. Yes.
Q. Do these fairly and accurately reflect how the residence looks?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 53-A through 53-Z.
THE COURT: Any objections?
MS. CASSINELLI COUCH: No objections.
MR. DUDLEY: No objection, your Honor.
THE COURT: They're received.
(Government's Exhibits 53-A through 53-Z received in evidence.)
BY MS. WHATLEY:
Q. Let's look at 53-A.
A. I got them out of order. I'm sorry.
Q. That's okay. They'll pop up on the screen in front of you.
A. Okay. All right.
Q. Your Honor, my video is not working, so I may have to turn around a little bit.
Looking at 53-A, what does this show?
A. That's the corner of Cooper and Avalon.

Q. So does the house sit at an intersection?
A. Yes, uh-huh.
Q. And in February of 2009, where did you park your vehicles?
A. On the front driveway. That's where we always parked our cars.
Q. And is that what is seen in this picture?
A. Yes, uh-huh.
Q. Let's look at 53-B through F. We're going to go through those. 53-B, is that just another picture of the front of the house?
A. Yes, uh-huh.
Q. 53-C?
A. Yes.
Q. It appears as though that there's a wall. Does that go pretty much around the house?
A. Yes, uh-huh.
Q. About how tall is that wall?
A. Oh, gosh, I don't know. It's probably ten feet. Maybe.
Q. And 53-D.
A. Yeah, that's the other entry. The stop sign is the corner at Cooper and Avalon, but this is -- you just come right up on the driveway.
Q. And which -- if you were pulling into the driveway, which direction would you normally pull in from? This entrance?
A. This end. This end. You pull in so that you can come back

around.
Q. And 53-E, what does this show?
A. That's the front door to the house.
Q. And 53-F.
A. Yes. You can see the keeping room door there.
Q. Is that the door that's on the --
A. With the vines and that arbor. Uh-huh. That's the keeping room door. Uh-huh.
Q. Do you recall what the weather was like on the evening of February 3, 2009?
A. It was really cold. I remember that.
Q. I'm sorry.
A. It was very cold. Uh-huh.
Q. What did you and Dr. Pierce do once you got home that evening?
A. I cooked. I cooked. And we sat in the kitchen. I had had a stool and he has another stool. We have a big island, and our two children always sat across. And I cooked and we ate. It was February, and Trent sat down in the keeping room in a chair that he dictates in and dictated all of his charts. I went back to our bedroom. I laid in the bed and I watched a basketball game because I'm a huge college basketball fan.
Q. You stated earlier that Dr. Pierce is a member of the Arkansas State Medical Board?
A. Yes.

Q. What is his role with the Medical Board?
A. He was a member, and then he became the chair of the Arkansas State Medical Board.
Q. How often does the board have meetings?
A. Every two months.
Q. When the Medical Board has meetings, where are those meetings located?
A. In Little Rock.
Q. So does Dr. Pierce come to Little Rock for Medical Board meetings?
A. Yes, uh-huh.
Q. When he comes to Little Rock, does he close his office?
A. No, no, no. Robert Shull worked for us.
Q. Where does Robert Shull live?
A. He is -- Robert's been doing that for, oh, gosh, for nine or ten years for us. He lives in Memphis, but he works in the Crittenden emergency room, and he for nine or ten years, he's been working that Thursday and Friday so that we didn't have to close our office and our patients could have care during the time Trent was at Medical Board.

Trent was the chair of the PA committee and served on PA committee and that met on Wednesday afternoons, and so Trent would leave Wednesday morning and leave to go to the physician's assistant meeting on Wednesday afternoon and then spend Wednesday night, go to the Medical Board meeting on Thursday and

the Medical Board meeting on Friday.
Q. So Dr. Shull would come over from Memphis just Thursdays and Fridays that Dr. Pierce had Medical Board meetings?
A. Yes. Uh-huh.
Q. So not every Thursday and Friday.
A. No, no. Just on those Thursdays and Fridays.
Q. So Dr. Shull is licensed in Arkansas?
A. Yes, uh-huh.
Q. Is he also licensed in --
A. Tennessee.
Q. You're going to get me in trouble if I'm talking over you.
A. No, no, no. You're fine.
Q. Was he planning on leaving February 4, 2009, to come to the February Arkansas State Medical Board meeting?
A. Yes. He was -- yes. He was going to go -- he was going to leave after he saw patients on Wednesday morning and go to come to Little Rock to the -- to start the board meeting. The first meeting would be the PA committee, uh-huh.
Q. Were you coming with him?
A. Yes.
Q. Who is the more organized of the two of you?
A. No, I mean, I was laying watching the basketball game, and I could hear Trent -- I don't know how much of these pictures of our house you could see, but there are -- it's glass on the front and there's 12 exterior doors to our house, and so we have

an alarm system and we're big alarm people. We sleep, have always, you know, slept with the alarm on and we're huge alarm people. Because of our children and because the house is so long, it's wired so that if an exterior door is opened, you hear, you hear the opening of the door. You hear the beep. You know somebody is going in and out of the house.

So I was laying watching the basketball game, and I heard, beep, and I knew Trent was loading his charts back into the car. Then you hear beep, and it was him coming back in to get another load. Okay? And that happened several times because Trent was loading the crates to go to the Medical Board. They have lots of paperwork that's Fed Ex'ed to them and lots of document review that they do before they get to the Medical Board.

So Trent would have completely loaded all of that, plus his -- plus all the dictated charts for the patients he saw on Tuesday, all day Tuesday, and his -- what we call his satchels. He has those rolling canvas bags that he would put them in, so that he didn't waste any time in the morning, you know, getting to the office to be slowed down. That's just Trent, you know.

Q. So was he packed, like, his clothes packed for Little Rock the night before?

A. Oh, yes, yes, yes. Everything but his rolling bag, uh-huh.

Q. Were yours?

A. No. No. I'm the 11th hour. Okay? You know.

Q. We talked about this briefly, but does the house sit on a

corner?
A. Yes.
Q. And what are the streets that are at that intersection?
A. Cooper and Avalon.
Q. Are there stop signs there?
A. Yes, uh-huh.
Q. Is it a two-way or four-way stop?
A. Four-way stop.
Q. In February of 2009, how long had you lived at the residence?
A. We moved there in '94. What is that, 17, 18 -- 16, 17. I don't know. Do the math. '94, 1994.
Q. About 15, 16 years.
A. Something like that.
Q. Don't make me do math this morning.
A. I'm not very good at that.
Q. Did the traffic bother you at those stop signs?
A. No. No, no, no. Those walls are all stucco. They have huge footings on them. You don't -- when you get behind those walls, you don't hear anything. You can hear fire trucks and police sirens back there, but you don't hear anything back in there. It's very quiet.
Q. At that time, February 3, 2009, did you have any lighting outside the residence that you turned on at night?
A. No. Trent and I talked about that we probably needed to

put some lighting in, but we didn't.
Q. What about any lights that were activated by motion sensors?
A. No.
Q. Let's look at 53-C. I believe this is a picture we've seen earlier.
A. Uh-huh.
Q. Is this the front, back, or side of your house?
A. Well, it's the side, sort of, kind of. But if you moved over, that's the front of my house. If you stood directly in front of my house, like my neighbor across the street, all they can see is the wall and the rooftop.
Q. Let's look at 53-J.
A. Oh, that's the back of the house.
Q. And there's a wall that goes back there as well; is that correct?
A. Yeah. But we never -- we never -- at the time -- that gate was put in after, after this thing happened.
Q. Okay.
A. We didn't use that back there. You had to go through fences and, you know, to get to it. We just never used that, nor did we ever park back there.
Q. And 53-U.
A. Yeah.
Q. Does this also show the wall?

A. Yes, yes.
Q. So the house is almost surrounded by walls; correct?
A. Absolutely, yes.
Q. You stated that you didn't have a gate back there when you were looking at 53-J.
A. No.
Q. So were there any gates that limited access to any of the driveways?
A. No.
Q. And how many driveways or parking areas did you have in 2009?
A. The front drive and then the back.
Q. And was access to any of that limited?
A. No. No, there wasn't any -- no, no.
Q. Okay. Mrs. Pierce, I'm going to have you step down because I'm going to have you come look at Government Exhibit 54. And you're going to have to talk loudly so that the court reporter can still hear you.
A. Okay.
THE COURT: Mr. Dudley, do you want to come around or can you see it from there?
MR. DUDLEY: I'll come around, your Honor. Thank you.
BY MS. WHATLEY:
Q. Showing you what's been marked as Government Exhibit 54, have you seen this before?

A. (Nods head.)
Q. There's some pictures on here. Can you identify those pictures for me, at least these three right here?
A. Sure. This is the back parking thing at our house.
THE COURT: Ms. Pierce?
THE WITNESS: Yes.
THE COURT: We can't hear you over here.
THE WITNESS: Okay.
THE COURT: And the court reporter has to hear so she can take it down.
THE WITNESS: This is the back parking pad of the house on the --
THE COURT: And Ms. Pierce --
THE WITNESS: On the Cooper side.
THE COURT: We probably need to set that up where we can tell on the record when you say this and that, what you're referring to. It would be very difficult if I were reading the court reporter's transcript to know when you say this and that what you mean.
THE WITNESS: Sure.
THE COURT: So would you define for us clearly what you are pointing to.
BY MS. WHATLEY:
Q. Let me help. This picture that is at the top center of the board, what entrance is this to your house?

A. It's the back entrance. I don't know what else you want to call it. It's an entrance we never used. It's got pea gravel on it and it gets in your shoes and --
Q. And what street would you exit from to get into this?
A. You would back out of that and you would be on Cooper.
Q. This picture right here that is on the top left-hand side, is this a picture of kind of -- of the front driveway?
A. Yeah, and it's closer to the intersection of Cooper and Avalon. I would call it the north end of our house. It's at the intersection of Cooper and Avalon. If you backed up just a little bit more, the stop sign would be right there.
Q. And the picture that's at the bottom of the diagram?
A. This would be the south end of our house, and it is just on Avalon Street.
Q. And do these three pictures fairly and accurately depict how your house looked in 2009?
A. Yes, uh-huh.
Q. And over on the right-hand side of Government Exhibit 54, is this an overview of your house?
A. Yes, yeah. And you can see this is -- this spot right here is this part of the driveway.
Q. And when you're saying this part of the driveway, you're talking about southwest entrance?
A. Uh-huh. Yeah. Which part is that?
Q. Which is --

A. The north. Uh-huh. And this is all the way in the back, and it's the one with the pea gravel on it. And so because there was just two of us and two cars, Trent and I always used that driveway.
Q. And these pictures are overlaid onto an overview of West Memphis; correct?
A. Correct.
Q. Are these streets -- are you familiar with these streets that are named on here?
A. Sure.
Q. And where is your house?
A. I mean, it's right there. Isn't that the corner of -- this is the corner of Cooper and Avalon, and that's our house right there.
Q. And you recognize this as being streets that are in West Memphis?
A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 54.

MS. CASSINELLI COUCH: No objection.

THE COURT: Mr. Dudley?

MR. DUDLEY: No objection, your Honor.

THE COURT: It's received.

(Government's Exhibit 54 received in evidence.)

BY MS. WHATLEY:

Q. Going back to the pictures, if we can look at Government Exhibit 53-O. What street is that looking down?
A. That's looking down Cooper.
Q. And going to 53-S, what street is that looking down?
A. That's looking down Avalon. That's the intersection of Cooper and Avalon.
Q. And from what perspective was this picture taken?
A. From my driveway. I mean, that's what you would see when you pulled out, you know, go out.
Q. And going to 53-T, what does that show?
A. That's the corner of Cooper and Avalon. That's the landscaping in front of the wall on the street.
Q. Okay. Run through these next ones fairly quickly. 53-U.
A. That's just a different view of the same.
Q. And 53-V.
A. And, again, that's looking straight down Cooper as if you were, you know, just looking straight down Cooper.
Q. Let's go to 53-X. What street is this?
A. That's Cooper, just looking the opposite direction.
Q. 53-Y. What street is this?
A. That's Avalon.
Q. Is that your house on the left-hand side of that picture?
A. It is. And if it -- I mean, it -- yeah, it is my house. I was just going to say, if it makes it any different, you can see kitty-corner from the Fergusons' house across the street, you

can see their brick. They have an outside brick thing with landscaping just like we do. That may help you get your bearings just a little bit better.

Q. And 53-Z. What street is this stop sign located on?

A. That's on Cooper, uh-huh. Yeah. And the placement of the fire hydrant there may make it easier for you to know where you are, I guess.

Q. Let's look at 53-K. In February of 2009, did you park in this area?

A. No, we never parked back there. We never -- no.

Q. And I believe you've previously testified to this, but this area was open?

A. Yes. Yes.

Q. And there's a gate that can be seen in this picture.

A. Right. But that was installed after, after February the 4th.

Q. In February of 2009, did you have a dog that would bark if someone was in your yard or driveway?

A. Have a silky terrier. Peppy barked at everything, but Peppy just barked, you know, barked and barked. She was 17. She just barked. That's what Peppy did.

Q. Did y'all pay attention when Peppy barked?

A. No, no, no. You walked into the laundry room, and you told Peppy to quick barking. "Quit barking, Peppy."

Q. In February of 2009, could your front driveway be accessed

from your back driveway?
A. Sure. You could walk straight through. Is that what you're asking me?
Q. Yes, ma'am.
A. You couldn't drive a car through it, but you could --
Q. Could a person walk through?
A. Oh, absolutely. Yeah.
Q. Let's look at Government Exhibit 53-J. Is this the same picture we've seen before of your back driveway?
A. Yes.
Q. And 53-K.
A. Uh-huh.
Q. Then let's go to 53-L. Are these just pictures that are getting progressively farther into the back driveway area?
A. They are, but before February 4, that iron gate did not exist either. We installed the iron gate and padlocked it and installed the wooden gate that covers this area now.
Q. So when you're talking about the iron gate, you're talking about the one in the middle of the picture of 53-L, was not present in February of 2009?
A. No. You make five steps off of that and you're in the Bomanite driveway in the front yard. Okay? But that didn't exist. Okay? We didn't have that.
THE COURT: Ms. Pierce, would you do something for me?
THE WITNESS: Sure.

THE COURT: The court reporter is typing everything we say, and you're anticipating --

THE WITNESS: You want me to talk in nouns, not pronouns, right?

THE COURT: You're anticipating what Ms. Whatley is going to ask you and you're starting to answer before she finishes the question.

THE WITNESS: I apologize. Okay.

BY MS. WHATLEY:

Q. Take a deep breath. There's some water if you need it.

A. Okay.

Q. And is 53-M, does it also show that gate?

A. It does.

Q. Let's go to 53-N. What is this?

A. That's a picture of the gate again.

Q. And is this from the front driveway or the back driveway?

A. Yes, the front driveway.

Q. But that wasn't there?

A. No.

Q. Let's look at Government Exhibit 53-P. What does this show?

A. It's the padlocked gate.

Q. And can you see straight through to another street?

A. Yes, that's Cooper.

Q. Let's look at Government Exhibit 53-R. Does that show what

it looked like on February 4 of 2009?
A. Yes.
Q. Let's talk about February 4 of 2009, Mrs. Pierce.
A. Okay.
Q. What were your husband's plans for that morning?
A. Trent was going to go to the office and see patients, and then we -- he was going to get stuff together and we were going to leave to go to Little Rock because he had a physician's assistant committee meeting.
Q. What time did he walk out of the house that morning?
A. Ten till eight.
Q. How are you sure about that?
A. Because I looked at the clock. Trent's real small framed and thin. He weighs about 135 or 40 pounds, and I was in the shower and he was getting ready to leave, and he opened -- I turned the shower off. He opened up the shower and he said, "Do I look like a cheerleader?"

And I said, "Do you look like a cheerleader?"

And he goes, "Do I look like a cheerleader?"

And he had on a red V-neck sweater and a tie and a shirt. And I wasn't really sure exactly what kind of response he wanted from me, so it was that red crimson kind of maroon kind of color, and Trent and I are both from Leachville and we were the Leachville Lions and the colors are maroon and white, and so I said to him, "Are you a Leachville Lion?"

And he goes, "No, I'm not a Leachville Lion. I'm going to Medical Board. I've got on my Arkansas tie. Do I look like a cheerleader?"

And I go, "No, no, you don't."

And he goes, "I'm gone."

So I stepped on out of the shower and I looked at the clock. He has a clock by his sink, and it was ten till eight. I know that for a fact.

Q. Did he already have his suitcase loaded into his vehicle?

A. No. He had everything loaded but his pull suitcase.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes, you may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government Exhibit 56. What is that?

A. This is Trent's car.

Q. And what kind of vehicle is it?

A. It's a Lexus hybrid. I think it's a 400 series or something.

Q. Do you know what year model it is?

A. 2008?

Q. Are you asking or telling?

A. We bought it in July. It always confuses me now. I guess it's a 2009 because they released the model early.

Q. Is it possible it's a 2008? I'm sorry. I tricked you.

A. I don't know. It was 2008, I guess. I don't know. I don't know how they do that. We bought it in July, okay?
Q. You bought it in July of '08?
A. We bought it in July, and then you had February '09, so whatever it makes it. I don't know. Whatever model year it is.
Q. But you bought it in July of '08?
A. Uh-huh. Yes, we did.
Q. Where did you purchase this vehicle from?
A. Lexus in Memphis.
Q. Is that the same place you have it serviced?
A. Yes.
Q. How often would Dr. Pierce drive this vehicle prior to February 4 of 2009?
A. It's Trent's car. He drives it all the time.
Q. Did he drive this vehicle to Medical Board meetings?
A. Yes.
Q. Does he still drive this vehicle to Medical Board meetings?
A. Yes. Well --
Q. Let's go to February 4, 2009, Mrs. Pierce.
A. I'm sorry. Repeat the question.
Q. You said you heard the suitcase being rolled down the hall.
A. Okay.
Q. Tell me what happened after you heard the suitcase being rolled across the floor.
A. Trent took -- Trent told me he was gone, and he pulled the

suitcase down. You could hear the suitcase hit wood floors, you could hear it hit rugs, you could hear it hit Mexican tile. Our house is very long, but we're the only people in it, and then I heard the beep of the door for him to go out the keeping room door.

I'm drying off, and I heard the most God-awful sound you have ever heard. We live in a -- we live in essentially a zero lot line house, and in the corner there is a utility transformer and sometimes it blows and makes a "pfft" kind of sound. I thought the utility transformer had blown, and I took off running because I knew it was so loud the house was going to be on fire. I mean, it shook the bottles and the -- on the dressing table. It was an incredible loud sound.

Q. You said you went to see if the transformer had blown.

A. Yes. I took off running because I was sure the house was going to be on fire. It was the loudest thing I'd ever heard in my whole life.

Q. I want you to look at Government Exhibit 53-H, which will be on the screen. Is that the window you went to look out?

A. Yes. I ran to that window because I could turn backwards and see the utility transformer.

Q. From that window, could you see the entire driveway?

A. Absolutely.

Q. I want to show you Government Exhibit 53-I. Does that show -- is that what you could see from that window?

A. Yes, that's the view from that window.
Q. Mrs. Pierce, did you ever turn around to look at the transformer?
A. No, I never turned to look at the transformer because I saw Trent's red sweater laying in the flowerbed.
Q. What did you do when you saw a sweater in the flowerbed?
A. I took off running. I went out the front doors, not the keeping room doors. I thought he -- I took off running.
Q. To get to Dr. Pierce?
A. Yeah. I mean, yeah, I did. I took off running.
Q. What happened when you got to him?
A. I pulled him up, and Trent sat up just like an Indian with crossed legs. And he was absolutely charred.
Q. Did he say anything when you got there?
A. I pulled him to me, and he said in a very quiet voice, "Get my wife. She's inside."
And I said, "Trent, it's Melissa. I'm here. I've got it."
Q. Mrs. Pierce, I know this is hard, but can you please tell the jury what he looked like when you saw him.
A. He smelled like singed hair. He had bags of blood hanging from his eyes. I wasn't sure Trent had a nose, in fact, I was sure he did not have a nose. He was absolutely charred. Charred. He was charred. I pulled him to me, and I slipped his wedding ring off and I slipped his watch off because I knew we were in bad trouble. I put them both on my hand. And I told

him, "Trent, I'm taking your ring off and your watch off." And he's just sitting like an Indian, completely upright, just with folded legs.

He had -- it looked like -- he had on a pair of little tweed pants, and it just -- it looked like a hobo blows out of them. His leg was exposed. You could see muscle and tendon insertion in his knees. He was missing flesh and muscle, and I could see bone in his left thigh. And -- he was charred. He was just charred all over. He was just -- his hands, he was charred. He was charred all over.

Q. Did anybody show up in the driveway to help you?

A. Well, it's an intersection, and it was ten till eight in the morning, and everybody started stopping and asking what they could do, and I -- some woman ran up behind me and asked what could she do, and I told her to run inside and get a quilt. I knew that he had enough injury that he needed -- and it was cold. It was real cold. And I knew he needed to be wrapped up so he wouldn't get shocky. And so she took off running, and some other person in a red truck pulled up on the end of the driveway and was running at me. Seemed almost as if they were floating toward me asking what could they do, and I said, "Give me your cell phone." And, of course, I was yelling to the people in the intersection -- I still had Trent in my arms. I told them to call 911, and they said we've called 911.

Q. The person coming toward you that let you borrow the cell

phone, was it a male or a female?
A. It was a male.
Q. Mrs. Pierce, I'm sure this is going to come out later so you might as well say it. What were you wearing?
A. I had on a pair of underwear and a bra half up and nothing else.
Q. And you said it was cold?
A. It was real cold, but I --
Q. Did an ambulance arrive that morning?
A. It was as if it fell out of the sky. I mean -- yes.
Q. Walk us through what happened next that you remember.
A. Okay. I asked the person with the -- to give me the cell phone, and I knew that they had already called 911. And so I dialed the cell phone to try to call Scott across the street and he didn't answer. So then I dialed Crittenden Hospital, the 735-1500 number, and they picked it up on the first ring and I asked them to patch me through to the emergency room. They did, and I told them I needed to talk to Robert Shull. I knew that he would be working the emergency room. And I think I very calmly told them that the hybrid battery on our car had exploded and that Trent was hurt badly, that he needed to be intubated, that he needed a big line in, and that they needed to call for the helicopter from The Med because if they did not, that he would die. Robert wasn't there.
Q. Mrs. Pierce, let me interrupt you. I'm sorry.

A. Okay. Okay.
Q. When the ambulance got there, how much time from the time the ambulance got there until Dr. Pierce was loaded into the ambulance?
A. We did it immediately. We -- immediately.
Q. Did you ride in the ambulance to the hospital?
A. I did. I rode in the front seat after wasting 15 seconds trying to get in the back.
Q. And what hospital did you first go to?
A. We went to Crittenden Regional Hospital.
Q. Where is that located?
A. It's probably a half mile from our house.
Q. In West Memphis.
A. In West Memphis.
Q. You didn't stay at Crittenden Regional?
A. No, no. We had asked for the helicopter from The Med.
Q. Where did you go?
A. To the Elvis Presley Regional Trauma Center in West Memphis.
Q. Does that go by another name?
A. The Elvis Presley Regional Trauma Center. The Med.
Q. The Med?
A. The Med, uh-huh.
Q. To your knowledge, is The Med affiliated and is the trauma center affiliated with any medical school?

A. The University of Tennessee.
Q. How did Dr. Pierce get to The Med?
A. By helicopter.
Q. How long was he at The Med?
A. 41 days.
Q. Did he see any doctors on a regular basis while he was there?
A. Yes.
Q. Who did he see?
A. Oh, okay. The trauma team works as a team, and so we saw -- you mean the whole time or just the first day or --
Q. Well, let me ask it differently.
A. Okay.
Q. Approximately how many different specialties did he see during the 41 days he was in the hospital?
A. We saw a general trauma surgeon, the entire team, Dr. KROES, Dr. Magnotti. Dr. Chris Fleming for eye, Dr. Bill Hickerson for burn, and Dr. Phillip Langsdon for plastics. The orthopaedist, Campbell Clinic, that group for broken bones. All the residents. Dr. DuBois, Dr. Landry.
Q. Did he have any problems with his ears?
A. Yes.
Q. So you saw an ENT as well?
A. Yes.
Q. You said he was at The Med for 41 days.

A. Yes.
Q. Where did he go after that?
A. He went to HealthSouth Rehab on Union Avenue in Memphis, Tennessee.
Q. How long was he in rehab?
A. We were there ten days.
Q. Has he gone back to practicing medicine?
A. He has, yes.
Q. And is he able to work as much as he did prior to February 4 of 2009?
A. No.
Q. Mrs. Pierce, has he suffered injuries that will be with him for the rest of his life?
A. Yes.
Q. Externally, is your husband the same as he looks in Government Exhibit 1?
A. No.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:
Q. Good morning, Mrs. Pierce.
A. Good morning.
Q. I'm Erin Couch, and I'm so sorry you've had to relive this this morning.

A. That's okay.
Q. I have a few questions for you. Please let me know if you need a moment. We can take a break anytime.
A. You're fine.
Q. Ms. Pierce, you testified just a moment ago, you identified one of these photographs as Dr. Pierce's clinic where I believe you've worked with him for many years; is that right?
A. Yes. Sure. Absolutely.
Q. Has the clinic always been at that location?
A. No. We were on the third floor of the professional building for probably four -- maybe four years. I'd have to check the date. We built that building and --
Q. When did you build it? Would that have been the first several years of his practice, his private practice?
A. Yes. Yes. It's the only place we've ever been after the professional building.
Q. So you've been at that location for many years?
A. Yes.
Q. Has anybody else ever shared space or --
A. No.
Q. Everybody is within his clinic?
A. Right. Trent was the only physician. Yes.
Q. You identified also several pictures of your home.
A. Uh-huh.
Q. On Cooper and Avalon. We won't go back through those, but

it appears that these photographs were taken in the summer. Do you agree?

A. Some of them were, yes.

Q. And let me show you Government's Exhibit 53-A.

MS. CASSINELLI COUCH: May I approach, your Honor?

THE COURT: You may.

A. Uh-huh.

Q. And just in looking at that picture, does that look to you like it was taken in the summer?

A. Yes, it does.

Q. Green trees and --

A. Yes. Green grass. Uh-huh.

Q. Thank you. And you mentioned that it was very cold outside when this happened, so that would have been wintertime.

A. Yes.

Q. I'm just going to turn this around for you so you don't have to get up.

A. Okay.

Q. Mrs. Pierce, I believe you identified this as your house; is that correct?

A. Yes, ma'am. If it's at the corner of Cooper and Avalon, it is, uh-huh.

Q. And we've got these kind of lines coming out of it to show the more detailed pictures.

A. Yes.

Q. Where is Dr. Ferguson's house in relation to your house? Is it on the --
A. Directly across the street. It's at 500 North Avalon.
Q. So would it be directly across the street or kitty-corner?
A. Kitty-corner.
Q. Okay, so it's on the other side.
THE COURT: Ms. Couch, I don't mean to stop you, but when you say this and that, make sure we know what you're referring to.
BY MS. CASSINELLI COUCH:
Q. Dr. Ferguson's house is across from the intersection from Cooper and Avalon?
A. Yes.
Q. On the opposite side of the street?
A. Kitty-corner, yes.
Q. Is there a house directly across Avalon?
A. Yes. It's Kent and Julie Ingram's house.
Q. It's difficult to see on this diagram, but it is directly across the street?
A. It is.
Q. I believe they've got some landscaping and stuff out there, so in some of the pictures, you can see more green than anything. Does that seem correct?
A. I don't know. Show me the picture.
MS. CASSINELLI COUCH: May I approach, your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. Ms. Pierce, this is Government's Exhibit 53-X.

A. Uh-huh.

Q. And does that show -- that would be where your neighbors we were just discussing live, directly across the street?

A. Yes.

Q. And there's a little bit of trees out in front of their house. You can't see their home on that picture.

A. We all have the same thing. We all have this outside landscaping, the Fergusons, the Ingrams, the Gaughs, us. That's all -- yes.

Q. Thanks. And as to your home, I believe you said that you and Dr. Pierce had lived there for about -- I think you said since 1994?

A. Yes.

Q. Has the wall been up since you moved in or since you built the house?

A. Yes. Right. The Uptons built it, uh-huh.

Q. And you mentioned that there was a back parking area that had pea gravel?

A. Yes.

Q. And there's some landscaping back there as well?

A. Right, uh-huh.

Q. Did you all never use that area to park or --

A. Trent and I never parked back there. When our son was at home, he parked back there.
Q. And you have two children; is that correct?
A. I do. Uh-huh.
Q. And they're both living outside of your home?
A. Yes.
Q. How long have they been out of the house?
A. My daughter is soon to be 27 and my son is -- just turned 25. Nobody's -- I mean, you know, they went to college and they did not come home in the summers, so --
Q. Several years?
A. Yes.
Q. On the evening of February 3, I believe you said Dr. Pierce loaded his car for the next day; is that right?
A. Yes.
Q. Would that have still been when it was daylight?
A. No.
Q. It would have been dark when he was outside loading his car?
A. Yes. We didn't get home until, you know, around eight o'clock.
Q. Did he do that first?
A. No, no. He dictated all of his charts. Okay?
Q. So what time would he have -- approximately what time would he have loaded his car, do you think?

A. Well, we came in, we grilled steaks, we ate. I watched basketball. Trent dictated an entire day of charts, which is usually an hour and a half of work, depending on, you know -- and then he loaded his car. So --

Q. So I know if I'm cooking, things take a little longer. Do you think maybe if you were home at eight, you cooked and he had work to do, you ate dinner. You think it was as late as 11 o'clock? Maybe?

A. Perhaps. I mean, I don't know.

Q. Sure.

A. Yeah, I don't -- I want to give you an absolute answer, and I can't. But we certainly went to bed before midnight because we had to work the next day, you know, so --

Q. And, Ms. Pierce, you identified a photograph of the window that I believe you ran to when you heard this happen.

A. Uh-huh.

Q. Is that window in a hallway or --

A. It is.

Q. Is it close to your bedroom?

A. Yes.

Q. I sort of have it in my mind as your bedroom is on one side and the rest of the house is kind of on the other of that window? Is that right or --

A. No. That's a gallery that runs the front of the house. It's a hallway that leads to our bathroom and bedroom. But the

gallery runs the entire front of the house.
Q. And can you see -- I guess out that window, you can see the whole front of your house within the wall.
A. Yes.
Q. Had you had any guests over or anything the night of the 3rd? It sound like you didn't.
A. No, no.
Q. Who all is commonly in and out of your home? I know that you've got some people that come help you.
A. Uh-huh.
Q. Anything like that. Who all is commonly in and out?
A. Velma is our maid. She comes every day.
Q. Anyone else that's in and out?
A. On a routine basis?
Q. Yeah. Maybe weekly or even monthly. Mostly Velma?
A. It's just Velma.
Q. Does she work all day?
A. No, no. Velma is very fast, and the agreement is, I don't care when she comes and I don't care how long she stays, just get it done. She is usually there probably, you know, an hour maybe each day. She does a load of laundry, makes the bed, you know, that kind of thing.
Q. Okay. Do you all get the daily newspaper?
A. No.
Q. Neither newspaper?

A. At our house?
Q. Yes, ma'am.
A. No.
Q. I know this is difficult to go through --
A. That's okay.
Q. And I just have a few questions about it.
A. No, that's fine. That's fine.
Q. You spent several weeks with Dr. Pierce in the hospital in Memphis; right?
A. Yes.
Q. When did he get to come home? And I think he may have gone through therapy first, so can you kind of tell us when he was released from the hospital?
A. Again I'll let you do the math. We went in on the 4th of February, stayed 41 days at The Med and stayed ten days at HealthSouth Rehab because that's all of the insurance benefits that we had for rehab, ten days. Trent came home in a wheelchair.
Q. So does March -- end of March sound right?
A. I don't know. 51 from the 4th of February.
Q. I'm not good at math either, so we're in trouble. Let's see. February 4 -- I believe it was the end of March, early April. Does that sound right?
A. Yeah.
Q. Mrs. Pierce, at what point did you learn that there had

been an arrest made related to the bombing? Or a suspect in the bombing?

A. I don't -- I don't remember. I don't know.

Q. Do you recall being aware of it while Dr. Pierce was still hospitalized?

A. I don't know. I don't remember. I don't know. I'd hate to say one way or the other, and I really don't know.

Q. And I know that your attention was elsewhere.

A. Yeah. Yeah.

Q. I understand. Do you recall when after Dr. Pierce was at home, do you recall any time when you both were aware that Dr. Mann had been arrested and that he was potentially a suspect in the bombing?

A. I know it happened, but I don't know when it happened. Okay?

Q. Do you know that you all discussed it at some point?

A. Discussed what?

Q. Being aware that there had been an arrest and that there was a suspect. And I don't mean in specifics. I mean, can you tell us if you and Dr. Pierce were generally aware that this was all happening? I know that you were very busy dealing with the medical issues, but can you tell us whether or not there was any time that you all were made aware?

A. I'm sure whenever it happened, somebody told us. I just don't know when it was.

Q. You all had a lot of people supporting you, didn't you?
A. Right.
Q. A lot of people very concerned about Dr. Pierce?
A. Yes.
Q. And interested, and I would assume that you had some people that were kind of afraid because they didn't know what had happened. Is that accurate?
A. Afraid of what?
Q. Well, afraid of not knowing what had happened. Is it fair that there was a period of time where you all didn't know what had happened? You knew that there was a bomb, but you didn't know why or who?
A. Well, sure. Yeah, yeah.
Q. And that's scary.
A. Yeah.
Q. And is it fair to say that people felt a little -- I don't want to say better, but probably a little safer knowing that somebody had been arrested?
A. Oh, I don't know.
Q. Let me ask you this. You're the office manager?
A. I am.
Q. And you were interviewed pretty quick, both because you found Dr. Pierce and because you might have had information to assist law enforcement; is that right?
A. Yes. They talked to me at The Med. Uh-huh.

Q. And your first instinct, maybe not your first instinct, one of the first things you mentioned was some strange phone calls that Dr. Pierce had received. Do you remember that?
A. Tell me about it. I mean, I don't know what you're --
Q. Well, there were some phone calls that I believe you mentioned that had been -- that Dr. Pierce had received in the weeks prior to the bombing that at the time gave him some pause. I believe he thought the person on the other end of the line was a little crazy. Do you remember talking to anybody about that?

Let me add this: There was also a letter that may have been connected to those phone calls.

A. I'm trying to be real precise and I'm trying to answer your question. Do you have written down what I said? And then maybe I could tell you to help you. Okay?
Q. Well, you may not remember. You had a lot going on. So if you don't recall, that's okay. I believe that you mentioned to law enforcement and possibly to Dr. Ferguson or one of Dr. Pierce's good friends that there had been someone calling Dr. Pierce that was affiliated possibly with UAMS? Does that ring any bells with you?
A. Let me just clarify what you're asking me. You mean as a departure from routine Medical Board stuff or what -- could you --
Q. Yes, ma'am. What I'm really asking you is, do you recall mentioning that to anybody, that there had been these strange

phone calls that Dr. Pierce had received and he had mentioned it to you? If you don't recall, that's perfectly okay.

A. I mean, I remember Trent talking to somebody in his cubby hole about Medical Board business, but, no, I really don't. I really don't know what you're talking about. If you could read it to me, I could help you or I could either validate it or whatever you want me to do.

Q. And I can't read it to you, but I can tell you that I believe that your comments were simply to the effect of he said something like this person seems like they're crazy or something like that. I don't know that you knew a lot of detail. It just would be the memory of the phone call, if you have it, and that's all. And it sounds like you don't, and that's okay.

A. I don't recall what you're talking about.

Q. Are you aware of that personal visit that a physician made to Dr. Pierce related to Medical Board issues?

A. Yes.

Q. You are aware of that?

A. Yes.

Q. And did Dr. Pierce take his son with him?

A. He did.

Q. And are you aware of any burglaries or things like that in the neighborhood?

A. No.

Q. In the weeks or months prior to this?

A. No.
Q. Not aware of those?
A. No.
MS. CASSINELLI COUCH: Mrs. Pierce, thank you very much.
THE WITNESS: You're welcome.
THE COURT: Mr. Dudley, anything?
MR. DUDLEY: No questions, your Honor.
THE COURT: Redirect?
MS. WHATLEY: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WHATLEY:
Q. Mrs. Pierce, Dr. Pierce's vehicle, the Lexus --
A. Yes.
Q. Of course, all my pictures have gotten mixed up. It's an SUV; correct?
A. Yes.
Q. When he would load things into the vehicle, the crate you talked about?
A. Uh-huh.
Q. Where would those be loaded?
A. Into the back. Into the lift gate.
Q. And where he was parked that evening, how close to the walkway out the keeping room was the back of that vehicle?
A. It was almost lined up identical. I mean, that was the

purpose, I guess, just walk out and put it in.
Q. And did you have any big lights in that driveway?
A. No.
Q. Do you recall a time where a few of us came to visit you at your home in West Memphis to tell you about the charges?
A. Yes, yes.
Q. Was that well after Dr. Pierce had been released from the hospital?
A. It would have had to have been, I guess. Yeah.
Q. Was Dr. Pierce present?
A. Yes, yes.
Q. Was he back practicing medicine by that time?
A. Trent started back in September, so --
Q. So if you were notified after September, it would have been when he was back practicing.
A. Yes.
Q. Ms. Couch asked you some questions you weren't sure about answers to; correct?
A. Yes.
Q. Do you recall ever telling law enforcement that your husband had received crazy calls?
A. Honestly, I don't remember that.
Q. And is it possible that you don't recall that because it didn't happen?
A. Certainly. I mean --

Q. You stated that you met with law enforcement early on to give them information?
A. Right. They came to The Med.
Q. Mrs. Pierce, do you know anybody that dislikes Dr. Pierce?
A. No.
Q. At the time of the bombing, had he received any threats?
A. No.
Q. Had your children received any threats?
A. No.
Q. Had you received any threats?
A. No.
Q. You said he was -- he sings in the choir at church?
A. Yes.
Q. Anybody at church not like Dr. Pierce?
A. No, no, no.
Q. He sings off key, the person next to him is mad at him?
A. No, he's got a great tenor voice. He doesn't sing off key.
Q. You said he was a member of the bank board?
A. Yes.
Q. Has he ever voiced any concerns about the bank board to you?
A. No, no.
Q. You mentioned there was a doctor he went up and visited one night at his office.
A. Yes.

Q. Did someone go with him that night?
A. Tyler went with him.
Q. Who is Tyler?
A. Tyler is my son.
Q. Do you recall when that was?
A. Well, it would have been -- Tyler would have been home for some reason visiting, and that's -- it was Medical Board business. It was a real departure. Trent out of courtesy met with him after he finished.
Q. To your knowledge, did he have any further contact with that individual after that night?
A. No.
Q. Did he seem concerned when he got home after that meeting?
A. No.
Q. Do you have any patients that don't like Dr. Pierce?
A. Not that I'm aware of.

MS. WHATLEY: I have no further questions.

THE WITNESS: Thank you.

THE COURT: Anything else?

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Mrs. Pierce, when I was asking you about the phone calls, I believe that you spoke with the chief of the West Memphis Police

Department at some point. Do you remember speaking with him?
A. I certainly spoke with him many times, yes.
Q. And do you remember talking about that phone call or those phone calls with him?
A. Honestly, I don't. But if you could tell me more about it, I could -- I don't want to not say that, you know, that I don't know what you're talking about. But I don't know what you're talking about.
Q. And if I could, I would, but I don't -- I can't.
A. Yeah.
Q. Did I understand, Ms. Whatley asked you, she said that they came to your house after Dr. Pierce had been released from the hospital; is that right?
A. Yes.
Q. And you said he went back to work in September?
A. Right.
Q. Do you recall if that meeting was before or after he went back to work?
A. I don't. I mean, I don't know.
Q. And a lot had happened between March and September.
A. March and September? Yeah, a lot happened.
Q. Do you recall -- well, you said you did recall Dr. Pierce meeting with somebody about board business and your son Tyler went along.
A. Yes.

Q. Do you recall him telling you that he was concerned and that's why he took Tyler?
A. Yes.
Q. And do you know, are you aware that the doctor he went to meet had been disciplined and was having problems with the board?
A. Yes.
Q. Did he tell you where he was going, who he was going to meet?
A. Yes, I think he did. I mean, he told me -- I don't know if he used his name or not, but I knew it was somebody that had a board concern and that he was going to go talk to him after hours.
Q. Did he tell you that he wanted you to know where he was going?
A. We were at our house. I would know -- I mean --
Q. Did he say anything like, "I want you to know where I'm going and what I'm doing in case something happens," or anything like that?
A. No. No, no, no.
Q. I'm going to go back to that phone call, that mysterious phone call, and give you a little more detail. Do you remember someone calling the office two, three, maybe, weeks prior to the bombing, maybe had an accent, and Dr. Pierce mentioned that he thought he was a nut, discussed terrorists, and he called back

several times? Does that ring any bells? And I'm not trying to trick you if you don't remember. But that's the detail that I have.

A. Could you repeat that?

Q. That someone had called with an accent, that Dr. Pierce had made some kind of comment that the guy was a nut. He talked about terrorists posing as doctors and called back several times. May have also sent a fax. Does that ring any bells?

A. No.

MS. CASSINELLI COUCH: Thank you.

MS. WHATLEY: Your Honor, the only thing I need to do, I forgot to request to admit Government's Exhibit 56.

MS. CASSINELLI COUCH: No objection.

THE COURT: It's received.

(Government's Exhibit 56 received in evidence.)

MS. WHATLEY: No further questions of Mrs. Pierce.

THE COURT: You may stand down.

THE WITNESS: Thank you.

THE COURT: Call your next witness. We're going to go a little farther until we take a break, but we're not going to take a lunch break. 11:45.

MS. WHATLEY: Velma Gales.

MR. DUDLEY: Your Honor, may we approach?

THE COURT: Yes, you may.

[Bench conference reported as follows:]

MR. DUDLEY: Your Honor, to minimize the possibility of prejudice to Mrs. Mann, I request that after each witness has testified who has nothing to say about Mrs. Mann, that the Court instruct the jury that they are not to consider that testimony with regard to the charges against her. Beginning with this witness.

THE COURT: I don't know that I necessarily see that -- the necessity of that. I think in voir dire, all the jurors said they could segregate the testimony. I think you went over that with them, for the first four days they would hear nothing about Mrs. Mann.

MR. DUDLEY: I did, your Honor, but I'm still making the request.

THE COURT: I'm going to overrule that. Now, of course, you can always ask the witness, you're not here testifying -- but I don't know that you necessarily want to do that.

MR. DUDLEY: No, I don't want to do that.

THE COURT: Okay.

MS. CASSINELLI COUCH: Your Honor, I will use the ELMO. I was just afraid that I was going to mess up.

THE COURT: That's exactly what I was going to say. Not a substantive discussion, I just wanted to say, it might be best practice when you're trying to show the witness something so all of us can follow along with you what you're talking about

that you use the ELMO.

MS. WHATLEY: And, your Honor, we have no objection if they're our exhibits, Ms. Newton has always been very nice to pull them up.

MS. CASSINELLI COUCH: Sure. And I asked for a quick lesson at break because I haven't used one in a while. I just felt nervous about trying it right then.

THE COURT: Okay. So that all of us can follow along. Thank you.

MR. HENDRIX: Is it up and running?

THE COURT: Sure.

MS. CASSINELLI COUCH: Every time we try to use it, it becomes a nightmare, but we'll do it.

MS. WHATLEY: If you need exhibits, Ms. Newton will pull them up for you.

MS. CASSINELLI COUCH: Just ask her. Thank you.

[Continuing in open court:]

VELMA GALES, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Would you please state your name.

A. Velma Gales.

Q. I can already tell you're going to have to speak up. Say that for us again. What is your name?

A. Velma Gales.

Q. And, Ms. Gales, where do you live?
A. West Memphis.
Q. How long have you lived in West Memphis?
A. All my life.
Q. And what do you do for a living?
A. I clean for Dr. Pierce.
Q. You clean for anybody else in town or just Dr. Pierce?
A. No. I do other people's, too.
Q. How long have you known Dr. Pierce?
A. 25 years.
Q. And how did it come about that you started cleaning for Dr. Pierce?
A. I had a headache and I went to Dr. Pierce for my headache, and he asked me what did I do for work, for a living, and I told him I clean houses.
Q. So did he hire you?
A. Yes, he did.
Q. So you clean his house. Do you also clean his office?
A. Yes, I do.
Q. And how often are you at his house?
A. Five days.
Q. So Monday through Friday?
A. Uh-huh.
Q. Is that a yes?
A. That's a yes. Sorry.

Q. And what about his office?
A. Four days.
Q. Which four days do you clean his office?
A. Monday, Wednesday -- Monday, Wednesday, Thursday, and Friday.
Q. And what time of day do you normally clean the office?
A. Usually Dr. Pierce leaves at six, five, something like that. Mostly six, six-thirty.
Q. So you clean after he leaves?
A. Yes.
Q. Do you recall whether or not you cleaned his office on the evening of February 3, 2009?
A. Yes, I was.
Q. What did you do after you cleaned his office that night?
A. When I got through cleaning his office, I went to -- got through cleaning, because he be my last one. I went to Taco Bell that night.
Q. And what route did you take from his office to Taco Bell?
A. By his house.
Q. So you went down Avalon?
A. Uh-huh.
Q. Is that a yes? I'm sorry. She has to get that down.
A. That's a yes.
Q. So you said you went by his house. So you went by the Pierces' residence that night?

A. I go that way all the time.
Q. When you get to their residence, can you drive straight through or do you have to stop?
A. There's a stop sign, four-way stop sign there.
Q. And do you know what the cross street is there at Avalon and --
A. Cooper? It's Cooper, I think.
Q. Cooper?
A. Uh-huh.
Q. What time would you say you approached that stop sign that evening?
A. I'm not quite sure, maybe ten-thirty, 11, something like that.
Q. As you approached that stop sign, did you see anything?
A. Yes.
Q. What did you see?
A. I saw a man jogging, but not really jogging, at the stop sign.
Q. What do you mean jogging, but not really jogging?
A. Well, he was moving, but not moving out of that spot.
Q. Kind of jogging in place?
A. Uh-huh. Yes.
Q. You said he was at the stop sign. How close was he to the stop sign?
A. Well, the stop sign was up further, so we was here, closer

to Dr. Pierce's driveway.
Q. So you were before you got to the stop sign.
A. Yes, before I got to the stop sign.
Q. Can you describe him for the jury?
A. Well, I didn't see him good. He was just a man. He had a baseball cap on his head with a pretty long ponytail hanging in the back, and he had some jeans on and a short T-shirt.
Q. Do you remember what the weather was like that night?
A. It was cold. Chilly.
Q. What else can you tell me about the man?
A. Well, he wasn't black and he wasn't white. He was a different color man, a different color man, from another place.
Q. Describe him for us.
A. Well, he was just a regular built man with, you know, ponytail, and he had pretty hair. He was not old, not young, and I'd say Iranian or something, I guess. I don't know.
Q. Do you recall how you described him to law enforcement?
A. Well, I just -- I just told them that he was a man with jeans on and a baseball cap and a long ponytail hanging out the back, and just standing there jogging, but not moving.
Q. You said he wasn't a white man.
A. No, and he wasn't a black man.
Q. Do you remember the description you gave?
A. I thought I -- just a regular man with bluejeans on, had that cap on his head. He never hold his head. He kept his head

down, and he just kept jogging. And I asked him to come by, and he shook his head for me not to.

Q. Let me stop you there. You said you asked him to come by.

A. Well, you know, I did my head like that so he could come by. But he didn't want to. He told me -- did that and I went on to the stop sign. And I stopped. Then I kept going.

THE COURT: Ms. Gales, our record can't pick up what you're doing with your head. You know, you're doing this and doing that and moving your head one way or the other, but we have a court reporter who is typing everything up, and she has to be able to describe -- describe for us what you did with your head and what he did with his head.

THE WITNESS: I asked him to go -- I asked him to go forward, and he told me, like with his head, to go ahead.

BY MS. WHATLEY:

Q. Okay. Let me try to help this along. When you told him to go forward, you weren't talking to him, were you?

A. No, I didn't talk to him. I didn't see his face.

Q. When you moved your head, were you kind of moving it to the left, like you wanted him to go in front of you?

A. I wanted him to go this way.

Q. You wanted him to go in front of your car?

A. Right. So I wouldn't hit him.

Q. Did he go in front of your car?

A. No.

Q. Did he give you some indication that he wasn't going to go in front of your car?
A. He just -- he just did that for me to go ahead.
Q. So he kind of just nodded his head down and did not move into the street.
A. Huh-uh.
Q. I'm going to show you Government Exhibit 53-B. It's going to be on the screen in front of you, Ms. Gales. What does this picture show?
A. Dr. Pierce's house.
Q. Is that the stop sign you saw that night or that you came up to that night?
A. Yes, ma'am.
Q. Can you please point on the screen and touch the screen on the picture where you saw the man that night. For some reason or another, that ended up in the sky on mine. Can you point in the grass, the grassy area where you saw him?
A. Right here.
Q. Okay. For some reason, the screens are not working properly. But it was in -- where the green dots are, do you have green dots on your screen, Mrs. Gales? At the top, do you see a green dot?
A. Oh, yeah.
Q. If I were to draw a line from that green dot down, would that be where he was standing?

A. Yes.
Q. Let's look at Government Exhibit 53-S. Is that the stop sign you approached that night?
A. Yes, ma'am.
Q. And on 53-T, is this a closer picture of that stop sign?
A. Yes.
Q. And where was the man standing when you saw him? For some reason our screen is not working. Would you say he was on -- if I was standing in front of the stop sign, was he in front of the stop sign or behind it?
A. In front.
Q. Let's look at Government Exhibit 53-X. Do you know what intersection that is?
A. Avalon.
Q. Is that Cooper and Avalon?
A. Yes.
Q. Now, let's look down Cooper. Okay?
A. Uh-huh. Yes, ma'am.
Q. Is there a place across from where you saw the man that he could have crossed and run?
A. No.
Q. So there's not a sidewalk down that far.
A. No.
Q. Let's look at 53-W. Do you see a sidewalk on 53-W?
A. Yes, half. A little piece.

Q. Half of a sidewalk?
A. Uh-huh.
Q. Does it end right after the Pierces' wall?
A. Yes, it does.
Q. If someone had been running down that sidewalk, what side of the stop sign would that person be on if they just left the sidewalk and kept going?
A. Well, they would have to go straight across.
Q. Would they have been on the side of the stop sign that you saw the man?
A. On the side?
Q. I'm not asking that very well. You see where the sidewalk is on 53-W.
A. Yes.
Q. Where it ends?
A. Uh-huh.
Q. If someone kept walking or running past that sidewalk --
A. It would be behind the stop sign.
Q. Is that where you saw him?
A. Yes, but he was in the front of the stop sign.
Q. So he was on the front side of the stop sign.
A. Right.
Q. Did he ever go in front of your vehicle?
A. No.
Q. Did you have any idea what his nationality was?

A. No.
Q. Did you look down Cooper that night?
A. I did.
Q. Did you see anything?
A. I saw a truck.
Q. Where was that truck parked?
A. Half was parked -- some was parked in front of Dr. Pierce's driveway in the back and the other part was parked up by a sign.
Q. I'll show you Government Exhibit 53-V. Is this the street you looked down that night?
A. Yes.
Q. And is that the street sign you were talking about?
A. Yes, ma'am.
Q. I would have you touch the screen, but I don't think our screens are working. Can you describe, can you touch on the screen where you saw the truck parked?
THE COURT: We're going to have to get IT up here to fix that.
MR. HENDRIX: Excuse me, Ms. Whatley. What number is that?
MS. WHATLEY: 53-V, as in Victor.
BY MS. WHATLEY:
Q. Ms. Gales, to your knowledge, did the Pierces ever park in that back driveway?
A. No.

Q. Did you ever park back there?
A. That's where I parked.
Q. So when you'd go to work, that's where you'd park?
A. Yes.
Q. I'm going to show you 53-J. At that time, in February of '09, was that gate there?
A. No.
Q. At that time, could someone walk from the street sign that's in the picture of 53-J to the Pierces' front driveway without having to walk down the sidewalk?
A. Yes, ma'am.
Q. Did you ever walk that way?
A. Down by the --
Q. Did you ever walk from the back driveway through the Pierces' yard to get to the front of the house?
A. The only time I walked through there is when Dr. Pierce got hurt and they had that blocked off. I had to go through the front.
Q. But it was possible in February of '09 to walk from the back driveway to the front driveway --
A. Yes, yes, ma'am.
Q. -- without going outside the wall.
A. That's true.
Q. Let's look at 53-Q. Do you see the street sign in that picture?

A. Yes, ma'am.
Q. Where is that street sign located?
A. That's on the front, because that iron gate wasn't there. I mean --
Q. So this picture is taken from the front of the house; correct?
A. Yes, ma'am.
Q. And do you know where this street sign that's in this picture, what street that's on?
A. That's on the back where they -- on the back of the house. On Cooper.
Q. Is that the same street sign that is -- that you see in 53-V, that we've already looked at?
A. Yes, ma'am.
Q. Looking at 53-R, is that what the area looked like in February of 2009?
A. Yes, ma'am.
Q. When you passed through the intersection, did you look back at the man?
A. Yes, ma'am.
Q. And what was he doing?
A. He was just standing.
Q. Was he still --
A. Jogging, moving a little bit until he got out of sight, and then I couldn't see him anymore.

Q. Did he ever cross the street that you --
A. No.
Q. Did you keep looking at him until you got out of sight?
A. Yes, ma'am.
Q. Could you see into Dr. Pierce's driveway when you were going that direction?
A. No, ma'am.
Q. Even when you were looking in your rearview mirror?
A. No, ma'am.
Q. At that time were there any lights in the driveway?
A. No.
Q. Was it dark up in the driveway?
A. Yes.
Q. Did you drive back by the house that evening?
A. Yes, ma'am.
Q. Did you see the man when you came back through?
A. No, ma'am.
Q. Did you see the truck?
A. No, ma'am.
Q. What time would -- what time would you say you came back through?
A. Probably about 12, maybe 12:15.
Q. Ms. Gales, the first time you talked to ATF, did you tell them about what you saw on February 3, 2009?
A. No, ma'am.

Q. Did you tell any law enforcement what you saw on February 3, 2009, the first time you talked to them?
A. No, ma'am.
Q. Why not?
A. Because I was scared.
Q. I'm sorry?
A. 'Cause I was scared.
Q. Did you later tell them about it?
A. I did.
Q. Are you the one that actually made the call to notify law enforcement?
A. Yes, ma'am.
Q. Why did you call and tell them?
A. Because I kept -- because I kept looking at Dr. Pierce.
Q. What do you mean, you kept looking at Dr. Pierce?
A. Because he was hurt.
Q. Did you ever meet with Special Agent John Norris and show him where the man and the truck were located when you first saw them?
A. Yes, ma'am.
Q. Did he take measurements that day?
A. Yes, ma'am.
Q. And you can stay where you are.

I'm going to show you Government's Exhibit 55-D.

MR. HENDRIX: Judge, I'm sorry. Do you mind if I

situate over here?

THE COURT: Come on.

BY MS. WHATLEY:

Q. Does this appear to be an outline of the Pierces' residence?

A. Yes, ma'am.

Q. And does this show, this area in front show the street of Avalon?

A. Yes, ma'am.

Q. And does this show Cooper?

A. Yes, ma'am.

Q. And does this show -- and the jury is having trouble seeing all of it. Up in the middle area, is that a stop sign?

A. Yes, ma'am.

Q. And over here, is that the street sign that we talked about earlier, the 35-mile-an-hour speed limit sign?

A. Yes, ma'am.

Q. There's a red truck on this diagram. I'll get closer. Do you see the red truck on the diagram?

A. Yes, ma'am.

Q. Is that where you saw the red truck that evening?

A. Yes.

Q. And is that where you told Agent Norris you saw it?

A. Yes, ma'am.

Q. And there is an outline of a man right here. Do you see

that?
A. Yes, I do. Yes, ma'am.
Q. And is that approximately where the man was on the evening of February 3, 2009?
A. Yes, ma'am.
Q. So those are fair and accurate depictions of what you saw -- of where you saw things that night?
A. Yes, ma'am.
Q. Both the man and the vehicle?
A. Yes, ma'am.

MS. WHATLEY: Your Honor, did you want to take a break?

THE COURT: Ladies and gentlemen, we're going to take our first break. What I plan to do is, we'll come back at 12. You know, we started an hour late because I had that swearing in this morning, but I don't want to hold you so long, especially if you haven't had anything to eat. So what I think we'll do is, we'll come back and finish up with Ms. Gales, we'll take our lunch break at that point, and so maybe around 12:45, one o'clock, we will take our lunch break.

Now, this is your first recess. I want to tell you what I've been telling you the whole time. Until this case has been submitted to you for deliberation, you must not discuss it among yourselves or with anyone else or remain within the hearing of anyone who is discussing it. After the case has been submitted

to you, you must discuss the case only in the jury room when all the members of the jury are present. You are to keep an open mind. And you must decide any issue in this case -- must not decide any issue in this case until the case is submitted to you for deliberation.

The reason I tell you that is, I don't want you to start forming hard opinions about the case until we've heard from all the witnesses. Can you do that for me?

Okay. Final admonition, if you see any of us hanging around, like I say, you can always say hi to me, but don't talk to any of the lawyers, don't talk to any of the parties, any of their witnesses. I wouldn't want anybody to believe something is going on that's not going on. Will you do that for me?

All right. We'll be in recess until 12 o'clock.

(Jury exited the courtroom.)

(Recess from 11:50 a.m. until 12:07 p.m.; jury present.)

THE COURT: You may continue.

BY MS. WHATLEY:

Q. Ms. Gales, I think at the break we got some technical difficulties fixed, so I want to go back to a couple things real quick. Okay?

A. Okay.

Q. Looking at Government Exhibit 53-B, and I think you have a pen up there that might help, can you please point or draw a circle on the screen of where you saw the man the evening of

February 3, 2009.
A. (Witness complies.)
Q. Ms. Gales, I know I've asked this before, but I'm going to ask you one more time. Not what he was wearing, what did the man look like?
A. He was maybe, you know, one of those people that wear those little dots.
Q. And you're pointing to your forehead.
A. Yeah. One of those little dots up there on his forehead.
Q. You said he wasn't a white man?
A. No.
Q. Was he a black man?
A. No.
Q. On the morning of February 4 --
MS. WHATLEY: Ms. Newton, please take that picture down.
BY MS. WHATLEY:
Q. On the morning of February 4, 2009, did you drive by the Pierces' residence?
A. Yes.
Q. And what time did you go by?
A. About ten minutes to seven.
Q. Please tell the jury what you saw that morning.
A. Well, I was on my way to the -- to get my tags. They open up at seven. I wanted to be the first one there. And on my way

there, you can't see Dr. Pierce's truck or stuff, house. You know --

Q. Let me stop you. So if you can't see it, were you --

A. I was going. But coming back --

Q. Okay. I get directions bad. So you -- how many times did you drive by Dr. Pierce's house that morning?

A. That morning? Twice.

Q. So the first time you drove by, Dr. Pierce's house would have been on your right when you're at the corner of Cooper and Avalon?

A. Yes, ma'am.

Q. When you were coming -- could you see into his driveway?

A. Not going.

Q. Did you see anything unusual?

A. No, ma'am, I didn't. Huh-uh.

Q. Did you come back by?

A. Yes, ma'am.

Q. About what time did you come back by?

A. About 7:30, 7:15.

Q. Were you able to see into Dr. Pierce's driveway then?

A. Yes, ma'am.

Q. And tell the jury what you saw that morning.

A. I saw a tire on Dr. Pierce's truck, and I was going to stop and move it.

Q. Let me stop. You said you saw a tire on Dr. Pierce's

truck?
A. Yes, ma'am.
Q. In addition to the four tires that are on the truck?
A. Oh, no, it was a tire on the bumper in front of the truck.
Q. Okay. Why did that stick out to you?
A. Because -- well, Dr. Pierce wouldn't have had a tire laying on his Lexus.
Q. Okay. What did you do when you saw it?
A. Well, I said I'm going to go over there and move that tire off of Dr. Pierce's truck so he won't get his hands dirty.
Q. Well, did you move that tire off that truck?
A. I didn't get a chance to because at the four-way stop sign, was a car behind me and he was honking for me to get out of his way.
Q. So did you get out of his way?
A. I did.
Q. How big was the tire you saw leaned up against the bumper?
A. To me it looked like a spare tire. It was -- you know, a spare tire is not large as a tire that -- a regular tire.
Q. What did you do after you drove past Dr. Pierce's house that morning the second time?
A. I went home, dropped my little grandson off at school, and then I went home to -- I started to work at eight-thirty. I went home and I laid down for a minute, and then I heard something, said, bam, and I said somebody done ran and hit my

truck or my house, so --

Q. Let me stop you there. You heard a bam.

A. Yeah. I heard something blowed up.

Q. How far do you live from Dr. Pierce?

A. I think about a mile, maybe a mile and a half.

Q. Do you recall what time of the morning you heard that?

A. It was eight o'clock.

MS. WHATLEY: May I have a moment, your Honor?

THE COURT: You may.

MS. WHATLEY: No further questions, your Honor.

THE COURT: Cross-examination?

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Ms. Gales, I'm not going to take up too much of your time. I do want to go back over your testimony and make sure we all understand it. Okay?

A. Yes, sir.

Q. And what I understand you're saying is that the night before the incident -- which was February 3; is that right?

A. Yes.

Q. That you saw a suspicious man standing out there on the street corner running in place.

A. Yes, sir.

Q. And I understand you've described this man as having a long

ponytail?
A. Yes.
Q. Wearing a baseball cap?
A. Yes.
Q. All right. And let's talk, Ms. Gales, about your vantage point, where you were. That's a four-way stop there at the corner of Avalon and Cooper; is that right?
A. Yes, sir.
Q. And what time of the night was this?
A. Probably 11:30, something like that, when I get off from work.
Q. Obviously very dark.
A. Uh-huh.
Q. And I understand the Pierces don't have lights on their house or didn't at that time; is that right?
A. Yes, sir.
Q. Is there a street light out there?
A. No.
Q. Were you with anybody?
A. By myself.
Q. Okay. So you pull up to that four-way stop going north, and your vantage point then is, that person, I gather, is probably, like, about a 45-degree angle to your right; is that correct?
A. Yes, sir.

Q. So you're having to look across your vehicle, across, I guess, the passenger's side, through the windshield to the corner there by the stop sign where this person is; is that right?
A. Yes, sir.
Q. And what you saw, what you described, I think maybe five eight, 160, 180, something like that?
A. Something like that.
Q. Wearing bluejeans, baseball cap. Did you get a good look at his face?
A. No. He had his head down.
Q. So you didn't get a look at his face?
A. No.
Q. But you're able to say that he wasn't white; is that correct?
A. That's right.
Q. And you're able to say that he wasn't black; is that correct?
A. Yes.
Q. But you're able to say he was some other nationality; is that right?
A. Yes, sir.
Q. And at first, I think, before the break, you said Iranian?
A. Well, his skin was dark, darker than mine.
Q. Is it possible that he was a light-skinned African-

American?
A. No, he wasn't.
Q. Why not?
A. Because I know.
Q. Why do you know that?
A. Because I know my color.
Q. So you're able to testify even though you couldn't see his face that this was not a light-skinned African-American; is that right?
A. Yes.
Q. Are you able to know whether he was Hispanic or not?
A. Excuse me?
Q. Was he Hispanic?
A. Well, he was dark, dark-skinned, and I know the color of other people's hair.
Q. Okay. Were you able to tell the color of the ponytail?
A. It's black.
Q. It's black?
A. Yes.
Q. Okay. Are you able to look at this gentleman sitting right over here, Dr. Mann, and are you able to say was that him or was that not him?
A. Who is Dr. Mann?
Q. Yes, Dr. Mann, if you don't mind.
A. No.

Q. You did not see that person.
A. No.
Q. And you're sure that you did not see that person; right?
A. He has short hair.
Q. Right. And you're able to tell this jury that was not the man that I saw.
A. Yes.
Q. Okay. How old of a man did you think you saw?
A. I don't know. Maybe in his 30s, 40s.
Q. Okay.
A. Not old. Not young.
Q. Okay. And let's move on. The next part of the story is that you -- was it that same night then that I guess you looked down, right down Cooper and you see this -- I think you described it as a small pickup truck?
A. Yes.
Q. And, again, is there lighting anywhere around here?
A. No.
Q. And I beg the Court's pardon. What I'm looking at is Government's Exhibit 55-D. It's not been introduced yet, but I'm looking at the top right-hand corner where there's an illustration of, I guess, a pickup truck. That's what you're saying you saw is this pickup truck?
A. Yes, sir.
Q. Did you testify that it was red?

A. I didn't say the color.
Q. Were you not able to make the color of the vehicle out because of how dark it was?
A. Yes.
Q. And is there lighting down that street?
A. Probably on down further, pole lights.
Q. But it wasn't lit enough --
A. Not by Dr. Pierce's house.
Q. Is it possible that it was some other type of vehicle than a pickup truck?
A. No.
Q. You're sure of that?
A. I'm sure.
Q. Okay. Is it uncommon for vehicles to be parked in that area?
A. Not that close to Dr. Pierce's house.
Q. I noticed --

MR. HENDRIX: Do we have Government's 53-V? I think that's it. And I can put it on the ELMO.

BY MR. HENDRIX:

Q. Can you see that?
A. Yes.
Q. Apparently this is a picture that was taken -- I'm unsure of when, but sometime after February, I gather, because with all the leaves and stuff, it was probably that spring or summer. I

see a vehicle parked down there. Do you see the vehicle?
A. That's a nurse call truck.
Q. Is it uncommon for vehicles to be parked on that street?
A. Not at night.
Q. I think you've testified that when you drove by that evening and you saw this man, you said it was about ten-thirty or 11 o'clock; is that right?
A. Yes, sir.
Q. Mrs. Pierce testified that it had to be around that time that Dr. Pierce --

MS. WHATLEY: Your Honor, I object to him saying what another witness testified to.

MR. HENDRIX: That's not what I want to do.

THE COURT: Sustain the objection if you're going to have her testify confirming or denying it.

MR. HENDRIX: Let me try it this way.

THE COURT: Okay.

BY MR. HENDRIX:
Q. Did you see Dr. Pierce loading crates into his Lexus vehicle when you drove by around ten-thirty or 11 o'clock that night?
A. No.
Q. I want to spend just a little bit of time -- you have talked to several law enforcement officers; is that right?
A. Two.

Q. Two different ones? How many times have you talked to them?
A. I didn't keep up with them.
Q. Well, I know this, that on February 5, you made a statement to someone, and in that statement is when you said that you saw the tire leaning against Dr. Pierce's car on February 5.
A. Yes, sir.
Q. Pardon me. On February 4, is that right? The morning of? So you talked to law enforcement on February 5; is that right?
A. I think so.
Q. Do you remember who you talked to?
A. Him. John?
Q. John Norrell sitting here at the table; is that right?
A. Yes.
Q. And did Agent Norrell take a statement from you? Did he take notes? Is that --
A. Yes, sir.

MS. WHATLEY: Your Honor, just so the record is clear, it's Agent Norris.

MR. HENDRIX: What did I say?

MS. WHATLEY: Norrell.

MR. HENDRIX: Excuse me, Agent. No offense.

BY MR. HENDRIX:
Q. And did Agent Norris, he took notes; is that right?
A. Yes, sir.

Q. And did he end up typing your statement up? Have you seen a typewritten version of what you told the agent that morning?
A. With Ms. Karen.
Q. Okay. So you've seen it typewritten?
A. Yes.
Q. Did you sign it?
A. Did I sign it?
Q. Yes, ma'am. Did you sign a statement saying this is my statement, signed Velma Gales?
A. I don't think so.
Q. Did you get a chance to read it?
A. Yeah, she let me saw it.
Q. And were you asked can you make -- if there were any corrections or additions or deletions, you were free to do that as well; right?
A. Yes, sir.
Q. And when you gave that statement on February 5, did the agent or anyone record it?
A. Record it?
Q. Yes, ma'am. Like a tape-recorder?
A. No.
Q. Okay. I know then that the next statement that you gave was in July of '09; is that correct?
A. Yes, sir.
Q. And who did you give that statement to?

A. Well, I only talked to John and the other guy, the other man. I don't remember his name.
Q. And is this the incident where then you called them; is that right?
A. Yes, sir.
Q. That's when you provided that additional information about I saw this suspicious-looking man out on the street corner on the evening of February 3; is that right?
A. Yes, sir.
Q. And did you only talk over the phone or did you meet again with the agent?
A. We met.
Q. Okay. And was the agent, again, taking notes?
A. Yes, sir.
Q. And was that statement that was typed up and you were able to review at some later time?
A. I don't remember.

MR. HENDRIX: Okay. And, your Honor, the reason I'm asking these questions is, it appears to me that she has made statements that would be discoverable under the Jencks Act.

MS. WHATLEY: Your Honor, may we approach?

THE COURT: You may approach.

[Bench conference reported as follows:]

MS. WHATLEY: Your Honor, Mrs. Gales has never read any of the statements that Agent Norris or Agent Cook took.

She's never signed any of those statements. If she had, I would have turned them over as *Jencks*. I don't think she is understanding necessarily what Mr. Hendrix is asking her. But Mr. Hendrix has seen the only two statements that have ever been written up by law enforcement. Mr. Hendrix has seen both of them.

MR. HENDRIX: Here's what we have is a letter that the prosecution has written to us that contains a paragraph of what she has allegedly said. What my questions to her were, did the agent take notes, did they reduce it then into some form of writing, if they even saw it approved, that under the Jencks Act 18 U.S.C. 3500 would appear to me to be a discoverable statement of the witness. And do we need --

MS. WHATLEY: And I agree with that, your Honor. However, she never has seen these statements. We attributed her -- a direct quote to her that was in the quotes in the statement. We attributed that to her in a letter we wrote to defense counsel. We also allowed them to see that statement, and, actually, they took that statement to their office with them and had it in their office for a period of a day or two before I got it back from them because I didn't intend for them to take it because it did not qualify as *Jencks*.

MR. HENDRIX: And I think that that's the dispute. My sense of this, at least what she is telling me, is, there are two ATF reports of interview that contain her statement, the

February 5 one, she was less certain on the July 5 one, and it's a legal issue for the Court to determine are those statements therefore discoverable.

THE COURT: The first one I believe her testimony was that she had not approved it at all. I think that's what her testimony was. Was that she gave a statement, and I'm trying to remember whether she even said that she -- if she saw a typed version. I think the second one is a closer -- is closer. I think in that one she said that she did meet with Ms. Karen and she showed it to her. She didn't say she signed it. She has not testified she signed either one of them or approved of either one of them. I think the second one she said that I say it.

MR. HENDRIX: I'm sorry, Karen. Go ahead.

MS. WHATLEY: I will tell the Court, I did not show her any statement. She and I have met and she has looked at the diagram, and that's what I'm concerned that she is getting those two things confused.

THE COURT: I'm going -- well, has there been an objection made? I think you objected to --

MS. WHATLEY: I was objecting to him raising this discovery issue before the jury.

MR. HENDRIX: Procedurally now at this point for me under the Jencks Act to move for production of those statements.

THE COURT: I'm going to overrule the objection. You

can continue to cross her about it and ask her about it. I'll allow the government to then redirect her, and then I'll make a determination. You can renew your request for production of it after I've heard from both sides, and then I'll make a ruling.

MR. HENDRIX: Understood.

[Continuing in open court:]

BY MR. HENDRIX:

Q. Ms. Gales, where we were is, I'm trying my best to figure out how many times you've talked to law enforcement, anybody on this side, and made a statement. Okay?

A. Yes, sir.

Q. I know February 5; right?

A. Yes, sir.

Q. And I know July 9 -- or, pardon me, July of '09, five months later. Is that right?

A. Yes, sir.

Q. Now, I thought I also received some information where you -- and I didn't know whether this was from a phone call that you made or whether they sat down and interviewed you, but you describe an event where you're driving again by the house on Avalon and you have your grandson with you.

A. Yes, sir.

Q. So is that a third different statement now that you've made?

A. Second one.

Q. Say that one more time.
A. It was twice I went by Dr. Pierce's house, in two different nights, you know. Had to go and I came back by there.
Q. And just so you and I are on the same page, what I'm asking is and what I'm trying to figure out is how many times --
A. Four times.
Q. -- you've sat down. Four separate times with law enforcement and talked to them and given them information?
A. Four times I went by Dr. Pierce's house, going and coming.
Q. I'm so sorry.

THE COURT: Hold on, Ms. Gales. We are failing to communicate here.

MR. HENDRIX: Right.

THE COURT: Hold on, Mr. Hendrix. You have to wait until he asks you the question. And what I always used to tell witnesses was, take a few breaths after you hear the question, think it through, and then answer. He is asking you about how many times you've spoken with law enforcement, not how many times you've driven by Dr. Pierce's house.

THE WITNESS: Okay. I'm sorry.

THE COURT: Look, let me tell you something. Here's what I know: I know that you didn't wake up dreaming one day that you're going to come sit over in federal court and testify about something like this.

THE WITNESS: No, sir.

THE COURT: So believe me, everyone in this courtroom knows that you're nervous. We know that. All I'd ask you to do is just try your best, as best you can, just to calm down a little bit. Nobody is going to jump on you or anything. We just want to hear what you have to say. Okay?

THE WITNESS: Yes, sir.

THE COURT: Just calm down a little bit. Mr. Hendrix will ask you the questions. Take a couple seconds to think about what he's asking you, and do the best you can to answer it. Okay? All right.

MR. HENDRIX: Thank you, Judge.

BY MR. HENDRIX:

Q. And, again, just to make sure we're all on the exact same page, I'm not asking about the number of times you drove by. I'm trying to figure out how many statements you have made to law enforcement. To say it another way, how many separate times you have talked to someone with the prosecution team. Does that make sense?

A. Yes.

Q. Okay. So, like I said, I know February 5 and I know July. There is another time that is unclear to me because I just have sketchy information on it, but at least you describe driving by and your grandson is in the car.

A. I think four times.

Q. You think you sat down or communicated four separate times;

is that right?
A. I think so.
Q. Was the last time in July of '09 or has there been another time?
A. I can't recall.
Q. Understood. And have you talked to the Pierces about this?
A. No, I haven't.
Q. Okay. In February, February 5 of '09, was it that time that you described an event where you were driving by the day before with your grandson?
A. Excuse me?
Q. On February 5, during that conversation you had with law enforcement, was that the occasion where you also told them that there was another time that you were driving by the Pierces' home and your grandson was in the car with you?
A. I don't understand what you're saying.
Q. Let me do this. And let me -- we call this in the business trying to refresh a witness's recollection. I'm going to give you some information, see if this helps you remember anything. Okay? The information that I have is that you passed by the Pierces' house at 7:15 a.m. the morning before -- or, pardon me, the morning of. Okay?
A. Yes, sir.
Q. You were with your grandson, Justin Tyler Joyce.
A. Yes.

Q. That's when you saw the tire resting on the SUV, on the Lexus?
A. Yes, sir.
Q. And your grandson saw someone underneath the car with their feet sticking out.
MS. WHATLEY: Your Honor, I'm going to object. This is hearsay.
MR. HENDRIX: I'm trying to refresh her recollection, Judge.
THE COURT: Where is this information coming from?
MR. HENDRIX: It comes from a lead sheet that was supplied to us by the government.
THE COURT: I'll overrule it. I'll allow Mr. Hendrix to use it to refresh her recollection.
BY MR. HENDRIX:
Q. If I confuse you, please tell me. The first question is, do you remember making that statement?
A. I made that statement?
Q. So this information tells me.
A. No, I didn't.
Q. Do you have a grandson named Justin Tyler Joyce?
A. Justin Taylor Joyce.
Q. Justin Taylor Joyce. And is he 12 years old?
A. Yes.
Q. And was there an occasion that morning of the bombing that

he was with you in your car?
A. Yes, he was.
Q. Okay. And is that the occasion that you saw the tire?
A. Yes.
Q. And is that what you told the police on February 5, or was that a different time?
A. No, that was that time.
Q. Okay. Now, between that date and the July date, were you interviewed anytime between February and five months later, in July?
A. I can't remember. That's -- I can't remember that.
Q. What we do know -- well, let me back up. You've worked for the Pierces for 25 years; is that right?
A. Yes, I have.
Q. And you are a -- you're younger than me, I can tell, so you must have begun working for them when you were quite young. Is that fair?
A. Yes.
Q. You're an employee, but I gather you are also close to the family?
A. Yes.
Q. And you work there every day?
A. Yes.
Q. And they trust you with their home and so forth.
A. Yes.

Q. Okay. And I think it was -- do you remember when Dr. Pierce came home from the hospital?
A. Yes.
Q. And I think that probably would have been in late March of '09; is that right?
A. I think so.
Q. Okay. Back on February 5, the day after you gave the statement to the police, you did not say anything to the police about this mysterious jogger, did you?
A. No, I didn't.
Q. And any other times that you spoke to law enforcement from February 5 until five months later, July of '09, you never mentioned that, did you?
A. No, I didn't.
Q. It's fair to say, is it not, that you had every opportunity to do so; is that right?
A. Yes.
Q. Okay. You've said in your direct testimony that the reason you waited five months was, one, out of fear, and, two, out of guilt. Is that right?
A. Fear. Yes.
Q. And your fear was what?
A. Well, look what happened to Dr. Pierce. If I told it, I was scared it would happen to me.
Q. You were scared of talking to the police because something

bad had happened to Dr. Pierce and you were afraid it was going to happen to you; right?
A. Yes.
Q. And so the fear was based on talking to the police.
A. Yes.
Q. But you'd already talked to them on February 5.
A. And I didn't tell them.
Q. You didn't tell them about the man, but you told them about the tire.
A. Yes.
Q. And you told them about the other time that you were with your grandson; right?
A. Yes.
Q. And you told them what you saw there; right?
A. Yes.
Q. And presumably your grandson saw something, too; right?
A. I don't think so.
Q. All right. But what you're saying is that fear for some reason got worse for you, that you needed to hide this information from all of us.
A. Yes.
Q. Because you thought this mysterious man was going to come after you.
A. Yes.
Q. I'm assuming none of that was realized.

A. I don't know. It's not over yet.
Q. What happened in July to get you to overcome that fear?
A. Because I've been working for Dr. Pierce so long, and I feel like, you know, I couldn't rest, couldn't sleep. That was just bothering me because Dr. Pierce is a good person, and I feel like, you know, go ahead on and tell it. I mean, what happened happened. At least --
Q. I'm sorry.
A. At least I'd done told it.
Q. Who was the first person you told about the jogger?
A. I called -- is his name -- well, I don't -- John.
Q. Norris. Agent Norris?
A. Was it -- it was him. I called one of them.
Q. Okay. And that --
A. There was two of them.
Q. And that happened in July?
A. Uh-huh. I think so.
Q. That was an important piece of information for everyone to have from the very beginning of this, was it not?
A. Yes.
Q. Because the government has put you on the witness stand to make an inference that there's some guy that's jogging around that's from some different country; right?
A. Yes.
Q. And that's obviously something important; right?

A. Yes.
Q. But you've held onto that information for five months.
A. I did.
Q. Skipping around just a little bit. If I understood what your direct testimony is, the evening before, you drove by and that's when you see the jogger; correct?
A. Yes.
Q. And then you drive back by around midnight?
A. Uh-huh.
Q. So within the space of an hour or an hour and a half, you drive by twice?
A. Yes.
Q. And I'm assuming that's going opposite ways?
A. Yes, it is.
Q. Was the first time going north?
A. Well, past Dr. Pierce's house.
Q. Okay. So the second time would be going south.
A. Yes, and the other time was going back home.
Q. Okay. Did you see the tire either time?
A. No. It was dark up in there.
Q. It was dark.
A. Yeah.
Q. At midnight, did you see Dr. Pierce loading crates?
A. No, I didn't.

MR. HENDRIX: Your Honor, I'll pass the witness.

THE COURT: Okay.

MR. DUDLEY: No questions, your Honor.

THE COURT: Okay. Redirect?

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Ms. Gales, you and I have met a few times; correct?

A. Yes, ma'am.

Q. Now, were we meeting to get ready for today?

A. Yes, we was.

Q. Every time you met, were agents sitting there taking notes?

A. Yes, ma'am.

Q. Every time?

A. Well, not every time, no.

Q. And you've met with law enforcement without me or Mr. Gordon being present; correct?

A. Yes, ma'am.

Q. When you and I have met, I've shown you some things; correct?

A. Yes, ma'am.

Q. I showed you Government's Exhibit 55-D.

A. Yes, ma'am.

Q. And I had you go through and tell me if this was right, didn't I?

A. Yes, ma'am.

Q. I showed you a bunch of pictures of the Pierces' house,

didn't I?
A. Yes, ma'am.
Q. And I've asked you questions about those, haven't I?
A. Yes, ma'am.
Q. Ms. Gales, I've never had you sign anything, have I?
A. No, ma'am.
Q. When I've met with you, I may have sometimes been reading things; is that correct?
A. Yes, ma'am.
Q. Did you ever sit by me and read things with me?
A. Yes.
Q. What did you read with me?
A. Well, no, ma'am, I didn't. I didn't.
Q. When we would meet, would we be sitting by each other or across from each other?
A. By each other.
Q. All right. Before today, how many times have we met?
MS. WHATLEY: And I'm just trying to get some things on the record so if I can progress this along.
MR. HENDRIX: Sure.
BY MS. WHATLEY:
Q. We've met, just to try to help along, we met one time at the Pierces' house.
A. Yes, ma'am, and at the police station.
Q. We met at the police station in West Memphis.

A. Yes, ma'am.
Q. We met briefly last night just to make sure y'all were here okay.
A. Yes, ma'am.
Q. And then we may have met one other time at the Pierces' house?
A. At the Pierces' house.
Q. One of those times we met at the Pierces' house, I really wasn't there to see you, was I?
A. No, ma'am.
Q. Who was I there to see?
A. Ms. Pierce.
Q. Did you and Agent Norris and Agent Cook go outside?
A. Yes, ma'am.
Q. Is that the day where you were showing them where you saw the man in the truck?
A. Yes, ma'am.
Q. And is that the day that Agent Cook and Agent Norris were taking measurements?
A. Yes, ma'am.
Q. So you had already told Agent Cook and Agent Norris about the truck prior to the day that we were there.
A. Yes, ma'am.
Q. First time you talked to law enforcement was the day after the bombing, February 5, 2009?

A. Yes, ma'am.
Q. You talked to Agent Cook and Agent Norris?
A. Yes, ma'am.
Q. Those are the only two you've ever talked to?
A. That's right.
Q. Is that the day that you told about seeing the tire in the driveway?
A. Yes, ma'am.
Q. Was it a lengthy conversation you had with Agent Cook and Agent Norris?
A. Was it -- pardon me?
Q. Was it a long conversation?
A. No, ma'am, not long.
Q. Between February 5, 2009 and July 29, 2009, did you meet with Agent Cook and Agent Norris again just to go back over the tire information?
A. Yes, ma'am.
Q. After that night, did you contact Agent Cook?
A. I did.
Q. Why did you call him?
A. Well, I wanted to tell, tell him about that man that I saw and the truck.
Q. So after when you called him, he and Agent Norris came back out to see you.
A. The next day.

Q. And they took notes that day.
A. Yes, ma'am. They met me at the Pierces' house.
Q. Did they type them up while they were sitting there with you?
A. No. I think they -- him was writing stuff down, taking notes.
Q. You didn't sign anything that day, did you?
A. No, ma'am.
Q. Ms. Gales, I just need you to tell this jury one more time, why did it take you from February to July to tell us about the man you saw the night before the bombing?
A. Because I was scared.
Q. Why were you scared?
A. Because Dr. Pierce was hurt so bad. Dr. Pierce was hurt real bad.
Q. Were you scared that was going to happen to you?
A. Yes.
Q. And what you told the police on February 5 had nothing to do with the person, it just had to do with the tire; correct?
A. Yes, ma'am.
Q. What you told them on July 29 had to do with a person?
A. Yes, ma'am.
Q. Were you afraid that person would hurt you?
A. Yes, ma'am. I'm scared. I watch my car now.
Q. You're still scared?

A. Yes.

MS. WHATLEY: No more questions.

THE COURT: You may follow up.

RECROSS-EXAMINATION

BY MR. HENDRIX:

Q. You still work for the Pierces?

A. Yes.

Q. And after February 5, did you still go to the house every day and clean their house for them?

A. After Dr. Pierce got hurt?

Q. Yes, ma'am.

A. The police wouldn't let us go.

Q. When did you start working for them again after?

A. I can't remember.

Q. Was it --

A. It was probably a month later.

Q. About a month later?

A. Maybe.

Q. So maybe in March is when you went back to working?

A. No.

Q. Let me ask you this: Was Dr. Pierce back in the home when you went back working for the Pierces?

A. No, he wasn't.

Q. So you came back to work before Dr. Pierce got home.

A. Yes.

Q. Okay. And your testimony is, you didn't come up with this information until July because you were scared.
A. Yes, sir.
Q. But you continued to go back to where the exact same location that you saw the suspicious man; right?
A. Yes.
Q. And right where this awful event happened; right?
A. Yes.
Q. You weren't too scared to go back to right where you saw all this stuff; right?
A. No.
Q. And I just want to make sure, just to be honest with you because I got diverted from my attention a second ago, just to make sure on your recross, the first time you came forward on this information about the jogger was in July; correct? July of '09?
A. Yes.

MR. HENDRIX: Okay. Your Honor, I'll pass the witness.

THE COURT: Okay. Anything else?

MS. WHATLEY: No, your Honor.

THE COURT: All right. This will be a good time for us to take a lunch break. I am going to give you an hour today to go to lunch, since there are fewer of us, we can get to lunch and get back, go a little quicker than we could when we had

everybody here. What I will tell you is the same thing I told you from day one. Keep an open mind, wait until you hear all the testimony before you make a decision. Also, don't discuss the case among yourselves. You'll have plenty of time to do that once we send you back to deliberate. If you see any of us out, don't speak to us. We want the process to not only be fair, we want it to appear fair.

Is there anything else we need to take up?

Okay. Let's take the jury out, and I have a matter to take up with the lawyers.

(Jury exited the courtroom.)

THE COURT: Yes, sir.

MR. HENDRIX: Judge, it goes back to the Jencks Act issue. Under 18 U.S.C., I'm looking at 3500(b): "After a witness called by the United States has testified on direct examination, the Court shall, on motion of the defendant, order the United States to produce any statement..."

And so, one, I want the record to be clear that we are making that motion. And then, two, I know that your Honor would look at 3500(e), which then defines what a statement is, and it says: A written statement made by said witness and signed or otherwise adopted or approved by him; two, a stenographic, mechanical -- basically a recording; and then any grand jury testimony. And I gather she did not testify before the grand jury.

MS. WHATLEY: Your Honor, she did not testify before the grand jury. She is still sitting here. Do we need Ms. Gales in the room or can she be excused?

THE COURT: Let's do this. Ms. Gales, you can stand down.

THE WITNESS: I can leave?

THE COURT: Hold on. We'll tell you in about five minutes. But you can leave the room.

MS. WHATLEY: Ms. Gales, you can go back to the witness room.

(The witness exited the courtroom.)

MS. WHATLEY: Your Honor, there is not a Jencks Act statement attributable to Ms. Gales. I have two statements, both of which the defense has seen. They came and looked at this statement. It was in a lead, it was lead No. 36, and he testified -- I mean --

I said it came out of the leads. We let them see 600 leads that were generated in this case just so we had shown them everything. When we came over last week and I provided *Giglio*, I also provided a letter in which I told them that Ms. Gales had not come forward with this information until months later. I set forth the exact quote from this statement in that letter and I also let them see this statement, and this is the statement that went home with them that evening and stayed with them for a couple of days.

It's the United States's position that neither one of these are *Jencks*, but they've had them.

THE COURT: Well, I understand the fact that they have them. What is your response to Mr. Hendrix's statement that these two documents have been approved by the witness, and, therefore, qualify?

MS. WHATLEY: Your Honor, if they had been approved, I would have turned them over. She has never seen them. She has never signed them.

THE COURT: Final statement. Final word on it.

MR. HENDRIX: Judge, just because of the nature of this case, I just suspect that we'll probably go through this process with each witness. Again, I have seen those. In examining the witness, it's always do you have, did you make a statement that I have not seen. I have to go through that discovery process. I thought I heard what she said, but I absolutely accept Ms. Whatley's recommendation that that's all the written statements.

THE COURT: I overrule or deny the request for the documents. I will say, I'll let you make your records on all this if you need to ask those questions when the witness is on the stand. Feel free to.

I would say that if you were to ask for the documents, let's take it up at the bench instead of mentioning it where the jury can -- because they'll start trying to figure out, well,

what's going on? What is all this stuff? And so let's take it up at the bench.

MR. HENDRIX: And if it helps the Court and to move the process along, if you want to just assume, I can make whatever -- it just says that after direct I have to make the motion, so however you want me to do it, that's fine.

THE COURT: To keep a clean record, I will -- we'll make that a continuing request.

MR. HENDRIX: Okay.

THE COURT: And we'll say that on the record right now. But just so we have a clean record, I would ask that you renew the request every time.

MS. WHATLEY: And, your Honor, for the record, we are giving *Jencks* over three days before the witnesses testify, so we're not holding firm to the Jencks Act that we have to give it over after the witness testifies. So we are providing any and all *Jencks* material that we have.

THE COURT: The record will reflect that.

Is there anything else we need to take up?

MS. WHATLEY: No, your Honor.

THE COURT: Let's take a break, and let's be back here at 1:45. We'll be in recess until then.

(Recess at 12:50 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Christa R. Newburg, RDR, CRR, CCR Date: March 2, 2011

Christa R. Newburg, RDR, CRR, CCR
United States Court Reporter

(Proceedings continuing in open court at 1:49 p.m.)

THE COURT: Call your next witness.

MS. WHATLEY: John Wah.

JOHN WAH, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY

Q Good afternoon. Will you please state your name and spell your last name for the record.

A John C. Wah, W-A-H.

Q Mr. -- Dr. Wah, where do you live?

A West Memphis.

Q And what do you do for a living?

A Physician.

Q What type of physician are you?

A Family practice.

Q And do you practice in West Memphis?

A Yes, ma'am.

Q And how long have you practiced there?

A Since 1988.

Q And do you know Trent Pierce?

A Yes.

Q Is he also a family practice doctor in West Memphis?

A Yes, ma'am.

Q How long have you known him?

A Since about '88.

Q Do you know him professionally or socially?
A More professional than social.
Q Do you have some social contact with him?
A Yes.
Q What's the social contact that you have with Dr. Pierce?
A Helped coach his son's basketball team.
Q Do you know where his residence is in West Memphis?
A Yes, ma'am.
Q Do you live near him?
A Close.
Q Do you pass his house on your way to work?
A Yes, ma'am.
Q What route do you take to get to work?
A Usually I get down on Barton Street and turn on to Pierce and then turn on Cooper and then turn on Avalon and then on to Broadway.
Q A lot of turns. Are you trying to avoid a middle school in West Memphis?
A Yes, ma'am.
Q Can you see that from where you are sitting?
A No, ma'am.
MS. WHATLEY: Your Honor, may he --
BY MS. WHATLEY
Q You are going to have to talk really loud so the court reporter can hear you, okay? You said you come down Pierce,

correct?
A I come down --
THE COURT REPORTER: I can't hear.
THE COURT: Hold on a second. First identify what it is you are pointing to, and then, Dr. Wah, do the best you can to describe what it is and what -- and where on that board you are pointing to so that the record can pick it up.
And, Mr. Hendrix, you can come around.
BY MS. WHATLEY
Q Looking at Government Exhibit 54, do these show streets of the West Memphis area?
A Yes, ma'am.
Q Pull that up to you. One of the streets you said you drive down is Pierce; is that correct?
A Yes, ma'am.
Q Is that located on the far left-hand side of Government Exhibit 54?
A Yes, ma'am.
Q And then where do you go from there?
A Turn left on to Cooper.
Q Okay.
A And stop -- there is a stop sign here on Avalon and Cooper, and Dr. Pierce's house is across the street from the point where I stop. Then I travel down Avalon and then on to Broadway.
Q When you are at Cooper and Avalon, do you have to take a

right?
A Yes, ma'am.
Q At the intersection of Cooper and Avalon, is there a stop sign?
A Yes, ma'am.
Q Is this a four-way stop or a two-way stop?
A I believe it's a four-way.
Q About what time of day do you normally drive by Dr. Pierce's house?
A Usually between 7:00 and 8:00 o'clock in the morning.
Q What time do you open your clinic?
A 8:00 o'clock.
Q Did you drive by his house on the morning of February 4, 2009?
A Yes.
Q About what time?
A 7:30, around that area.
Q Coming the way that you were driving, is it easy to see into Dr. Pierce's driveway?
A Yes, ma'am.
Q And did you look into his driveway?
A Yes, ma'am.
Q Is it unusual for you to look into his driveway?
A No, ma'am.
Q I am going to show you what has previously been introduced

as Government Exhibit 53-Z, and it will pop up on the screen there in front of you. If it doesn't, let me know. Is there a picture in front of you now?

A Yes, ma'am.

Q Is this the stop sign that you stop at?

A Yes, ma'am.

Q And does this show Dr. Pierce's residence taken from the perspective of that stop sign?

A Yes, ma'am.

Q Did you see anything that morning that caught your attention?

A I saw his car, and I saw an object in front of his car.

Q And what was the object that you saw in front of his car?

A It was kind of like a rectangular container with a -- looked like an, an old tire that was leaning against it.

Q Tell the jury why that stood out to you.

A Well, I -- I have a air compressor, a portable air compressor, and I thought if he had a flat maybe I could fill it up and that way he won't have to change it and he can just drive to the gas station.

Q So basically from what you saw, you thought he had a flat tire?

A Yes.

Q Did you see Trent Pierce in the driveway that morning?

A No, ma'am.

Q What did the tire look like?
A It looked like an old doughnut tire, a smaller tire than a regular tire.
Q Did it look like it would fit on Dr. Pierce's vehicle?
A No, ma'am.
Q And where was it when you saw it?
A It was leaning against a rectangular container.
Q Would it have been visible to someone getting in the driver's seat?
A I believe it would have.
Q Did you stop and help that morning with your air compressor?
A No, ma'am, I did not stop.
Q Did you drive up into Dr. Pierce's driveway?
A No, ma'am.
Q Was there a reason you didn't stop?
A Well, I looked at the tires. It looked like it was an old doughnut tire, and he has a new car. So it didn't look like it would fit his car, so I looked at -- I gave a good glance of all his tires and they looked like they were all inflated and so I figured he must have done something in the middle of the night or left it out there. It wasn't a flat, and so I kept on to the office.
Q Did you hear an explosion that day?
A Yes, ma'am.

Q And what did you think it was?
A Originally, I thought it was a -- maybe a car that might have hit somebody, but I didn't hear any kind of brakes, squeals. So then it kind of reminded me of a transformer blowing.
Q Approximately what time did you learn what had really happened?
A It was after the office opened and the rumors started coming in from patients.
Q Let me stop you there. Is it fair to say that West Memphis is a small town?
A Yes, ma'am.
Q Fair to say people start hearing about things pretty quickly?
A Yes, ma'am.
Q After you heard what happened, did you contact law enforcement?
A Yes, ma'am.
Q Did you end up meeting with law enforcement?
A Yes, ma'am.
Q Did you ultimately provide them with a drawing of what you saw?
A I provided the drawing to the police department, West Memphis Police Department.
MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY

Q I have handed you what has been marked for identification purposes as Government Exhibit 57. Have you ever seen this before?

A Yes, ma'am.

Q What is it?

A That's my drawing of what I saw.

Q And does it fairly and accurately depict what you saw that morning?

A Yes, ma'am.

Q At this time we move to admit Government Exhibit 57.

THE COURT: Any objection?

MR. HENDRIX: No objection, Judge.

THE COURT: It's received.

(Government's Exhibit 57 received in evidence.)

BY MS. WHATLEY

Q Looking at the right-hand side of this screen, it's actually a drawing of the intersection; is that correct?

A Yes, ma'am.

Q There is a X -- I mean, a box with an X in it. What is that?

A That's my vehicle.

Q And then the circular part at the top, is that the Pierces' driveway?

A The semicircle, yes, ma'am.
Q And what's the other rectangle that's in that semicircle?
A Oh, the other rectangle is the vehicle.
Q Dr. Pierce's vehicle?
A Yes, ma'am.
Q And what is the object in front of that?
A The drawing to the left.
Q And then at the very bottom right-hand side, you have signed that John Wah, MD, and you dated it 2/6/09?
A Yes, ma'am.
Q On the left-hand side of this page, just tell the jury what that is.
A Looked to be like a rectangular box with a tire that was sitting on top of it. That tire was the one that looked like it was a small doughnut or smaller tire. And the box -- well, the container looked a little greenish from what I could determine.
Q Approximately how long did you get a look at what you saw in Dr. Pierce's driveway that morning?
A Several seconds because I was looking at his other tires to make sure that he didn't have a flat. So that was always in the view of what I was seeing.

MS. WHATLEY: Your Honor, I have no further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH

Q Dr. Wah, I believe you testified that you drove by the residence and you could see that there was a tire sitting out in front of the Lexus; is that right?
A Yes, ma'am.
Q And then you determined that probably Dr. Pierce didn't need your help because his tires looked inflated?
A They looked different from his regular tires that were on his car.
Q You mentioned that you thought he might need help, like he had a flat tire?
A Yes, ma'am.
Q But you determined that he didn't have a flat tire?
A Right.
Q When you drove by, you could clearly see the tire -- the spare, smaller tire out front, right?
A Yes, ma'am.
Q And you could tell that he didn't have a flat tire on the Lexus?
A Yes, ma'am.
Q Thank you.

MR. LASSITER: No further questions, Your Honor.

THE COURT: Any redirect?

MS. WHATLEY: No, Your Honor.

THE COURT: Dr. Wah, you may stand down.

MS. WHATLEY: Amanda Oakley.

AMANDA OAKLEY, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY

Q Will you please state your name.

A Amanda Oakley.

Q And spell your last name for us.

A O-A-K-L-E-Y.

Q Where do you live?

A I live at 1107 Cherry Lane in West Memphis, Arkansas.

Q Do you know Trent Pierce?

A Yes.

Q How do you know him?

A I work for him.

Q How long have you worked for him?

A Nine and a half years.

Q And what do you do for him?

A I work as a certified nursing assistant, which is in the clinic.

Q What's the name of the clinic?

A Family Practice Center of West Memphis.

Q What time did the clinic open every day?

A 8:00 o'clock.

Q What time were you supposed to be at work?

A 8:00 o'clock.

Q Do you always make it to work at 8:00?

A Yes.
Q At least you always try, right?
A Right.
Q In February 2009, what route did you take to work?
A I took -- went down North Avalon -- I was taking my daughter to daycare -- and then to Oliver.
Q So you would come through that four-way stop at Avalon?
A Correct.
Q And you would stay on Avalon?
A Yes.
Q I am going to show you Government Exhibit 53-Y. It should pop up on the screen in front of you. Is this the stop sign that you stop at?
A Yes.
Q From that stop sign, can you see into Dr. Pierce's driveway?
A Yes.
Q And looking at Government Exhibit 53-A, is this what it looks like as you approach the driveway?
A Yes.
Q When you drive to work, do you ever look into Dr. Pierce's driveway?
A Yes.
Q Why?
A Because when you come to the four-way stop sign, just

automatically you look straight into their driveway.
Q Do you remember February 4, 2009?
A Yes.
Q Did you take the same route to work that day?
A Yes.
Q What time do you think you drove past Dr. Pierce's house?
A Probably about 7:55. I was running late.
Q Do you recall looking into the driveway that day?
A Yes.
Q Did you see anything out of the ordinary that morning?
A I did.
Q What was that?
A I saw a round, looked like a doughnut tire in front of his vehicle.
Q And why do you say it looked like a doughnut tire?
A Because -- from the distance that I saw it, you could just tell that it was a doughnut tire.
Q And where did you see it?
A I saw it in front of the driver's wheel.
Q Based on where it was located, do you think it could have been seen by someone getting into the vehicle on the driver's side?
A Yes.
Q I asked you earlier if you saw anything out of the ordinary. Why did that seem out of the ordinary to you?

A Because usually it was -- when you look into the driveway -- I mean, not supposed to be there, and so I just -- it was just not ordinary that something like that would be in front of a tire that -- none of his tires were flat, you know?
Q You have known Dr. Pierce a long time?
A Yes.
Q Does he normally leave things lying around?
A No.
Q Did you learn of the explosion that day?
A Yes.
Q When did you learn of it?
A When I made it to work.
Q About what time did you get there?
A About 8:05.
Q After that, did you meet with any law enforcement officers?
A Later that morning.
Q And did you do any drawings for them?
A Yes, I did.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY
Q I just handed you what has been marked for identification purposes as Government Exhibit 58-A and 58-B. Have you seen these before?
A Yes, I have.

Q What are they?
A My drawings.
Q And I smiled at you, and why did I smile at you?
A Because these are bad drawings.
Q Are these the diagrams that you made for the officers?
A Yes.
Q Are they the -- to scale? Is the house the right size?
A No.
Q But do they fairly and accurately represent what you saw on the morning of February 4, 2009?
A Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 58-A and 58-B.

MS. CASSINELLI COUCH: No objection.

THE COURT: They're received.

(Government's Exhibits 58-A and 58-B received in evidence.)

BY MS. WHATLEY

Q Let's look at 58-A, and for the record can we say that this is the really bad one?
A Yes, we can.
Q Okay. There is a -- we will call it a rectangle. What does that represent?
A That is supposed to be a car.
Q Whose car is that supposed to be?
A Dr. Pierce's.

Q And there is a circle in front of that. What is that?
A That would be the doughnut tire.
Q Let's look at 58-B. As you were driving down the street, you would have been at the four-way stop sign at Cooper and Avalon, correct?
A Correct.
Q Explain what the rest of the picture is.
A Okay. The four-way stop sign and then to the left is Dr. Pierce's driveway and the little small square is the tire, the doughnut tire, and that would be Dr. Pierce's vehicle, the SUV, and then there is a flower bed, and then to the left is their house which is bigger than that, and then behind Dr. Pierce's SUV is Melissa's car.
Q And did you know what both of them drove?
A Yes.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: Yes.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH

Q Hi, Ms. Oakley. You testified on direct that you could clearly see down the driveway from the direction you were coming down Avalon; is that right?
A Yes.

Q And on your diagram --

MS. CASSINELLI COUCH: Excuse me, Your Honor.

BY MS. CASSINELLI COUCH

Q Did you draw this or did somebody draw it for you?

THE COURT: Hold on just one second, Ms. Couch. Can you see that in the jury box? Okay. Now?

(Jurors indicating.)

BY MS. CASSINELLI COUCH

Q Did you draw this one or did someone assist you in drawing that?

A I did.

Q And did you draw this one as well?

A Yes.

Q Okay. And lastly, do you recall if -- was the spare tire leaning against the SUV or separated from it?

A It was laying flat in front of the driver's tire.

Q Okay. Thank you very much.

A Uh-huh.

THE COURT: Any cross, Mr. Dudley?

MR. LASSITER: No, Your Honor.

MS. WHATLEY: One question, Your Honor.

REDIRECT EXAMINATION

BY MS. WHATLEY

Q You said you drove by a little before 8:00. Was the sun up?

A Yes.
Q I guess what I am asking is, was it dark outside?
A No. It was light.
MS. WHATLEY: No further questions.
THE COURT: Anything else, Ms. Couch?
MS. CASSINELLI COUCH: No, Your Honor.
THE COURT: You can stand down.
THE WITNESS: Thank you.
THE COURT: Call your next.
MR. GORDON: United States calls Lyne Courtney.
THE COURT: Has Ms. Courtney been sworn in?
MS. WHATLEY: She has, Your Honor.
THE COURT: Okay.

LYNE COURTNEY, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON
Q Ma'am, please introduce yourself to the jury.
A Sure. I am Lyne Courtney.
Q And to make sure we have your name correct, would you spell it for us, please?
A Sure. Lyne is L-Y-N-E. Courtney, C-O-U-R-T-N-E-Y.
Q And what do you do for a living, ma'am?
A I am a litigation paralegal.
Q Who do you work for?
A Holland and Associates.

Q And how long have you been a paralegal?
A Since '95.
Q Do you live in West Memphis?
A I do.
Q How long have you lived there?
A I lived there most of my life. I have moved to Memphis a few times in my adult years, but I always move back.
Q And did you live in West Memphis on February 4, 2009?
A I did.
Q If you would, tell the jury where you were and what you were doing that morning at about 7:45.
A Sure. I was on the way to take my two boys to school. I have a -- at the time -- they are two years apart and one was in junior high and one was in high school.
Q Is one of their schools on Avalon?
A It is.
Q What's the name of that school?
A That's West Junior High School.
Q And did you drop one of your sons off there?
A I did. My youngest.
Q What did you do after that?
A I went -- headed straight down Avalon toward Cooper where I would normally take a right on Cooper and head toward the high school.
Q As you were driving down Avalon, did you notice anything

unusual that morning?
A Yes. Zac and I were driving along, and we heard a loud explosion and saw an explosion happen in front of us.
Q If you would, turn and tell the jury what you heard and what you saw.
A Sure. It was just a really loud noise. My first instinct was a transformer blew up right beside us, but obviously that wasn't it. We could see the cylindrical fire explode over a concrete wall that was around Dr. Pierce's house at the time.
Q Was it a flame?
A It was a flame, bright orange.
Q Bright orange? And it went up instead of out?
A Yes. From what we could see, it went straight up.
Q And how long could you see this flame?
A It was just a few seconds.
Q What did you do after you saw the explosion?
A We went ahead and pulled to the four-way stop, which is right there. Dr. Pierce's house would be on the corner of that. That's when I noticed something in the driveway that looked charred, and after a second or two, I realized it was a man.
Q What was the man doing?
A He was bent forward, kind of hunched over with his hands out in front of him, kind of like this.
Q Was there anything in his hands?
A Not that I could see.

Q And --

THE COURT: Mr. Gordon, I really could not tell what the witness was saying.

Would you do me a favor and stand up so I can see what you are trying to show us?

THE WITNESS: Oh, sure. Sure.

THE COURT: And let the jury see because I couldn't tell.

THE WITNESS: When I came to the four-way stop, I saw what I realized was a man. He was kind of hunched forward with his hands out in front of him sort of like this.

THE COURT: Okay.

THE WITNESS: Just hunched over.

BY MR. GORDON

Q But nothing in his hands?

A Not that I could see.

Q Were there any cars in the driveway?

A Yes.

Q Was the man standing near a car?

A He was.

Q Do you remember what the car looked like?

A It was a white SUV crossover-type car.

Q And where was the man in relation to the car?

A He was on the driver front of the car, just beside it, slightly in front of it.

Q How close?
A Close enough to touch it.
Q Facing the car?
A Yes, sir.
Q After you saw the man, what did you do?
A I pulled through the four-way stop and pulled to the street -- to the curb, told my son to call 911. I immediately got out of the car. At that point I see a woman running from the house around the car, and she is yelling at me to call 911.
Q Did you see the woman come out of the house?
A No. I just saw her coming around the car.
Q What was this woman wearing?
A She was wearing a bra and panties.
Q And she was yelling, "Call 911"?
A Uh-huh.
Q Is that a yes?
A Yes. I'm sorry, yes.
Q Did you call 911?
A I didn't. I had already told Zac to and, when I turned around, there was another lady who had pulled up and she was on her cell phone. I said, "Are you on the phone with 911?" And she said yes.
Q I don't know if you said this already. Is Zac your son?
A He is.
Q Okay. When the woman ran around the car in the driveway --

A Uh-huh.
Q -- where did she go?
A She went straight to the man.
Q And what happened next?
A He kind of fell into her, and they just kind of went to the ground.
Q Did you hear the man say anything?
A As I was approaching, he said, "Get my wife." And she was saying, "It's me. It's me, honey."
Q Did you know who this man and the woman were?
A No.
Q Do you know Dr. Trent Pierce?
A I do.
Q How do you know him?
A He is my family physician.
Q How long?
A A long time. I believe I started going to him right after my son was born in '94 --
Q Okay.
A -- because I had quit seeing the pediatrician.
Q Does he treat your sons as well?
A My oldest.
Q Did you know that that was his house?
A No.
Q Did you know that the woman was Melissa Pierce?

A No.
Q Had you ever met Melissa Pierce before?
A Not that I recall. I may have seen her at his office, but I don't think I would have recognized her anywhere.
Q What about Dr. Pierce? Under normal circumstances would you have been able to identify him?
A Oh, definitely.
Q Yes?
A Yes.
Q Did you recognize him there in the driveway?
A No, no. I wouldn't have recognized him if he had been my dad.
Q Describe to the jury what he looked like.
A He was lacerated all through the front. His clothes were ripped, burned. He was covered in black, appeared to be burnt from head to toe.
Q How about his face?
A Yes. His face was -- my thought was he didn't have a face.
Q Was there any blood?
A Yes.
Q Could you smell anything?
A I smelled burning flesh, burning hair.
Q And when did you first learn or realize that that man was actually Dr. Pierce?
A Not until later that day. My mom had read it or seen it on

the news and had called and said, you know, "That was Dr. Pierce, and there seems to be some foul play. You should probably call the police and let them know you were there."

Q Okay. Now, when you ran up into the driveway -- when you got out of your car and ran into the driveway and Dr. Pierce and Melissa Pierce just kind of dropped to the ground, did Mrs. Pierce ask you to do anything?

A She did. She asked me to go in the house and get a blanket.

Q What do you recall about the weather that day?

A It was freezing.

Q Did you go in and get a blanket?

A I did.

Q Tell us about that.

A I went in the house to get a blanket. Their house is extremely clean. There is not any clutter or anything anywhere, so it took me a few seconds. I was just trying to find a throw or a blanket on the back of the couch or at the end of the bed. There wasn't any. I did finally locate a blanket and took it to her. It seemed like I was in there forever, but it was not maybe but ten seconds.

Q What did Mrs. Pierce do with the blanket?

A When I brought it out to her, she wrapped it around Dr. Pierce and kind of held on to him and the blanket.

Q Did you go back into the house?

A I did. I ran back in. I had noticed a coat right inside the door, and I got the coat. She wouldn't let go of him to put it on, so I knelt behind her and held it over her.
Q To keep her warm?
A Right.
Q When you came back out with the coat for Mrs. Pierce, was there another man there?
A There was. Right after I came back out with the coat, another man had walked out, and he had some coveralls that he had brought to cover her up. But I had already had the coat around her.
Q Was Mrs. Pierce using his phone?
A Yes.
Q While you were there, did an ambulance arrive?
A It did.
Q How fast did it get there once you arrived on the scene?
A It seemed like an eternity, but I don't think it was more than three or five minutes at the most. They were there actually really quick.
Q When the ambulance arrived, what did you do?
A I kind of backed off because she was standing up to back off to let the EMTs in, and so I backed off. And she started putting on the coat as the EMTs came in, and I just stepped back.
Q Did Mrs. Pierce get in the ambulance?

A I wasn't outside when the ambulance left, but I believe that she did.
Q Where were you?
A I had gone back in the house to try to get her some clothes to put on because I figured she didn't care that she was in her underwear at the moment, but she might care at some point. So I ran back in to try to get her some clothes.
Q And when you came out she was gone?
A She was already gone, and so I gave them to a family friend that was there and was going to be headed to the hospital right behind them.
Q And did you lock up the house?
A No. He did while I was standing there.
Q The friend?
A Uh-huh.
Q From there, what did you do?
A I went back to my car and took Zac on to school.
Q Did you-all get there on time?
A Uh-huh. He was there on time.
Q All right. How fast did all this happen?
A Extremely fast. Probably within ten minutes or less. Probably less than ten minutes, everything happened.
Q Everything that we have talked about?
A Right.
Q And then when did you notify the police what you saw?

A I called later that afternoon and left a message with the West Memphis Police Department, my name and contact information and my involvement.
Q Okay.
MR. GORDON: Your Honor, may the witness step down?
THE COURT: Yes.
BY MR. GORDON
Q Ms. Courtney, I am going to show you Government Exhibit 54. Do you recognize this picture?
A I do.
Q Do you recognize that as a neighborhood there in West Memphis?
A I do.
Q And does this area show where you were the morning of February 4, 2009?
A Yes, sir, it does.
Q Can you point at Government Exhibit 54 and show us where the school was that you dropped your son off at?
A Sure. The school would be right here actually. This is a circle drive to the junior high.
Q Okay.
A So I would have pulled out right here and dropped him off.
Q For the record, I guess, there is a -- at the intersection of Barton and North Avalon, that inset picture is kind of covering the school?

A Yes. I believe the school address is actually Barton, but it's that whole block.
Q So that's where you dropped your son off?
A Yes, sir.
Q And then show the jury where you drove.
A Okay. I went straight through here. This is a four-way stop you have to stop at, and in the mornings it takes awhile to get through because all the kids get dropped off.
Q When you say "here," identify --
A Okay. This is the four-way stop at North Avalon and Barton, and then I would drive straight on through. This is actually another stop sign and then I would come on this way and I would take a left right here. This is where I would normally take a left.
Q On to Cooper?
A Uh-huh. And then I would take a left on to Pierce, and this is the high school over here.
Q All right. Show us where you were when you saw the explosion?
A Sure. I was about right here.
Q For the record, it's midway between -- on Avalon, midway between Roosevelt and Cooper?
A Yes.
Q And you were headed south?
A Yes.

Q And then show us where the stop sign was that you stopped at when you saw Dr. Pierce in the driveway.
A When I saw that, I kind of stopped right here because it startled us. I went ahead and rolled slowly to the four-way stop where I stopped, and that's when I realized that was a man and somebody was injured. So I hurriedly moved through this four-way stop and pulled over here, right in front of their driveway on the opposite side of the street.
Q And for all of our benefit, show us where it was that you saw the explosion.
A It was right here.
Q For the record, it's just south of the intersection of Cooper and Avalon on the east side?
A Yes.
Q Thank you.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON
Q Ms. Courtney, I am going to show you what I have marked as Government Exhibit 60. Do you recognize that photograph?
A I do.
Q Is that a fair and accurate depiction of Dr. Pierce's driveway shortly after you got there?
A It is.
MR. GORDON: Your Honor, we would offer Government's 60

into evidence.

MS. CASSINELLI COUCH: No objection.

THE COURT: It's received.

(Government's Exhibit 60 received in evidence.)

BY MR. GORDON

Q Okay. Ms. Courtney, are you in this photograph?

A I am.

Q Where are you?

A This is me right here.

Q Okay. And for the record, in the -- sort of in the center of the picture, there is someone squatted down with a white T-shirt on, you can see the back of the white T-shirt?

A Yes.

Q Is that you?

A Yes, sir, that's me.

Q What are you doing in that photograph?

A I am actually knelt down behind Mrs. Pierce holding a coat around her.

Q All right. And in that photograph is the hood up or down on the white SUV in the driveway?

A It's down.

Q And the driver's door, is that open or closed?

A It's open.

MR. GORDON: May I approach the witness again, Your Honor?

THE COURT: You may.

BY MR. GORDON

Q Let me show you what has been marked as Government Exhibit 61-A. Do you recognize that?

A I do.

Q Is that a fair and accurate depiction of the -- of the white SUV that was in the driveway when you saw it there that morning?

A It is.

MR. GORDON: Offer Government Exhibit 61-A.

MS. CASSINELLI COUCH: No objection.

THE COURT: It's received.

(Government's Exhibit 61-A received in evidence.)

BY MR. GORDON

Q Ms. Courtney, is that the damage that you recall seeing to the car when you were there?

A It is.

Q What's that in the front right corner in the bushes, that red thing?

A That's the blanket that I had gone into the house to get that was -- that Mrs. Pierce wrapped around Dr. Pierce.

Q Thank you, ma'am.

MR. GORDON: Pass the witness.

THE COURT: Cross-examination?

MR. HENDRIX: No questions, Your Honor.

THE COURT: Okay. Mr. Dudley?

MR. DUDLEY: No questions, Your Honor.

THE COURT: Okay. Ms. Courtney, you can stand down. Call your next.

MR. GORDON: Your Honor, there is some question about if our next witness is back from lunch yet. I hope he is. The United States calls Jimmy Evans.

THE COURT: Has Mr. Evans been sworn in?

MR. GORDON: He has not, Your Honor.

THE COURT: Do you have any other witnesses back there who you can bring down and get them sworn in?

We're going to have you come on down and get all three of you sworn in at the same time. Is there anyone else back there or are these the only three we have here?

MR. GORDON: This is all right now, Your Honor.

(Jimmy Evans, Mark Gibson, and Anita Brinkley were sworn.)

THE COURT: Okay.

MR. GORDON: Your Honor, for the record, it's Jimmy Evans, Mark Gibson, Anita Brinkley.

THE COURT: Okay. Thank you.

Mr. Evans, you can come have a seat right over here.

JIMMY EVANS, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON

Q Please turn and introduce yourself to the jury.

A I'm Detective Evans, West Memphis Police Department.
Q And, Detective Evans, how long have you worked at West Memphis PD?
A Eight years.
Q And what's your current assignment?
A I'm a detective with the narcotics division.
Q How long have you held that position?
A Approximately a year and a half.
Q What did you do before that?
A I was a -- prior to a detective, I was on the patrol division and also assigned to SWAT, SRT.
Q What is SRT?
A Special response team, the same basic principle as SWAT teams.
Q Do you have any other law enforcement experience?
A A little over a year with Crittenden County sheriff's office.
Q What did you do for them?
A I was a patrolman.
Q Were you on duty the morning of February 4, 2009?
A I was.
Q If you would, please tell the jury where you were and what you were doing at about 7:45 that morning.
A I was sitting at West Junior High on South Avalon -- on North Avalon, excuse me -- on North Avalon just -- I was just

north of the intersection of Barton and Avalon. I was working crosswalk detail for the patrol division. We had had complaints about children -- cars not stopping for children crossing the crosswalk. That's what I was doing that morning.

Q And were you in a car or out of a car?

A I was sitting in the driver's seat of my squad car.

Q And while you were sitting there, do you recall something unusual happening?

A Yes. I heard a loud explosion while I was sitting there. I had the window on my squad car rolled down, and I was sitting there. And I heard a loud explosion, which it was distant from where I was, but you could still feel some pressure from the explosion from where I was at.

Q So you heard it and you felt it?

A Yes.

Q What did you feel?

A It was just like a -- it's a small amount of pressure that -- it's a shock wave that pushes against the body or will push -- kinetic energy that pushes out from an explosion is the only way I can explain it.

Q Describe what it sounded like.

A It sounded to me like a transformer blowing up, is what it sounded like.

Q And when you heard the explosion, what did you do?

A I -- at the time it went off, I thought it came from behind

me. So I turned my squad car around and started traveling northbound on Avalon to Ross, and I made a right turn on to Ross traveling eastbound. At that time I got a call across the radio from the dispatcher saying that there had been an explosion, a tire had exploded at -- they give the address. I can't recall the exact address.

Q Was it a house on Avalon?

A Yes, it was. It was on Avalon Street. But they called out Trent Pierce's name, and I knew exactly where he lived. So at that point, I spun around and initiated my lights and siren -- sirens and headed that way.

Q Okay. How did you know the name Trent Pierce?

A He is a well-known physician in the West Memphis community. He has treated me several times, and I have also sat on some board hearings with him as a witness.

Q All right. Do you know where his house was?

A Yes.

Q And how far away were you when you got the call?

A When I got the call, it was approximately three blocks.

Q And how long did it take you to get from where you -- where you were when you received the call to his house?

A I would say approximately a minute. Maybe -- maybe just a little bit longer.

Q Were you the first law enforcement officer on scene?

A Yes.

Q Were other people gathering?
A Yes.
Q Tell us what you saw when you got on the scene.
A As I was pulling up, you could see a vehicle with a bumper removed. That caught my immediate attention, and then by the flower bed -- there was a flower bed to your right with fieldstone that -- around the flower bed. Against the fieldstone was somebody -- somebody covered in with a blanket and a female hovered over him.
Q Did you have any idea what had happened?
A At that time, no. No, I didn't.
Q Could you tell if the person wrapped up in the blankets was a male or a female?
A No. You couldn't tell.
Q Okay. Did you ask the female what had happened?
A When I exited my car and walked up there, there was a male there that was -- I think he was trying to talk to me and I was trying to take in what was going on and the female was beside herself. I mean, she was really hysterical and I couldn't -- I didn't know who she was either. I was trying to figure out what was going on and, when I looked down and seen him, I knew, you know, there had been an explosion. And you could -- at the same time -- I mean, trying to put all this together and put it in words. At the same time you had that odor, the odor of gunpowder or blast, what I call blast odor, the fragmentation of

the bumper. And about the time I started realizing somebody was injured, the ambulance came up.

Q So the odor, did you recognize the odor?

A Yes.

Q How did you recognize it?

A I recognized odor. We do explosives entry on warrants, barricades, and hostage rescue. It's the same odor that that gives off when we blow a door open. And we had just returned from a weapons of mass destruction bomb school in New Mexico. That was the same odor that all of their bombs would give off as well.

Q While you were trying to figure out what had happened, did an ambulance arrive?

A Yes.

Q And did you know the paramedic who was on that ambulance?

A I knew one of them.

Q Who was it?

A Mark Gibson.

Q And when the paramedics arrived on scene, what happened then?

A At that time Mark came up with a stretcher. He came running up with a stretcher. I remember Mark saying, "Let the stretcher down," but before he could let it down, we grabbed the person and put him on the stretcher for them to take off. Take him. Mark, I was on the -- when Mark grabbed him, I was in back

of Mark. The other medic or EMT grabbed him -- I don't know what he was -- grabbed him by the feet, and I grabbed the left side of him. I was to the left side of the individual, and I helped pick him up and put him on the gurney.

Q In the process of loading this man on to the stretcher, did you get a good look at him?

A I got a partial look at him.

Q Tell the jury what you saw.

A What I seen is -- you could tell the front of his hair was burnt. It was singed. It looked like this part of his face -- I mean, it was -- I could tell from the whole impression something had went off in his face.

Q And you are talking about which side?

A The left side.

Q What else?

A The right side of his face had -- to me, it looked like smoldering. It's ash. It was just black. You couldn't really tell. And it wasn't -- I mean, you just couldn't tell who it was. The shirt he had on was singed, and it looked like it was singed to his body more or less. That's about all I could see at that quick of a moment, and then he was gone.

Q What else did you smell?

A You could smell burning flesh, the hair. That's about all I can remember to be honest.

Q Did you recognize the man?

A No.
Q When did you find out it was Dr. Trent Pierce?
A Several minutes afterwards, one of the firemen who came on the scene advised me.
Q Based on what you saw, did you think the man was going to survive?
A No.
Q How long would you say the -- how long were you on scene before the man was taken away in the ambulance? Best guess.
A I am going to say not -- I wasn't there five minutes and he was gone.
Q Okay. Maybe not even that long?
A Maybe not even that long. That's the maximum time. If I had to put a high-rate guess on it, it would be less than five, five or less. I don't think five minutes would -- it was -- it just happened so fast.
Q All right. When Dr. Pierce was taken away, did you get a look at the vehicle that was in the driveway?
A Oh, yes.
Q Okay. Do you remember what color or type?
A It was a -- what I consider to be cream color to me.
Q All right.
A It was a -- it was a hybrid vehicle. I remember the hybrid stamp being on the back of the vehicle. I remember walking around the vehicle looking at it and --

Q Did you see any damage?
A Yes.
Q Did you see --
A Directly from the front bumper is where it appeared to be.
Q Any other damage?
A There was -- the grille and the headlight was moved up, but that's it. The main focus of the damage was from the front bumper.
Q Was there debris in the driveway?
A Yes.
Q Do you recall, was the hood up or down?
A Upon arrival, it was down.
Q How about the driver door?
A It was open.
Q At some point did the West Memphis Fire Department arrive?
A Yes.
Q Tell us what happened when they got there.
A When the fire department showed up, I don't know what their -- how they got their initial assessment, but they said that it looked like a battery had exploded.
Q Did you agree with that?
A No.
Q Why not?
A One, I have never seen a battery in a bumper. Two, I have seen battery explosions, several, and I have never seen one do

that much damage from what had occurred here. Plus, I had seen the hybrid, and I am not sure about all hybrids, but 90 percent of your hybrids, the batteries are in the trunk. They are not even in the engine compartment.

Q Did you talk to the fire department?

A We had some -- some discussion about opening that hood.

Q Was that a friendly discussion?

A No. Not at all.

Q Who won that discussion?

A Well, they -- they basically told me they were going to open that hood, and at that point I told them to give me time to get behind a wall for protection. They start working on the hood as I am walking away. And my captain walks around the corner, and I grab him by his gun belt and pulled him behind the wall with me.

Q Why did you want to be behind the wall?

A Secondary explosion. I wasn't sure what was going on, but it didn't look normal to me. And I have never -- you know, you respond to thousands of scenes a year, and there is always one that's going to be unusual. This was the one that was unusual. It stood out.

Q And what happened? Did the fire department open the hood?

A Yes, they did.

Q What happened?

A They opened the hood and could not find a battery under the

hood.
Q Did you-all eventually find the battery?
A Yes, sir. We had a brief discussion about it, and I don't know how much time it was. Somebody showed up with a schematic of the vehicle, a layout of where everything was in the vehicle, and the batteries were in the trunk of the vehicle -- or in the back compartment of the SUV.
Q So once you figured out the battery wasn't at play here, what happened next?
A At that point I discussed with my captain it being a homicide scene, a possible homicide scene, and he immediately -- I don't know who he contacted, but he contacted somebody to contact the bomb squad in Memphis. Perimeter was set up. We clear a certain area around the initial scene and lock it down with personnel so people cannot come in and out and disturb evidence.
Q And you mentioned that the bomb squad was called?
A Yes, sir.
Q Why were they called?
A At that point we thought it could be a secondary explosive. We discussed -- I discussed with my captain there being a secondary explosive there.
Q And what do you mean by "secondary explosive"?
A On some bomb scenes, if somebody means to do somebody harm, they will set a second explosive in case the first doesn't work.

It's like a booby trap.
Q Okay. Were you involved at all in collecting any evidence?
A No.
Q Once you cleared the scene, what did you do?
A My initial reaction was to go start a report. I was called by my commanding officer and advised not to, that the -- this scene was going to be turned over to the ATF and to wait on them and any reports or anything put on paper would be at their request.
Q Okay. And did you go back on patrol?
A Yes. I left then and reported back to the perimeter and was put on a post there to hold down an area to keep people out.
Q All right. The patrol car, did it have a video camera in it?
A Yes, sir.
Q What triggers the video camera to come on?
A There are several ways to trigger it. You can trigger it by your body mike alone. You can trigger it by just initiating the blue lights. You can trigger by just initiating the sirens or those in combination or a certain mile-per-hour will trigger it and make it come on.
Q So this particular morning, when you got the call about an explosion at the Pierces' house, did you turn on your lights and siren?
A Yes, sir.

Q And did that activate your camera?
A That's what activated the camera.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON
Q I am going to show you what has been marked as Government Exhibit 59. Do you recognize this?
A Yes, sir.
Q What is it?
A It's a CD of my camera feed.
Q Okay. And did you watch this before testifying?
A Yes, I did.
Q How do you know what's on here?
A I watched it and then initialed it and dated it.
Q And that's what's written on the disk itself?
A Yes, sir. My initials and today's date.
Q And is this a fair and accurate recording of what happened when you responded to the call on February 4, 2009?
A Yes, sir.
MR. GORDON: At this time we would offer Government Exhibit 59.
MR. HENDRIX: No objection.
THE COURT: It's received.
MR. GORDON: Permission to publish.
THE COURT: Yes, it's received.

(Government's Exhibit 59 received in evidence.)

MR. GORDON: Permission to publish?

THE COURT: Yes.

(Government's Exhibit 59 was played in open court.)

BY MR. GORDON

Q I want to pause it real quick and ask you, in the bottom left-hand corner of this video, what are all those numbers?

A That's the date and time stamp on the recording from the recorder itself.

Q Okay. And in a few moments here, in the bottom right-hand corner, some letters are going to pop up.

A Yes, sir.

Q Tell us what those are.

A It should be LB, MC, and SR. The LB is going to be light bar, the MC is going to be body mike, and the SR should be siren.

Q Okay.

(Government's Exhibit 59 was resumed in open court.)

THE WITNESS: I am sorry. That was BM.

BY MR. GORDON

Q Officer -- Detective Evans, I paused it at 7:55:29 seconds. Is that Dr. Pierce's driveway there on the left?

A It is.

Q Detective Evans, I am going to show you what has already been admitted as Government Exhibit 60. Is this picture here,

is that a still frame from the video we just watched?
A Yes, sir, it is.
Q Detective Evans, I want you also to look at Government Exhibit 61-A, please. Do you recognize that?
A Yes, sir. That's the way the vehicle was when I first arrived.
Q Okay. And are those firemen in this picture?
A Yes, sir.
Q One outside and one kind of climbing into the car?
A Yes, sir.
Q What are they doing there?
A They are attempting to raise that hood.
Q Let me show you Government Exhibit 61-B, 61-C, 61-D, are those fair and accurate depictions of the scene and the damage to the vehicle that you saw this particular morning?
A Yes, sir. This is after the hood has been raised, yes, sir.
MR. GORDON: I would like to offer Government 61-B, C, and D.
MR. HENDRIX: No objection.
THE COURT: They're received.
(Government's Exhibits 61-B through 61-D received in evidence.)
BY MR. GORDON
Q Look at 61-B here with us, Detective Evans. When was this

photo taken?
A This was taken several minutes after the hood was -- the hood had been lifted. They came and -- that's me to the left.
Q In the black pants?
A Yes, sir, in the black pants. They came and got me and wanted to know where the battery was in the vehicle.
Q Let's look at 61-C. What's this?
A This is -- this is after the hood had been raised. We have cleared out. They're still trying to find the battery here.
Q Does that show some of the debris in the driveway?
A Yes, sir. It's the debris in the driveway, and still the blanket that Dr. Pierce was wrapped in to the right.
Q 61-D, is that a closeup of the damage to Dr. Pierce's vehicle?
A Yes, sir.
Q Thank you, Detective.

MR. GORDON: Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX
Q Just very, very briefly, detective. Other than responding to the scene that morning, were you involved in the investigation of this case?
A No, sir.
Q Did it immediately get turned over to ATF?

A As soon as they arrived. I don't know what the time was on it, but as soon as they arrived.
Q You didn't do any witness interviews or anything like that?
A No, sir.
Q Did anybody with West Memphis PD that you are aware of?
A We had an officer take statements, I think some statements of some of the people that were standing around.
Q Just there at the scene, but in the long-range investigation?
A No.
Q Okay. Thank you very much.

THE COURT: Mr. Dudley?

MR. LASSITER: No questions, Your Honor.

THE COURT: Anything else?

MR. GORDON: No, Your Honor.

THE COURT: Officer, you may stand down.

Call your next.

MR. GORDON: Thank you, Your Honor. Mark Gibson.

MARK GIBSON, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON

Q Good afternoon, sir. Please introduce yourself to the jury.
A Mark Gibson.
Q Who do you work for, Mr. Gibson?

A West Memphis Fire Department.
Q How long have you worked there?
A A little over -- or right at 20 years.
Q And what do you do for the fire department?
A I am a firefighter/paramedic.
Q Tell us what that means, please.
A It means I respond to house fires, fight fires. I respond to emergency medical and trauma calls and treat people. Basically, drive an ambulance.
Q Okay. What sort of training do you have that qualifies you to be a paramedic?
A First of all, you go for approximately 160 hours to get basic EMT. Then you have another 800-something hours of classroom time and approximately a thousand hours of clinical or field time. Then you take a national test and get your paramedic certification.
Q Okay. Are you certified?
A Well, it just changed the licensure, but yes, when I initially got it, I was certified.
Q And how often do you have to renew your certification or your license?
A Every two years.
Q How long have you been a paramedic?
A About 24 years.
Q Okay. 20 with West Memphis; what about the rest?

A I spent about four years with a private ambulance service out of Jonesboro.
Q And do you still work there as well?
A Yes, I do.
Q Part time?
A Yes, sir.
Q Were you on duty the morning of February 4, 2009?
A Yes, sir, I was.
Q Do you remember receiving a call just before 8:00 o'clock that morning?
A Yes, I do.
Q Can you tell us exactly what time the call came in?
A 7:47 a.m.
Q What was the nature of the call?
A The call was unknown problem to respond to 411 North Avalon.
Q Did you respond there?
A I did.
Q Did you respond by yourself?
A With my partner, Blake Sims, and also a fire truck responded with us.
Q And you and Mr. Sims were in the ambulance?
A That's correct.
Q When you arrived on scene, were there any law enforcement officers there?

A Yes. There was two. Officer Jimmy Evans and also Officer DJ O'Clare.
Q Would you -- what did you see when you arrived on scene?
A I noticed a light-colored SUV with damage to the front and to the driver's side front quarter panel. Also noticed a white male sitting on the ground and a white female hovered over him.
Q Okay. Did you have any idea what had happened?
A No.
Q What was the female doing?
A She was very hysterical, screaming to -- that she was a nurse and to get her a helicopter right now.
Q And what was this lady wearing?
A She was wearing a dark colored brown sweater-type dress and a pair of panties.
Q Did you know who the female was?
A No, sir.
Q Could you tell who the male was?
A No, sir.
Q Did you ever identify who the male was?
A After asking the white female, I said, "Ma'am, what is your husband's name?" And she responded, "It's Dr. Trent Pierce."
Q Okay. Do you know who Dr. Trent Pierce is?
A Yes. I know him very well.
Q How do you know him?
A I have had several dealings with his patients, going to his

office to pick up patients over the past 20 years.
Q Okay. In 20 years as a paramedic, how many times would you say you have seen Dr. Pierce?
A I would say over 100 times at least.
Q Okay. If you ran into him under normal circumstances, would you recognize him?
A Yes, I would.
Q Did you recognize him that morning in the driveway?
A No, I did not.
Q Tell the jury what he looked like.
A Well, he was wearing a -- appeared to be a dark gray or black wool jacket. You could tell he had a tie on. He had dress pants on. It looked like something from a play or a theater. Looked like somebody had poured a can of red paint over his body. He didn't have active bleeding that you could see, but his burns and everything gave the red appearance. It looked like his hair was wet when it was actually burned and singed the way that he had his hair.
Q What about his face?
A His face had severe burns to it.
Q And how about his eyes?
A His eyes, when I examined them, they looked like somebody basically took some sand paper and went over their eyes. They were really dull, wasn't shiny like normal corneas are.
Q Was he conscious?

A He was.
Q Was he responsive?
A Yes.
Q When you saw Dr. Pierce's condition, did you make any decisions?
A Yes. Whenever I first got to the scene, Officer Jimmy Evans came up to the ambulance and told me he had a helicopter en route. So I knew the helicopter was on its way, but due to the temperature -- and I am just guessing. I don't know for sure. It was probably in the upper 20s, low 30-degree. So due to his injuries and the climate, I decided to do a rapid transport and transport him to the hospital there in West Memphis, which is Crittenden Regional Hospital, where we could administer treatment until the helicopter arrived.
Q So what did you do with Dr. Pierce?
A I told my partner to go get the stretcher. We placed him on the stretcher and into the back of the ambulance and transported him to the hospital.
Q What about Mrs. Pierce?
A We placed her in the front passenger seat after an argument.
Q She wanted to ride in the back?
A She said she was riding in the back. And, of course, when people are in a panic state, you have to take charge, and I told her no, she wasn't, to get in the front seat or she could find

another way up there.
Q So who was in the back?
A Myself and Dr. Pierce.
Q While you were in the back on the way to the hospital, did you talk to Dr. Pierce?
A I started my exam, and as -- the very first thing you do is establish responsiveness to find out if they're conscious, and if they are conscious, are they alert, ask them several different questions. And I asked him, "Trent, can you hear me?"
Q And did he respond?
A He said yes. And another effort to figure out what his level of consciousness was -- in other words was he alert, was he confused, whatever -- I asked him what had happened. At that time --
Q Did he respond to that?
A At that time he advised a spare tire had blew up on him.
Q Did you then examine Dr. Pierce?
A I did.
Q Tell us how you did that.
A We --
Q Do you need water?
A No, I am fine.
Q Okay.
A We do what we call a rapid physical exam, and it's where you go -- start at the top of their head and go to the bottom of

their feet looking for obvious injuries, such as obvious broken bones, any skins and cuts, any major bleeding. We make sure that their airway is open. We make sure they're breathing good. We make sure that their heart is beating good, and we just look for any obvious injuries that could be life threatening or otherwise.

Q Tell the jury what you found, please.

A Okay. The head, we found several third-degree burns to the scalp, head, and face.

Q Explain third degree for us, please.

A Okay. When you are burned, you have three degrees basically. First degree is like a mild sunburn. Second degree is a little bit worse. It's characterized by red skin with blisters, a bad sunburn, which is very painful. And then you have third degree, which it involves the -- all the layers of the skin and sometimes the fatty tissue, the nerves. It affects the nerves and everything. And a lot of times, it's painless and may have black appearance, charred appearance, but it's the most severe, third-degree burn is.

Q Most severe, but painless?

A Third degree, in essence, is -- technically is painless because it affects the nerves layer of the skin.

Q So once it destroys the nerves, it's painless?

A Right. There is no feeling them.

Q What else did you find? How about Dr. Pierce's ears?

A Okay. The ears, burns were noted to both ears. We were unable to assess adequately for any bleeding coming from the ears due to his facial trauma. Of course his eyes, we spoke about a while ago, he had corneal injuries and burns to both eyes. His nose, he had trauma and burns to the nose. Throat, he had first and second-degree burns to the neck. However, his trachea or his windpipe was in midline. We check for that. A lot of times if they have chest injuries, it may be deviated to one side or the other. So his trachea was midline. No swelling noted to the throat.

His chest was -- there was no major injuries noted to that. His breath sounds were good on both sides. Abdomen, his stomach was good, was soft. He wasn't tender. He had bowel sounds in all the quadrants. His pelvis was stable. His arms, he has a compound fracture to the right ulnar.

Q Explain that for us, please.

A The ulnar, you have two bones that go from your wrist to your elbow. The one on the thumb side is called the radius and the ulna is on the, this side.

Q And you said he had a compound fracture?

A Which means that the bone had broke and penetrated the skin. So the bone was sticking out of the skin.

Q What else?

A Okay. Let me see. Multiple lacerations and third-degree burns to both arms. However, he did have good peripheral

pulses, and SMCs were intact.

THE COURT REPORTER: I'm sorry. S-M-C?

THE WITNESS: S-M-C, sensory, motor, and circulation.

BY MR. GORDON

Q How about his legs?

A Okay. His lower extremities, he had multiple lacerations and had evulsion to the right knee.

Q Okay. Explain what an evulsion is.

A Okay. Evulsion is actually a tearing away of the skin. In this case he had a obvious -- you could see the kneecap itself and all the skin was torn away. Also had one on his right thigh.

Q Was there a lot of blood with these injuries?

A No.

Q Why not?

A Well, it's due mainly because of the heat of the blast, it kind of seared the skin, and it kind of cauterized the vessels so there wouldn't be much bleeding.

Q While you were in the ambulance, did you treat Dr. Pierce?

A Other than doing a -- the basic physical exam, we were in the hospital before any treatment could be done.

Q How long did it take you to get from Dr. Pierce's house to the hospital?

A About two minutes.

Q And how long was the entire call, from when you first got

it at the fire department until you arrived at the hospital?
A Seven minutes.
Q Where did you take Dr. Pierce?
A To Crittenden Regional Hospital.
Q And about how far was that from his home?
A About a mile maybe.
Q What time did you get to the hospital?
A Arrived at the hospital 7:54 a.m.
Q Tell us what happened at the hospital, please.
A I took him in and rolled him to bed 8C, which is normal protocol for critical patients. That's where we all know to take them. When I arrived there, Dr. Hashmi and several other hospital staffs and other doctors were there, but Dr. Hashmi was the ER doctor that day. So I started giving him my report as we was moving him over.
Q Okay. How did Dr. Hashmi react when you gave him your report?
A I told him that it was a hybrid car, and we don't know much about hybrids, you know? I said, I don't know. The battery may have exploded or something. I don't know. I said, Dr. Pierce said a spare tire blew up on him. I said, but there was damage to the front of his vehicle and to the right quarter panel. So I don't know. And he examined him. He said, "No. You call the police right now. This is a bomb. Call them and tell them this is a bomb."

Q Did you notify the police?
A Chief Powder, who is the police chief for West Memphis, he was there in the emergency room, and he relayed it back to the officers on the scene.
Q What did you do at the hospital?
A I helped them assess the patient further. I also helped them start IVs and get him bandaged up and ready, waiting on the helicopter to get there.
Q Okay. Were you there when Dr. Pierce was loaded on to the helicopter?
A Yes. I helped them load him on to the helicopter.
Q Where was the helicopter taking him?
A To the Elvis Presley trauma center or The Med in Memphis.
Q After Dr. Pierce was air lifted away, what did you do?
A We got our ambulance back in service. Got everything cleaned up and did a -- filled out our run reports that we fill out on every call, and then we returned to the scene.
Q Why did you go back to the scene?
A To -- they asked us to come stand by while everybody was working. When we got there, they had it barricaded off, and the Feds were there. The bomb squad, they had their dogs running around the scene and the yard surrounding.
Q And did you remain there the rest of the day?
A I did.
Q Thank you, Mr. Gibson.

MR. GORDON: Pass the witness.

THE COURT: Cross-examination?

MR. HENDRIX: No, Your Honor.

MR. LASSITER: No, Your Honor.

THE COURT: You can stand down.

THE WITNESS: Thank you.

THE COURT: How long is your next witness?

MR. GORDON: To be sure, can Mr. Gibson and Detective Evans leave? Are they released or at least subject to re-call?

THE COURT: Is there any need for these witnesses to hang around?

Okay. They're released.

THE COURT: Ms. Whatley, how long is your next witness; do you know?

MS. WHATLEY: Probably about as long as Mr. Gibson was, maybe a little bit longer.

THE COURT: And how many more do you have waiting today?

MS. WHATLEY: I have the one that we are about to call and then one more and then, depending on whether or not I get a witness here from Memphis out of turn.

THE COURT: We can get started with this one. Call your next.

MS. WHATLEY: Okay. Dr. Shakeb Hashmi. Dr. Hashmi has not been sworn, Your Honor.

SHAKEB HASHMI, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY

Q Please state your name for the record and spell your first and last name.

A Shakeb, S-H-A-K-E-B, last name H-A-S-H-M-I.

Q I can already -- you and I have talked a couple of times and I already know you talk a little fast. So if you will, slow down and make sure everybody on the jury can understand you.

A Occupational habit.

Q I understand. Are you a physician?

A Yes.

Q And how long have you been a physician?

A 16 years.

Q Where did you receive your training?

A Aga Khan University in Karachi, Pakistan.

Q What is your specialty?

A I am double boarded in internal medicine and emergency medicine.

Q When did you become boarded in internal medicine?

A 1996.

Q What about emergency medicine?

A 2003.

Q How are you employed? Who is your employer? I hate asking this question of you, but who is your employer?

A Well, the emergency medicine -- hospitals don't run their own emergency departments. They outsource the emergency rooms, and so I worked in medical director capacity for MCare and Schumacher Groups, nationally recognized companies. They have 300-plus hospital contracts and we have different regions and then we have assigned medical directors. I am the medical director at Crittenden Regional Hospital.

Q Spell Schumacher.

A S-C-H-U-M-A-C-H-E-R.

Q And Schumacher Group has a contract with Crittenden Regional Hospital?

A That's correct.

Q Where is Crittenden located?

A West Memphis, Arkansas. About five minutes from Memphis downtown.

Q I know you have a lot of hats that you wear at the hospital. Let's focus solely on the emergency department.

A Okay.

Q What is your role with the emergency department?

A I am a medical director of the emergency room.

Q How long have you been the medical director of the emergency room?

A Since 2007.

Q Were you working in that capacity on February 4, 2009?

A Yes, I was.

Q Do you recall getting a call from EMS that morning?
A Yes, I do.
Q And when you get those calls, are you normally told of the nature of the injuries that the patient has?
A Yes. It was a little confusing because your eyes don't see what your mind cannot perceive. I was told that they were bringing in a patient with possible burns from a car battery. That was told to me the first time.
Q Let me stop you there. When you are told of the nature of the injuries, what's the purpose of EMS or the police or whoever it is telling you -- telling you about those injuries?
A You mean what did they tell me or what was my understanding what was coming to the ER?
Q Just in general, no matter who is calling in. Why does EMS tell you the nature of the injuries? Are they needing to prepare you, needing you to get a room ready? Why do they tell you what they tell you?
A Oh, yeah. I got it. At the hospital we have established the trauma protocols, and the call was conveying: We are bringing in an unstable patient who may or may not survive. So we have to get ready. We have few minutes. We were expecting life threatening injuries. So we were ready for him.
Q On February 4, 2009, you said you were first told that the injuries were from a battery explosion?
A Yes. Unfortunately, the victim's spouse was obviously

upset, and her impression was that a car battery blew up on her husband. And when the EMS arrived, the patient had multiple body traumas and third-degree burns, head and neck area and facial areas, and had some open wounds and compound fractures of the extremities. So their assessment was a little more than that.

Q Let me stop you there. Prior to the time the patient arrived, were you told who the patient was?

A No.

Q At what point did you learn who the patient was?

A On arrival, the patient's spouse was there and I know her.

Q You know Mrs. Pierce?

A I do. Melissa.

Q And did you know Dr. Pierce prior to that morning?

A Yes.

Q And how long had you known him?

A Since 1996.

Q When Dr. Pierce arrived at Crittenden Regional Hospital, were his injuries consistent with a battery explosion?

A No. Actually, if I can add to that, I would not have recognized Dr. Pierce had his spouse not told me that -- who that person was. His injuries were quite severe. But we do these ABCs; that's the first rule of trauma. You identify the life threatening signs and symptoms first. So the moment I laid my eyes on him, I knew this was more than car battery. It

was -- the injuries were consistent with some kind of explosive injury causing the nature and the degree of his trauma.

Q And it was due to the nature and degree of his trauma that you believed it to be an explosive?

A That is correct. We, as medical directors, we have continuous medical education programs that we have to attend on regular basis to keep up with. After 911, I have attended a couple of courses to identify serious traumas and get your department ready to deal with multiple trauma victims. So I knew this was not a car battery burn. This was more than that, consistent with some kind of explosive injury causing all the injuries that the patient had.

Q You said you had learned of that through continuing education. Was this the first explosive injury you had had come into the hospital?

A No. I have seen some during residency program at University of Tennessee at Memphis. I have seen not directly, but indirectly at other places. I have covered 13 hospitals between MCare and Schumacher. So I have seen those injuries before. But to take care of patient directly as you being the responsible physician, that was pretty much the first time.

Q Can you articulate to the jury what Dr. Pierce's injuries were, starting maybe at the top of his head and then let's slowly work our way down the body?

A Yeah. I think I documented it on my T sheets. The patient

had what we call life-threatening critical injuries. He had severe third-degree burns of his entire face. You could not recognize his face. He had lost his entire left orbit, so I knew his -- he was going to be blind.

Q Let me stop you there because -- you said his orbit.

A Oh, I'm sorry.

Q That's his left eye?

A Oh, his left eye, it was all burned and charred. His entire hair was burned. He had singed nasal hair. That means he had some inhalation of the smoky material, whatever exploded on him. He was gasping for air, and the first thing I was able to get something out of him was he was having difficulty breathing. At that time I knew we had to secure his airways. So his face was severely burned. We call it third-degree burn. There is no other degree after that. He had eyeball -- we call it left orbital fracture, pretty much a totally damaged eye.

Then he had -- I am not going to call it shrapnel, but he had some evidence of puncture wounds all over his trunk, chest, abdomen, and all four extremities. And if I remember correctly, he had what we call open wounds, right lower extremities. They are considered open, complicated wounds, unstable wounds.

Q Let me stop you real quick. I'm sorry. I don't mean to interrupt.

A Sure.

Q You have said that he was unrecognizable or that you didn't

recognize him.

A Yeah.

Q And you have talked about burns. Can you kind of describe the color of his face and his extremities, what they looked like?

A Yes. Dr. Pierce is a Caucasian male, but he -- I am not sure -- he was totally black. Soot, skin was completely charred. That's what you call -- no sensation whatsoever on the face. But our job was to initially -- our job was to stabilize him long enough to live. So I don't remember in details. I did document on my T sheet the nature of the wound later on after we shipped him to The Med.

First was to secure his airways, which we did, put the central line. I am not sure. I am sorry, Karen, to describe third-degree burns, his Glasgow coma scale was 9, and I am not sure how to explain in layman terms; but I will try my best. He had post-concussive syndrome, significant blow to his head and neck area. He remembered a few things, but he was not aware of what was happening to him. So this what we call post-concussive syndrome. So he had possible loss of consciousness from his facial and head injuries.

Other than severe facial burns, he had burns on his trunk and extremities, but they were more patchy rather than confluent burns, which he had on the face.

Q You stated earlier that he had open wounds.

A Yeah.
Q Can you tell us what -- it seems kind of obvious, but to make sure we're on the same page, what is an open wound?
A They're complicated wounds, especially in trauma settings. Open wounds are when the skin is compromised. Subcutaneous tissues is compromised. You can see the bones, the underlying bones. That is what -- we call them open, complicated wounds. So I could see his bones in both his upper and lower extremities.
Q And were any of those bones fractured?
A I think his right lower extremity and right forearm, he had some fractures.
Q Was Dr. Pierce conscious during this period of time that he was at Crittenden Regional?
A On arrival, he was post-concussive, but his voice was getting hoarser. So you don't want to make them talk. You just deal with what you have there. The more you make them talk, the more the vocal cords get swollen. So I had a very limited conversation with him. What I remember was he said he was having difficulty breathing, but he -- that's my post-event assessment. I don't think he was aware of the severity of his injuries. So I would say he was a little bit -- not obtunded, but he was a little bit confused for sure.
Q Was he able to communicate with you through squeezing or moving of any extremities?

A Yes. Yeah. We skipped some obvious questions. I don't ask "are you hurting" when you see that kind of injury. So you are very selective when you have that degree of multiple body trauma with third-degree burns. So your history is different. So I remember telling him, he -- was happy that I was there. He knew me very well. So I asked him to squeeze my fingers if you had headache, if you have chest pain, if you have abdominal pain. Those are the basic things you -- because you have to localize sometimes what we call distraction injuries in multiple trauma patients. Face looks bad, but actually they're hurt bad in the liver and spleen. Those are distraction injuries, so we have to make sure that we cover major areas that trauma can have indications. So the liver and spleen is first. If he has ruptured spleen or liver, we need to identify that. But this kind of --

So he did squeeze that he did have some chest pain, did have some abdominal pain. I don't know if that answered your question, but I got the picture. His major injuries were basically head and neck and extremities. Thank God.

Q Based on the type of injuries he had, were those painful injuries?

A When you have third-degree burns, you don't hurt that much, ironically. But he was hurting from his open lacerations and fractures and overall internal injuries that he might have sustained at that time. So we did give him morphine. We did

follow the protocols that we follow for our trauma patients. We did give him antibiotics, the tetanus, the morphine for analgesia. We did secure the airways. He was intubated. Within 30 minutes, he had a central line, his wounds were cleaned and covered, and we immobilized him while I was on the phone with The Med trauma.

Q What's the purpose of doing a central line?

A You go down. With a major burn, you have a lot of loss of fluids. And once they get hypotensive, you can't get the pulse, you can't get the vascular access. So we do a central system. So you need to go ultrasound guided left IJ, internal jugular access, to give him lots of resuscitative fluids.

Q Was it your intent when he arrived to keep him at Crittenden Regional Hospital?

A Oh, not at all. The moment I laid my eyes, I told the staff, "We have 15 minutes." Realistically, I was thinking probably 25, 30 minutes, but if you set the goals too lenient -- you know what I am talking about. So we said 15 minutes he is going to decompensate, which he did right before we transferred him to The Med.

Q Why would you send him to The Med?

A He needed a team of multiple physicians. This was not the job of just one trauma surgeon. He needed a good anesthesiologist, a good neurosurgeon, a good facial maxillary surgeon. He needed the thoracics as well because he did have

some puncture wounds to his chest. He didn't have a pneumothorax by exam, but I didn't waste time for the X-ray. Laid him across table and did a C spine just to make sure his neck was okay. He also needed the plastics down the road because his skin was totally burned, unrecognizable. And he needed orthopedic surgeon as well to fix his traumas and fractures that he had.

And, of course, the general surgeons kind of, the -- they lead the team, but you have those subspecialists, surgical subspecialists that help recover -- help the patient to recover. So he needed a multi-team disciplinary approach to take care of his problems.

Q And how was he transferred to The Med?

A We called the chopper. As I said, we established the trauma protocol, and the chopper was already called in. So they were waiting for us while we were stabilizing Dr. Pierce and -- did that answer?

Q That did.

A I'm sorry.

Q One more question. About how long was he at Crittenden Regional Hospital that day?

A I, from what I recall, I think less than 30 minutes. We was very happy. The team kind of somehow came together very nicely, and I would say less than 30 minutes. Probably 25 minutes.

MS. WHATLEY: No further questions.

THE COURT: Any cross-examination?

MR. HENDRIX: No, Your Honor.

MR. LASSITER: No, Your Honor.

THE COURT: Okay. Doctor, you can stand down.

We are going to take another break. We will break until 3:45, and we will back and finish out the day. We will be in recess until then.

(Recess at 3:31 p.m., until 3:46 p.m., jury not present.)

THE COURT: Did you have something you wanted to address with me or --

MR. HENDRIX: I think we're good, Judge.

MS. WHATLEY: And, Your Honor, just to kind of let you know where the United States is, we flew this afternoon. We have one more witness that's here, and we are going to call her. We have another witness that may or may not get here who is coming in from Memphis.

THE COURT: Does anybody have contact with the witness to know how far the witness is?

MS. WHATLEY: Ms. Hollingsworth was on her way downstairs to call him. If we called him, we would be calling him out of order because he was just coming on over for tomorrow. So when Ms. Hollingsworth gets back up here, she will pass us a note to let us know where he is.

THE COURT: Okay. Bring the jury on in.

If that person is here and we can go on and deal with him, he or she can get back over to Memphis.

MS. WHATLEY: And that would be great, and trust me, he would prefer that. But I just don't know -- and who knows what I-40 looks like this afternoon.

MR. HENDRIX: Can I address something with the Court? We got a internet card. Would it be okay to put it in in the -- in our computer in the courtroom?

THE COURT: Yeah. I have no problem with the lawyers having their --

MR. HENDRIX: We'll only surf appropriate things.

(Jury enters the courtroom.)

MS. WHATLEY: Anita Brinkley.

ANITA BRINKLEY, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY

Q Good afternoon. Please state your name for the record.

A Anita Brinkley.

Q You are going to have to slow down. I already can tell that.

A I'm sorry. Anita Brinkley.

Q Where are you employed?

A Crittenden Regional Hospital.

Q Where is Crittenden Regional Hospital located?

A West Memphis, Arkansas.

Q What is your position?
A I am LPN in the emergency room.
Q How long have you been an LPN?
A 19 years.
Q And how long have you worked at Crittenden Regional?
A Five.
Q Where did you work before Crittenden Regional?
A Newport. At Harrison, Newport Hospital.
Q As between Harrison and Crittenden, are those the two hospitals you have worked at in your 19 years?
A I have also worked in corrections.
Q And at Crittenden Regional, you stated you work at the emergency department?
A That's correct.
Q And have you always worked in the emergency department since you have been at Crittenden?
A Yes.
Q And were you working in the emergency room on February 4, 2009?
A Yes, I was.
Q Do you remember a trauma coming in that day?
A Yes, I do.
Q And who was the patient that was brought in?
A Dr. Trent Pierce.
Q Did you know Dr. Pierce prior to that day?

A I had never seen Dr. Pierce before that day.
Q Did you know he was being brought in that morning?
A Yes, we did.
Q How did you know that?
A His wife had called prior to his arrival looking for a Robert, which Robert is Dr. Robert Schul, a friend of the family. He works frequently in the ER and just to see if he was on the staff that day or in the emergency room.
Q And was Dr. Schul on staff that day?
A He was not.
Q Who was actually the physician on duty?
A Dr. Hashmi.
Q How did Dr. Pierce arrive at Crittenden Regional?
A West Memphis Fire Department paramedic ambulance.
Q Do you recall what time he arrived?
A Early in the morning. Right about 8:00 o'clock.
Q What happened when Dr. Pierce was brought into the emergency room?
A We have beds. We have four different beds in our ER that we work codes or traumas on. We placed him on 8-C, which is our trauma bed, and proceeded to take Dr. Pierce's clothes off and examine him to see what kind of injuries he had that day.
Q Why did you take his clothes off?
A We always have to expose the body to see what we are working with and to see what injuries and how do we need to do

or what, how to treat those injuries.
Q How are the -- how are clothes removed from a patient's body?
A Usually we take shears, which are bandage scissors or trauma scissors, and cut their clothes off.
Q Did you cut Dr. Pierce's clothes off?
A Yes, we did.
Q We are going to go through some of those.
A Okay.
Q In thinking back over Dr. Pierce's clothes, was there any portion of those clothes that stood out over others that had damage to it?
A Well, it was February and it was cold and so he had several layers of clothes on. The exterior coat that he had on was kind of frail, like torn apart, unweaved or whatever. That was the first thing that you noticed was his trench coat or short coat.
Q Do you recall what color it was?
A It was black, it was black.
Q Did his clothing have blood or any other bodily fluids on him?
A Once we got to the inside -- we took several layers off. He did actually have a white shirt on and some other light-colored clothes that you could see blood on.
Q Could you describe, was there any smells that you smelled on Dr. Pierce when he arrived?

A Just like burnt hair, when someone is in a fire. The smell of flesh or hair burning is what we smelled.
Q I am going to pull out what has been marked for identification as Government Exhibit 22. Do you recognize this?
A That would be his pants.
Q Is this a piece of his coat?
A It may be the inside lining of a coat. Yeah, that is correct.
Q This is the inside lining of the coat?
A Yes. It has like a zipper line-out in the -- that was inside the coat.
Q Does this appear to be in the same condition as it was when you cut it off of his body on February 4, 2009?
A Yes, ma'am.
MS. WHATLEY: Your Honor, at this time we move for the introduction of Government Exhibit 22.
THE COURT: Any objection?
MR. HENDRIX: No, sir.
THE COURT: It's received.
(Government's Exhibit 22 received in evidence.)
BY MS. WHATLEY
Q You said that his coat was pretty big, it was, or it was a trench coat?
A It was above-the-knee coat, but it was a thick, material coat. And not like a light jacket, you know. It had like the

inside that was zipped out or would have been zipped out and then the other layers from the outside.

Q So it was larger than what I just showed you with Government Exhibit 22?

A Yes, ma'am.

Q I am not going to pull this out, but I am going to show you what has been marked --

MS. WHATLEY: I'm sorry, Your Honor. May I approach?

THE COURT: You may.

BY MS. WHATLEY

Q Show you what has been marked Government Exhibit 27, and does this appear to be the rest of the black coat?

A Yes, it does.

MS. WHATLEY: I was going to say, do you want me to pull it out to show her it's in the same condition?

MR. HENDRIX: I do not.

MS. WHATLEY: Okay. Your Honor, we move for the admission of Government Exhibit 27.

MR. HENDRIX: No objection.

(Government's Exhibit 27 received in evidence.)

BY MS. WHATLEY

Q After the coat, what was the next item that you recall?

A It seemed like he had on maybe a sweater or a cardigan. Like I said, there was more than myself cutting off clothes, so --

Q Do you recall what color that cardigan was?
A I don't know if it was red, maroon. I am not really real sure what people call red. It's a deep red, I will call it.
MS. WHATLEY: May I approach? I keep forgetting to ask.
THE COURT: That's fine. You may on all these.
BY MS. WHATLEY
Q Showing you Government Exhibit 23, does this appear to be the sweater that you cut off him that day?
A Yes, ma'am.
Q And are there burns and holes in the sleeves of this sweater?
A Yes, there is.
Q Were there numerous -- I don't want to say injuries, because a piece of clothing is not injured, but were there holes and things of that nature in the sweater?
A Numerous.
MS. WHATLEY: Your Honor, move for the admission --
BY MS. WHATLEY
Q Does this appear to be the same condition as when you cut it off?
A Yes.
MS. WHATLEY: Move admission of Exhibit 23.
MR. HENDRIX: No objection.
THE COURT: It's received.

(Government's Exhibit 23 received in evidence.)
BY MS. WHATLEY
Q Do you recall any other items that you cut off of his body that day?
A His pants, his underwear. He also had on a T-shirt, and I think there was like one other dress shirt. Took a tie off of him. We just kind of peeled what we can get off of him, and then what we couldn't get off easily, we cut off with our shears.
Q I'm showing to you what has been marked for identification as Government Exhibit 24. What is that?
A Underwear.
Q Do you recall cutting his underwear off?
A Yes, I do.
Q Does this appear to be in the same condition as it was?
A Yes, it does.
MS. WHATLEY: We move for the admission of Government Exhibit 24.
THE COURT: It's received.
MR. HENDRIX: No objection.
(Government's Exhibit 24 received in evidence.)
THE COURT: Mr. Hendrix, there appear to be a number of these items that have been cut off. Do you have any objection to any of those?
MR. HENDRIX: We do not.

THE COURT: Ms. Whatley, we can probably go through those pretty quickly.

BY MS. WHATLEY

Q I show you Government Exhibit 26.

MS. WHATLEY: May I approach?

THE COURT: You may.

BY MS. WHATLEY

Q Do you recall seeing that item that morning?

A That's his pants.

Q And was the belt still attached to them when you cut them off his body?

A Just like they are right there.

Q Was there any damage to the pants that morning in addition to the damage you caused when you took your shears to them?

A Yes, there was. You could see burn marks or whatever, burnt, burn holes, impaled or, you know, like you would -- like if a sparkler went off on some nylon or whatever. Burnt places in the pants legs.

Q I am showing you Government Exhibit 31. Do you recall --

A His tie, uh-huh.

MS. WHATLEY: And may I have the ELMO? I am not sure if it's on or not.

BY MS. WHATLEY

Q And I am not sure if you can tell from that, but is there any flag on this tie?

A Arkansas.
Q And was there any damage to the tie itself?
A You can actually see some of the burn marks or some of the soot, I called it, from on the tie there.
Q Is that what is in this area up in here?
A That's correct, uh-huh.
Q And are there actually holes in the tie?
A Right.
MS. WHATLEY: Are these all admitted?
THE COURT: The last two, 26 and 31, they are received.
(Government's Exhibits 26 and 31 received in evidence.)
BY MS. WHATLEY
Q Did Dr. Pierce have a scarf on that morning?
A Yes, he did.
Q And was that removed? I am assuming it didn't have to be cut. Was that removed from him?
A Ma'am, he didn't have anything on.
Q And showing you Government Exhibit 30, is this the scarf?
A If it's dark gray and black, yes. Yes.
MS. WHATLEY: Your Honor, we move for the admission of Government's 30.
THE COURT: It's received.
(Government's Exhibit 30 received in evidence.)
BY MS. WHATLEY
Q Did you see any gloves that morning?

A Yes, I did.
Q And where were those gloves located?
A They weren't actually on his hands. Best I can remember, a lot of time they will put their clothes or whatever they have on the cot with them.
Q So these were not on the hands?
A I did not -- like I said, I was not the only one removing clothes that morning, but I did not remove any gloves off of Dr. Pierce.
Q But did you see gloves that morning?
A Yes, I did.
Q Showing you Government Exhibit 28 and 29, do you recall seeing those?
A Yes, ma'am.
Q What about the cough drops that were in No. 28?
A I am sure somebody pulled those out.
Q Is it unusual for the items to be pulled out of people's pockets when they're in the emergency?
A It is.
Q It's unusual?
A It's not unusual.
MS. WHATLEY: We move for admission of the Government Exhibits 28 and 29.
THE COURT: They're received.
(Government's Exhibits 28 and 29 received in evidence.)

BY MS. WHATLEY

Q Did you have to take his shoes off of him?

A Ma'am, I didn't take them off. Someone took them off. I was on the right side of the body removing clothes and taking -- and it's usually several of us all in sequence removing stuff and cutting things off and taking shoes and -- yeah.

Q And are shoes maintained with the rest of the clothing when they're taken off someone's body?

A Yes, they are.

Q I show you Government's Exhibit 33-A and 33-B.

A We try to keep everything together because a lot of people want their family's belongings or whatever. In this case, of course -- but, you know, most people want their family's belongings. So we try to keep it together and actually bag it up and give it to a family member after whatever we have going on at the time.

MS. WHATLEY: Move the admission of 33-A and B.

THE COURT: It's received.

(Government's Exhibits 33-A and 33-B received in evidence.)

BY MS. WHATLEY

Q You said that one of the things you took off of his body was a shirt, like a dress shirt?

A Yes, ma'am.

MS. WHATLEY: May I approach?

THE COURT: You may.

BY MS. WHATLEY

Q I show you what has been marked for identification as Government Exhibit 36.

A A white dress shirt, yes.

Q It's not really white, is it?

A Not really white anymore, no.

Q Describe the dress shirt that you cut off of him.

A Well, like I said, he had his coat on. The heavy coat actually helped block or whatever, the inside clothing. So, you know, of course he was bleeding from his wounds. It's obvious on that shirt. It shows up a lot worse than on any other color. And then it also had the soot from whether it be the tire or whatever, the burn, whatever.

Q Were there also holes in the shirt?

A Yes, there is.

MS. WHATLEY: Your Honor, we move for the admission of Government Exhibit 36.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 36 received in evidence.)

BY MS. WHATLEY

Q Is that the sleeve?

A You can't hardly tell what it is, but I would say that's probably out from under the coat that got the most impact.

Q You said he had a turtleneck on?

A Something like a turtleneck. He had a higher neck. I would call it a turtleneck.
Q I'm assuming he had socks on as well with his shoes?
A Yes.
Q And were those taken off his body?
A I am sure the same person that took his shoes off took his socks off.
Q And you also stated earlier that he had an undershirt on as well?
A That's correct, a T-shirt.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY
Q I am showing you what has been marked as Government Exhibits 34, 35, and 37. Is 34 the turtleneck we talked about?
A Yes.
Q And 35 are the socks?
A Yes.
Q And 37 is the undershirt, T-shirt?
A Yes.
MS. WHATLEY: Move for admission of 34, 35, and 37.
MR. HENDRIX: That's fine, Judge.
THE COURT: Received.
(Government's Exhibits 34, 35, and 37 received in evidence.)

BY MS. WHATLEY
Q Did Government Exhibit 37, the undershirt, did it have a lot of damage to it?
A It did. But, you know, it was like on -- next to his skin, so it actually was the bottom layer of clothing through all these other clothes. But it did have a significant amount of damage done to it also.
Q Do you recall a fleece jacket that day being with his clothing?
A Yes.
Q And was it also placed with the rest of his clothes?
A Yes, ma'am.
Q Showing you what has been marked as Government Exhibit 32. Does that appear to be that fleece jacket?
A Yes, ma'am.
MS. WHATLEY: I move for the admission of Government Exhibit 32.
THE COURT: It's received.
(Government's Exhibit 32 received in evidence.)
BY MS. WHATLEY
Q Do you recall any discussion about a tooth?
A Actually, I was on Dr. Pierce's right side. Like I said, we all kind of team up, and I had the right side. And I did, in the process of doing my assessment and trying to get IV sites and everything, hear someone say, "What is that? That looks

like a tooth." And just kind of out of the corner of my eye, I looked up, and it had landed -- like it had fallen out of his mouth to his chest area there. At this time, of course, we had his clothes off and just had a gown thrown over him, and so that tooth had fallen out. From the time that we undressed him until we started moving around, he had lost a tooth.

Q Is that also kind of maintained with everything else that is taken off of him that day?

A Yes, it is.

Q Showing you what has been marked as Government Exhibit 39.

A (Nodding head.)

MS. WHATLEY: Your Honor, we move for the admission of Government 39.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 39 received in evidence.)

BY MS. WHATLEY

Q Is that the tooth and a couple of pieces that came out of his mouth that day?

A Partial tooth.

Q Partial tooth?

A Uh-huh.

Q Do you recall if Dr. Pierce had any glasses on when he arrived at the emergency department?

A I don't remember any glasses being on his eyes once we got

him in the ER, but then again, I just really didn't look at his eyes. I was fixated on the nose more so than I was on his eyes.

Q Why were you fixated on the nose more so?

A His nose was like totally burnt, like a marshmallow, crispy. It looked like if you touched it, it would fall off. And laying down on a supine position, on your back, and you see that nose and it sticks above everything else, that's just what I noticed the most, other than the soot and stuff embedded in his face.

Q If Dr. Pierce had had glasses on him that day, would they have been in the midst of everything else like all the other clothing and gloves and --

A Right. They would have been.

MS. WHATLEY: May I have a moment, Your Honor?

THE COURT: You may.

MS. WHATLEY: Move for admission of Government Exhibit 38.

MR. HENDRIX: No objection.

THE COURT: I know the defense doesn't object to it, but she says she has no clue whether he had glasses on and she can't identify them. So I can receive it, but I don't know that that would be honest because she hasn't verified them at all, laid any foundation for them at all.

THE WITNESS: It could have been removed by someone else that was -- you know, I told you I wasn't by myself. It

appeared to be on the nurses notes and someone else could have taken those off of him, but I did not see -- I am not saying they weren't taken off his person. It could have been in his jacket, his pocket of his shirt or something.

MS. WHATLEY: Your Honor, I will get them in through a later witness, but if I can ask a couple more questions?

THE COURT: Yes, please.

BY MS. WHATLEY

Q Everything that's -- that comes with him on the gurney -- his clothes, socks, shoes, whatever, is everything -- what happens to that as you're cutting it off the body and removing it from his body?

A Well, we usually try to place everything between the gurney and the wall behind you where you are working so actually no one has access to any of that because, like I said, a lot of people will have money and valuables on them. So we try to keep them in our sight until we get them all gathered up and put in the bag. So anything that I cut off of Dr. Pierce was placed behind me because -- against the wall. I was against the wall side. The other side of the gurney is open to another bay and so we -- you know, we will say, "Hand me those," and we will try to keep them together.

Q And is that what you did in this case?

A That is correct.

Q What did you do with all of these items after Dr. Pierce

ultimately left the hospital that morning?
A We bagged them up and I -- any other time we would have gave them to his wife, but in this case, of course, it was a different situation. So we placed them in a bag and a chain of command, and then had the police department come and pick them up.
Q And did you actually help bag those clothes?
A Yes, I did.
Q So anything that would have come off of him were put into the bag?
A That's correct. And then we also write a list most of the time of what we actually collected off a person and put it, usually, with that stuff.
Q And what do the bags look like that you put them in?
A I think in this case it was a red bag, which means a biohazard bag, which it has blood, body fluids on it, so no one can be exposed to those fluids.
MS. WHATLEY: May I approach?
THE COURT: Yes.
BY MS. WHATLEY
Q I am going to show you what has been marked for identification as Government Exhibit 42. Is that the bag?
A Yes.
Q So everything that we are talking about would have been put into this bag?

A That's correct.

MS. WHATLEY: Move for admission of Government Exhibit 42.

MR. HENDRIX: No objection.

THE COURT: Received.

(Government's Exhibit 42 received in evidence.)

BY MS. WHATLEY

Q While you were cutting the clothes off of Dr. Pierce, did he say anything to you?

A Actually, he did. He was still alert and oriented and talking the whole time. When I was -- I was on the right side of the body cutting the clothes off, looking for an IV site. When I went to move his right arm, his extremity, he said, "Oh, that hurts." And I said, "I am sorry. I don't mean to hurt you. We need to get some IVs in you." And at that time, what we call a compound fracture, which is an open wound that has actually broken bones -- when I went to lift his arm, you could tell that the bones were broke and that there was an open wound there. So he was letting me know that me lifting that arm trying to look for an IV site, that I had hurt him doing that.

Q Did you have the opportunity to see Dr. Pierce's entire body?

A Yes, I did.

Q I need you to describe how Dr. Pierce looked when he arrived and -- I mean, after you got all the clothes cut off of

him, and start with the face and work our way down.
A I didn't really look at his eyes. Like I said, I was fixated on the nose. And then I -- then his face was like soot and impaled objects, which at that time I didn't know what kind of impaled objects were into the skin.
And going down his right side was obviously the compound fracture and probably his lower two bones of his arms, ulna and radial. And then his right femur, which is his thigh bone had areas that was -- probably I could put both my hands in, and probably that deep, where the meat -- it's called evulsion. It's where the meat is just torn away. He had one area up on his upper thigh and a smaller one around the top of the knee. He had two big areas there that was probably, you know, this deep (indicating) and the size of my two hands together.
Q Was there a lot of blood coming from these wounds?
A It's really funny. When you have a burn, it kind of cauterizes the edges. So you don't have a lot of bleeding, and it seals. He had bled a little, and then it sealed off. So for the wounds he had, he did not have a lot of blood.
Q Considering the extent of the wounds, were you surprised by the lack of blood?
A I was.
Q You said you have been an LPN for 19 years. Have you ever seen anything like this before?
A Not in 19 years, no. It was almost like something out of

TV or a storybook that you read about it. It didn't even seem real -- I mean, at the time.

Q Did Dr. Pierce stay at Crittenden Regional for the treatment?

A No, he did not.

Q How long was he at Crittenden?

A We got him out as quick as possible, probably within 30 minutes. The helicopter, my understanding, was called from the site or the scene. So that was already in the workings by the time he got to us. I would say probably 30, 45 minutes tops, if he was there that long.

Q What was your role and what -- what were you responsible for doing in order to get him to the next step?

A Well, obviously when you have any kind of trauma like that, you need large IVs with fluids for shock and you also -- you don't know the damage to the airways. So one of the first things that you want to do is intubate them. So you put a tube down their throat and put them on a machine to breathe for them in case this happens to swell up. It would cut their airway off.

Q Was he intubated?

A Yes, he was intubated.

Q What else?

A Also, Mark Gibson had started an IV in his AC, which is your elbow thing. And we actually needed another one, so at

that time Dr. Ford had showed up, and we also put the central line in him.

Q Slow down just a little.

A Okay. A central line is a big, large IV that's usually put here in your clavicle area for large amounts of fluids where we could hydrate him and keep him from going into shock.

Q Did you do anything else that day?

A We did some -- I put a Foley in him. That's a catheter. Anytime you intubate somebody, you have to do an intake and output. It keeps up with how much fluids they're getting in and how much they're putting out to see if there is any internal injuries. And then we also put some wet dressings on him where we covered him with wet gauze and wrapped him in kerlix.

Q After that, what did you do?

A By then, the helicopter people were there, and they took him on to The Med.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: You may.

MS. WHATLEY: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. HENDRIX: No questions, Judge.

THE COURT: Anything?

MR. DUDLEY: No, Your Honor.

THE COURT: You can stand down.

Now, just for the record, let me make sure I have all of

your exhibits that you -- I think you put in 22, 23, 23-A.

MS. WHATLEY: No, not 23-A.

THE COURT: Did you put in 24?

MS. WHATLEY: 24.

THE COURT: 26, 27, 28, 29, and 30, 31?

MS. WHATLEY: Yes.

THE COURT: 32, 33-A and B?

MS. WHATLEY: Yes, sir.

THE COURT: 34, 35, 36, 37, 39, and 42?

MS. WHATLEY: Yes, sir.

THE COURT: Do you know if your witness --

MS. WHATLEY: That's what I -- I don't think he is here. I just need to see how close we are.

THE COURT: Okay.

MR. HENDRIX: And, Your Honor, if it helps on that one item of the evidence, that's -- the Court's concern is what Ms. Whatley came over and asked me about. It's not anything that we dispute. We're happy to stipulate to it if it helps to move the process on. If I'm helping, I'm hurting, I am not sure yet.

THE COURT: You know, I understand and normally I would just receive it and I know that other witnesses will probably just put it in, but she sat there under oath and said, "I didn't see it." So -- but I will receive it since it's stipulated. We will receive it. What exhibit was that?

MS. WHATLEY: 38, Your Honor.

THE COURT: Okay. 38 is also received.

(Government's Exhibit 38 received in evidence.)

MS. WHATLEY: Your Honor, the information I have is that that doctor at 5 minutes after 4:00 was about 30 minutes away and was coming straight to the courthouse, but --

THE COURT: Let's do this. Let's take a break until 4:30. If the witnesses are not here by 4:30, we will break, and then we will come back tomorrow at 9:00 o'clock in the morning.

Ladies and gentlemen, I am not sure this is the last time I am going to see you today. Don't start talking about the case. Don't form a firm opinion about the case until you have had a chance to hear from all the witnesses and to discuss the points of view of your fellow jurors, and that will happen at the end of the trial. I ask you not to discuss the case, not only with each other, but don't discuss it with anyone outside the courtroom.

Also, do not speak to any of the lawyers, any of the witnesses, any of the parties involved in the case. We not only want this process to be fair, we want it to appear to be fair. And we will recess until 4:30 and, if the witness is not here by then, we will recess until tomorrow at 9:00 o'clock. Okay?

We will be in recess.

(Recess at 4:23 p.m., until 4:35 p.m.)

THE COURT: Call your next witness.

MS. WHATLEY: Phillip Langsdon.

THE COURT: I think Mr. Langsdon is having a difficult time getting through security.

MS. WHATLEY: I am sorry, Your Honor. He is running down the hall.

THE COURT: Tell him don't run.

Mr. Langsdon, calm down. It's going to be okay.

PHILLIP LANGSDON, GOVERNMENT'S WITNESS, DULY SWORN

THE COURT: Mr. Langsdon, what I want you to do first is sit down and take about five seconds and compose yourself. You rushed all the way over here, you came through security and rushed up the steps and down the hallway. So just take you about five seconds to calm down.

THE WITNESS: I'm good.

MS. WHATLEY: How about some water? Will that help?

THE WITNESS: No. I'm fine, but thanks.

MS. WHATLEY: And, Your Honor, he was actually scheduled to go on tomorrow, but --

THE COURT: I know.

DIRECT EXAMINATION

BY MS. WHATLEY

Q Take a deep breath, and please state your name for the record.

A Phillip Langsdon.

Q Spell your last name.

A L-A-N-G-S-D-O-N.
Q Dr. Langsdon, what do you do for a living?
A I am a facial plastic surgeon.
Q And how long have you been a physician?
A Since 1980.
Q And where did you go to medical school?
A University of Arkansas.
Q What year did you graduate?
A 1980.
Q I'm sorry. I just asked that. It may not be the nicest question to ask, but who was first in your class?
A Trent Pierce.
Q So you have known Dr. Pierce for a long time?
A Yes, ma'am.
Q Have you stayed in contact with him over the years?
A Not on a regular basis.
Q And you said that you work in facial plastic surgery, correct?
A Yes, ma'am.
Q And how long have you been specializing in that?
A Since I finished my fellowship training in 1986.
Q Do you do any work at The Med?
A Yes.
Q And what is your affiliation with The Med?
A I am a professor there and chief of division of facial

plastic surgery, and I staff the residents at the trauma center at the Regional Medical Center in Memphis.

Q Were you contacted on February 4, 2009, regarding a trauma that had arrived at The Med?

A Yes, ma'am.

Q And did you go to The Med that day?

A Yes, I did.

Q What did you know about the trauma before you arrived?

A Well, you know, I first got a phone call, and at that point I just knew that there was a doctor involved in an explosion injury. And then on my subsequent conversations with my resident, then I, you know, found out on the way down who it was.

Q Did you see him on February 4, 2009?

A I did.

Q Did you recognize him when you saw him?

A No.

Q I am going to show you briefly Government Exhibit 1. Is this the Trent Pierce you knew before that day?

A Yes.

Q Did he look like that when you saw him on February 4?

A No.

Q Please describe how he looked that day when you saw him.

A Well, he was unrecognizable. His head was swollen bigger than a pumpkin, and it was so inflated there was no way to

discern who the individual was at all.
Q He is a Caucasian male. Did he appear to be Caucasian when you saw him that day?
A At that time I couldn't tell because his skin was singed and burned and he was so swollen and charred. He was not -- really, I couldn't determine that without looking at one of his legs.
Q Did he have any -- was his face intact or were there things that were --
A No. There was disrupted tissue, meaning some missing tissue and some wounds, and then charred skin and -- you can better tell, you know, from photograph, but it was not intact in any way.
Q Did he have any facial bone injuries?
A He did.
Q And where were those and describe those.
A I think it was, you know, the bones below the left eye socket.
Q Do you remember anything about his left eye?
A Well, at that time, you know, during the initial contact, we had ophthalmology in the room and there was some question about the viability of that eye, but at that point, you know, full diagnosis hadn't even been made.
Q Did you perform surgery on Dr. Pierce that first day, February 4, 2009?

A Yes.
Q And do you recall the purpose for that surgery?
A Well, my part -- my small part of all the other things that were done was just mainly handle the initial facial injuries.
Q Do you recall how long the surgery lasted that day?
A I don't. I had to leave after a couple of hours and go back to my clinic, and another doctor in our department went in and finished the things that needed to be done. He had to do a tracheotomy, I think.
Q Do you recall how long Dr. Pierce was in the operating room that first day?
A Several hours. I don't remember the exact time. It could have been four, five, or six hours. I would have to look at the operative reports and all the time. It was several hours. It wasn't 15 minutes or anything like that.
Q But your part wasn't the entire time?
A No. There were other things going on simultaneously with what I was doing.
Q How many levels to the skin are there on -- especially on the facial area?
A Well, there is -- like the epidermis is the outside and the dermis and the fatty layer, and that's all outside of the muscle and the deeper layers.
Q Were there injuries to all three layers of his skin on his face?

A Yes.
Q And was that your focal point, was the facial injury?
A Yes, ma'am.
Q Were his injuries such that you could address all the problems at one time?
A No.
Q On February 6, 2009, did you assist Dr. William Hickerson with a surgery?
A Yes, ma'am.
Q And who is Dr. Hickerson?
A Dr. Hickerson is in the department of plastic surgery. He handles the burns and wounds in this case.
Q Did you also perform a surgery on February 20, 2009?
A Without looking at all the notes, I operated on him several times while he was at The Med and if that's, if that's the last time, you know, I would answer yes to that, but I am trying to remember exactly what we did.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY
Q I just handed you a report of operation. Does that help refresh your recollection?
A Yes, ma'am.
Q And what was the date of that operation?
A 20th of February, 2009.

Q Do you recall or were any other surgeries performed on him on the 20th other than what you did?
A Yes, ma'am.
Q And what was that other surgery that was performed?
A I know that the ophthalmologists were removing his left globe or his left eye that day too.
Q Were you in there while that was being done?
A Yes, ma'am.
Q And is that referred to as an enucleation?
A Yes, ma'am.
Q And based on your medical experience, is an enucleation a painful surgery?
A Well, it's not a procedure that I perform and, of course, I watch whatever I am seeing there and I did, you know, question the ophthalmologist who can give you a better answer to that. But they were telling me that it was an extremely painful postoperative course for somebody when they have the globe removed or an enucleation performed.
Q What was the purpose of you performing surgery on Dr. Pierce on February 20?
A We were working on the broken bone beneath the eye socket and on some of the tissue deformity on his nose at that time, and all of these are staged procedures. You can't rearrange all the tissue in one setting. And then also, he had a -- a trache change. I removed a fragment from his lip, and then we

examined -- or my resident examined his ears.
Q You said you removed an item from his lip?
A Yes.
Q What did you remove?
A Well, there was -- an X-ray showed metallic fragments in him and there was a fair-sized one in his lip and I removed that.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes.
BY MS. WHATLEY
Q I am handing you what has been marked for identification purposes as Government Exhibit 49. Have you ever seen that before?
A Yes, ma'am.
Q And what is that?
A It's a metal fragment from his lip.
Q And is that in substantially the same condition as it was when you removed them?
A Yes, ma'am.
Q After you removed them, what did you do with those items?
A Carried it upstairs to the pathologist.
Q And then what?
A Had them mark it, put it in a baggy, and carry it down to the federal officer.
Q So you handed it over to an ATF agent?

A I handed it over myself after they showed me their identification.

MS. WHATLEY: Your Honor, at this time I move to introduce Government Exhibit 49.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 49 received in evidence.)

BY MS. WHATLEY

Q After the surgery on February 20, that night did Dr. Pierce have any problems?

A Well, he had some significant problems along the way. I think of two or three episodes of very serious medical decompensation.

Q Specifically after the surgery on February 20, did he lose blood -- begin to lose his blood pressure and --

A He did. They had a -- they had a time keeping him alive, just to be blunt about it, that night.

Q But he made it through the night, correct?

A Yes.

Q Do you recall where his bed was at The Med?

A In the trauma, the intensive care unit.

Q Have you continued to follow Dr. Pierce since his release from The Med?

A Yes, ma'am.

Q And what is the purpose of the follow-up?

A My role now has been to try to help get him to looking as close to normal as we can, from his facial injuries.
Q Will he ever look the way he did in Government 1 again?
A No, ma'am.
Q Has he undergone additional surgeries?
A Yes, ma'am.
Q And have you taken pictures at each stage of that follow-up?
A Yes, ma'am.
MS. WHATLEY: May I approach?
THE COURT: You may.
BY MS. WHATLEY
Q I am handing you what has been marked for identification as Government Exhibit 65-A through 65-F. Have you seen these before?
A Yes, ma'am.
Q And did you actually take these photographs?
A I took some of them, and my nurse took some of them.
Q What are these?
A These are photographs of him, you know, after his release from the intensive care unit. And once -- it is some time after that -- I don't remember the exact date -- when his swelling is about gone. And we were planning what we were going to do to try to rearrange some of the lost tissue and remove some of the fragments from his skin and remove some of the scar tissue and

plan to try to build -- you can't really tell in the photograph, but a part of the nasal tissue on the right side where all the black debris appears to be is actually missing -- nasal tissue with foreign substance in it, and so we are in the process of trying to get that out of the tissue there.

Q Do these pictures, 65-A through 65-F, fairly and accurately depict how Dr. Pierce has looked through the follow-up visits?

A Yes, ma'am.

MS. WHATLEY: At this time we move for admission of 65-A, B, C, D, E, and F.

MR. HENDRIX: No objection.

THE COURT: Admitted.

(Government's Exhibits 65-A through 65-F received in evidence.)

BY MS. WHATLEY

Q Do you recall performing a surgery around April 20, 2009?

A Well, I don't have my office chart in front of me, so I am not going to remember the exact dates of the times that I surgically treated him. If that's the first time, of course I remember it.

Q How many surgeries do you think you have done on him since he got out of The Med?

A I think I have done three. Could have been four.

Q Looking at 65-A and 65-B -- look at 65-A first. Is this -- are these pictures of some of the first -- before or after some

of the first surgeries you performed when he left The Med?
A Yes, ma'am.
Q And you talked about damage to the right side of his nostril. Can you explain that?
A Well, if you look where the black debris is, if you were looking at the various angles of it, you could see that there is a pretty contracted notch in the nostril where there is missing tissue. And what our goal is there is to remove the debris and then slowly try to slide some normal tissue over in there to create a normal contour for your nostril as you -- you know, a normal person.
Q You stated his left eye was removed. So what is --
A That's a, you know, a prosthesis. It's a false eyeball. They do a pretty good job of, you know, getting a match.
Q In this picture it also appears as though he has damage to the left side of his chin and the left side of his cheek.
A Correct.
Q So have you had to take steps to correct that as well?
A There was some missing tissue there, and it was, you know, damaged pretty well. And that's -- when I saw him, those areas were wide open. You know, those were wounds. And so that's tissue pulled back together, and it's in the early phase of scar contracture in this photograph.
Q Going to 65-B, does this show the nostril more --
A You can see it a little bit better.

Q Now, what is all the black on his face?
A Well, it's some sort of foreign tissue -- not tissue, but foreign material. I can only suspect what it actually is. You know, we send the material to the pathologist. They don't come back and say asphalt, tire rubber, or anything like that. They give us a scientific name of whatever it is, but it's not normally there.
Q And is part of what you are doing with these follow-up surgeries an effort to try to remove part of that foreign material?
A Yes, ma'am. We have been trying to get out as much of it as we can so when you look at him, you don't see this splatter of black in his face.
Q Let's look at 65-C. Does this appear to be a picture that was taken after those first two pictures were taken?
A Right.
Q And does this show the progression of the surgeries?
A Right. If you -- if you had both of the pictures to compare, like I do here, you can see that there is less black in the tip of the nose and there is less black in some of the areas of the face. There is a lot of this, so you can't go in with one operation and pick it all out. These procedures that I did took a minimum of three hours each. So after three hours, you know, I am getting pretty tired of sitting there cutting and picking and sewing, and that's basically what we were doing. So

we can't do it all in one sitting. Besides, any tissue damaged right adjacent to or next to another fragment, you can't get them both at the same time. You have to space it out so the tissue has time to heal the surrounding tissue. So that's why it has to be done sequentially.

Q On the screen in front of you, we have two pictures side by side. 65-A is on the right, and 65-C is on the left. So does this show the progression of the injuries to the left cheek area?

A It shows -- yes, ma'am, it does. It shows an improvement. We took some of the tissue out of his nose in the bottom and moved some tissue around to try to move normal tissue in, and then we just worked in a scattered fashion around his face to try to remove some of the darkest fragments, even though there are some dark ones left. That was the end of three hours' work.

Q Let's look at Government Exhibit 65-D. Does this just show another progression?

A Yes, ma'am.

Q And 65-E?

A Yeah. You can see he is starting to -- we are starting to get enough of it out that you can -- you can see it changing.

MS. WHATLEY: If we can put 65-D and 65-E up side by side.

BY MS. WHATLEY

Q So in this picture it appears as if you have taken a lot of

black material out of his chin and his left cheek and lip area.
A Right.
Q Going to Government Exhibit 65-F, he has his head kind of tilted backwards. What, what are you -- what was your goal in taking this picture?
A That's a normal photo that we take when we deal with the nose. It's called base view where we're looking up the bottom of the nose and the nostrils, and it shows a different angle of things. And we do that so that we can watch the progression of what we're doing and plan what we're doing. The next phase mainly is to look at the tip of the nose because that's the hardest area to repair. The skin is usually fairly thin over there and not easy to move around and you can't -- you can't -- I'm trying to repair the tip of his nose without taking forehead tissue. And that's something y'all don't want to get into, I'm sure, but it's part of my plan to analyze it.
Q The last surgeries that you performed, then, have been mainly to correct the problems with his nose?
A No. Each time he has been in, I have worked in a lot of different areas of his face along with a specific slice that we have addressed, like the cheek and the chin.
Q Do you recall when the last surgery was that you performed on Dr. Pierce?
A It seems like it was -- it's been months ago.
Q So a few months?

A It has been several months.
Q I mean, is there a reason that you give time between surgeries?
A Well, I advised him to wait a little while and let the tissue settle down. The tissue gets hard when you operate on it. To give you a comparison, if somebody comes in with a cut and they have got a scar, they're wanting it fixed immediately. And sometimes you can't do that because the tissue heals, and it goes through healing phases. And it can take some months to get through it and the tissue gets hard and contracted and it won't behave like we want it to. So by letting the tissue heal and relax, we can get it back to its maximum normal state. And then we get more mobility, and we can accomplish more with it.

And besides, this fellow had a lot of anesthesia over all these months, and nobody really knows for sure what happens in the long-term with repeated anesthetics.

MS. WHATLEY: If we can, I want to put Government Exhibits 1 and 65-E up side by side.

BY MS. WHATLEY
Q Do you anticipate doing more surgeries on Dr. Pierce?
A Yes, ma'am.
Q I believe you testified to this earlier. Do you think you will ever be able to get him back to what he looks like in the picture on the left?
A No, ma'am.

MS. WHATLEY: No further questions.

THE COURT: Any cross?

MR. HENDRIX: No questions.

MR. LASSITER: No, Your Honor.

THE COURT: Okay. Doctor, you can stand down.

THE WITNESS: Thank you.

THE COURT: I think this is our final witness for today, right?

MS. WHATLEY: Yes, Your Honor.

THE COURT: All right. I will give you the same admonitions, jury, that I have been giving you all along. Don't talk about the case, don't talk with any of the parties involved, and keep an open mind until the end of the case when you have had a chance to talk to your fellow jurors in the jury room about the case.

We will recess today and we will be back in the morning at 9:00 o'clock. Okay. We will be in recess until then.

(Overnight recess at 5:00 p.m.)

C E R T I F I C A T E

I, Cheryl Nelson Kellar, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Cheryl N. Kellar, RPR, CRR, CCR Date: March 4, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

July 14, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 9:01 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 3
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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[CONTINUED]

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Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

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THE COURT: I understand you have an issue you need to take up.

MR. HENDRIX: Yes, sir. Thank you, Judge. Judge, I expect that at some point this morning the next series of witnesses are going to be the doctors for the Med and so forth and I suspect that this is going to be the portion with fairly gruesome pictures that have already been talked about. We'd like to move to exclude those, and let me give you my reasoning, where we're going with this. The element, as I see it, the pictures and the testimony that we've sat through the past couple of days goes to one issue and that's the injury element of Count 2. I don't see otherwise that it's relevant to any other issue in the case. Count 1, the weapons of mass destruction does not have an injury component to it as an element so I don't think it would be relevant to that, and certainly the obstructive counts and the firearm counts don't contain the element of proving injury beyond a reasonable doubt, so I agree that it is relevant to Count 2.

The question then is, while relevant, should it be excluded for other reasons. And, Judge, I'll cite two things to you, obviously Rule 403 and then the United States Supreme Court case of *Old Chief*. And, Judge, under 403, although relevant evidence may be excluded if its probative value is

substantially outweighed by the danger of, and it lists then these things, and I'm only going to rely on two. It's substantially outweighed by the danger of unfair prejudice is one. Confusion of the issues, I don't think so; misleading the jury, I don't think so. But also considerations of undue delay, waste of time, or I think the more pertinent one is needless presentation of cumulative evidence. So I think our analysis is cumulative evidence and then unfair danger. Let me begin with the latter.

Cumulative evidence, again, Judge, if I've gotten it, and of course, we'll know more once the government addresses this, but it seems to me it's limited to that one element out of nine defenses. We've now already established, I think, beyond a reasonable doubt that Dr. Pierce was injured as a result of this incident. I'll also offer to the Court that we are now willing to stipulate that that element of Count 2 has been met and we'd be willing to stipulate and say the government has met its burden. Unfair prejudice, the danger of unfair prejudice, and, Judge, that's simply the analysis of does this evidence have a tendency to sway the jury to make a decision based on some improper reason, i.e., their emotions. And that's where I want to talk about *Old Chief* if you don't mind very briefly.

THE COURT: Mr. Hendrix, your argument is very simple and I'll state it in plainer terms without you even making it. Your argument is that there's no question that

Dr. Pierce was bombed. There's no question. There's no question that he was injured. There's no question that he suffered very, I don't want to say grave injuries, but I'll characterize them as grave injuries. We have pictures of him already with a damaged face. Your issue is, and you tell me if I'm wrong, is are we just going to parade in a bunch of pictures just to scare the heck out of the jury to make them feel like they have to do something?

MR. HENDRIX: Right.

THE COURT: Is that your argument? And at some point, the point of him being injured satisfies the element, I think you said element 2.

MR. HENDRIX: Right.

THE COURT: Or Count 2.

MR. HENDRIX: Count 2.

THE COURT: It's been satisfied and you stipulate to it so at this point why are we even putting on more pictures.

MR. HENDRIX: Exactly.

THE COURT: Let me hear from the government on that. What's the response?

MS. WHATLEY: Your Honor, first and foremost, the United States is allowed to prove its case. The issue is the pictures. I think the defense will even agree with this that during discovery, I gave a whole lot of pictures, and we've actually narrowed what the defense has termed as the more

gruesome pictures down to nine pictures. What we have shown so far is where his face is now, as opposed to where his arm was, where his leg was and where his face was within 48 hours of the bombing. Your Honor, the first witness I plan to put on this morning is not going to show any pictures, he's just going to kind of outline the surgeries. The next two witnesses, I do plan to introduce pictures through them. I don't plan on belaboring the issue, just plan on getting them into evidence because although Mr. Hendrix is saying that Count 1 does not have an injury requirement, there is a sentencing enhancement for injury, which I believe that we have to prove because it raises the statutory mandatory minimum and maximum in that case.

Count 2, it is relevant. But also I believe it's relevant not only to show the injury, but to show kind of exactly how bad the blast was. I mean, we have charges under Count 1 as a weapon of mass destruction, and I do believe that we should be allowed to show the destruction that it caused. As to cumulative evidence, Your Honor, I'm showing three or four pictures of his arm and three or four, four or five pictures of his leg.

THE COURT: I'm not so much swayed by the cumulative evidence argument. The issue for me is if you have the defense conceding that he's injured, what pictures do we need to show to show just how much he was injured. I guess that's the

issue. I have to resolve that in my mind. At what point do we show -- well, you keep showing pictures and then desensitize the jury. But at the same time, if you show them pictures just to get them fired up, make them want to get somebody, that's not appropriate either.

MS. WHATLEY: That's not the United States' intent in this case, Your Honor. It is to show the extent of the injuries he received. As I said, I will be shocked if after 10:30 this morning --

THE COURT: You say you have nine pictures?

MS. WHATLEY: Nine pictures. And I'll be more than happy to show them to the Court.

THE COURT: That's fine. The government's saying they have nine pictures, and three pictures of the arm, pictures of his head.

MS. WHATLEY: I know I have three pictures of his face that were taken within two days of the bombing. I have two pictures of his arm taken within two hours of the bombing, two pictures of his leg taken within two hours. I may have lied there. And then one picture of his leg, one picture of his knee, and one picture of his thigh taken two days after during a surgery. And that's all I have that would be referred to as gruesome. The only other pictures I have are pictures that were taken recently of his arm and leg showing the --

THE COURT: Let me let Mr. Hendrix close.

MR. HENDRIX: Judge, here's what I'm expecting if we need to flesh this out. Those are the particularly gruesome photographs. A little bit more comprehensively, we're also concerned about continued doctors from the Med saying the same thing. Whether there are actual pictures introduced, their testimony is the same thing. The reason I kept harping on *Old Chief*, Judge, is this is the very precise issue that was raised in *Old Chief*. That was the felon in possession case where the government -- the prior conviction proved the felon element, a felon in possession was assault with a deadly weapon. The defense offered to stipulate, the prosecution refused, and then the United States Supreme Court said, look, we should be allowed to try our case the way we want to try it, which is exactly the government's position here. But the United States Supreme Court said if this evidence is relevant to only one issue and the defense is willing to stipulate and there's unfair prejudice --

THE COURT: Isn't the distinction in that case that that's the underlying offense for which the person is being charged a felon in possession?

MR. HENDRIX: Correct.

THE COURT: So the new offense is felon in possession, all you have to show that the person is a felon, you don't necessarily have to go back and show why the person received the felony. In this case, isn't there a distinction

here in that this is the actual blast that is the subject of Count 2 and Count 1 of the indictment?

MR. HENDRIX: And, again, the Supreme Court, I think, addresses that and that's what I was saying earlier. If that evidence is relevant to other issues, agreed. But I think like in *Old Chief*, this evidence, these pictures and this medical testimony goes to one very specific element and it's the element of Count 2 which is the statutory sentencing enhancement. The government has to prove physical injury. Again, we concede the government's proved it.

THE COURT: Let me ask the government one final question. How many doctors do we have coming in this morning?

MS. WHATLEY: Three doctors total, Your Honor.

THE COURT: To what extent will their testimony overlap?

MS. WHATLEY: It shouldn't overlap. These are three separate surgeries, Your Honor.

THE COURT: So we're not going to have people coming in saying what the previous doctor said and just pounding one point into the ground?

MS. WHATLEY: No, Your Honor. We're having the first doctor he saw that morning who did the first surgery, he'll kind of give an overview as to how many surgeries, then I have an orthopedic resident who performed a surgery later in the day. Then I have the burn -- the head of the burn unit who

will testify about a surgery that he performed two days later.

THE COURT: Okay. I'm going to overrule you, Mr. Hendrix. If you need to make a further record, I'll permit you to do that. Now, what we'll do is we'll take your objections as continuing and let the record reflect that so that, now, you can object when the doctors are called and they start testifying and they attempt to get the pictures into the record. But just understand you don't have to. We'll let the record reflect that all of the pictures, you're objecting to all of them.

MR. HENDRIX: Correct.

THE COURT: And you're objecting to any testimony that overlaps?

MR. HENDRIX: Yes.

THE COURT: If you want to object when one comes in, you can. We'll let the record reflect that you object to them.

MR. HENDRIX: That'd be great.

MS. WHATLEY: Your Honor, the reason we're calling these three doctors this morning is because all of them pulled items out of Dr. Pierce's body which will become relevant later.

THE COURT: That's fine. Let's bring the jury in.

(Jury enters the courtroom.)

THE COURT: All right. Ms. Whatley, let's bring in all of the witnesses for this morning. Let's get all of them

sworn in.

MS. WHATLEY: Yes, Your Honor. For the record, the witnesses here to be sworn are Dr. Louis Magnotti, Dr. Nick Rachel, Dr. William Hickerson, Susan Raburn, D.J. O'Clare, and Jimmy Turnbow.

THE COURT: Everybody come down. We're going to swear y'all in at once.

(Louis Magnotti, Nick Rachel, William Hickerson, Susan Raburn, D.J. O'Clare, Jimmy Turnbow, Government Witnesses, Duly Sworn.)

THE COURT: You can all go back out and be seated. Let me say this to everyone before you leave. The parties have called for the rule, and what that means is that as you testify, you can't leave the courtroom and then go and talk to the other witnesses about your testimony. The reason we do that is we'd like for each witness to come in and testify based on information that witness knows and not based on any information they've heard from another witness. Will you do that for me?

THE WITNESSES: Yes, sir.

MS. WHATLEY: Your Honor, the United States' first witness is Dr. Louis Magnotti.

DIRECT EXAMINATION

BY MS. WHATLEY:

Q Good morning. Will you please state your name for the record and spell your last name.

A Louis Magnotti, M-a-g-n-o-t-t-i.
Q And what do you do for a living?
A I'm a trauma surgeon and general surgeon at the Regional Medical Center in Memphis.
Q How long have you been a surgeon?
A I've been a surgeon since finishing residency, which was in 2001.
Q When did you finish medical school?
A Medical school was finished in 1995.
Q And where did you receive your training?
A I went to medical school at the University of Medicine and Dentistry in New Jersey, in Newark, New Jersey. I did my general surgeon residency at University Medical, Medicine and Dentistry of New Jersey at New Jersey Medical School, and then I did a trauma surgical critical care fellowship at Memphis.
Q And you stated that you currently perform trauma surgeries?
A Trauma and general surgery.
Q You said it's at the Regional Medical Center in Memphis?
A Yes.
Q Is that sometimes referred to as the Med?
A Yes.
Q Does the Med have a specific trauma center?
A Yes, it does.
Q And what is the trauma center called?

A The Presley Regional Trauma Center.
Q Like Elvis Presley?
A Yes.
Q Were you on call in the trauma center on the morning of February 4th, 2009?
A Yes.
Q Do you remember Dr. Trent Pierce being brought into the Med that day?
A Yes.
Q Were you the admitting physician?
A Yes.
Q Have you reviewed the paperwork from the Med that morning in regards to this case?
A Yes.
Q And are you listed as the admitting physician?
A No.
Q Who is Dr. Tiffany Dee?
A She's one of my partners.
Q Do you know why the paperwork states that she was the admitting?
A She had been on for the entire week and I was only covering for that one day. That's how I assume it was mislabeled.
Q On the morning of February 4th, 2009, did you know that Trent Pierce was being brought in to the Med?

A Yes.
Q How did you know that?
A He was a transfer from an outlying hospital, so with transfers, there's a little more information obtained and the CCA, which is the critical care admission area, had gotten a call as well as the chief resident gets the call which all goes through med com, which is medical communications, they arrange the transfers, they arrange C-flights, they arrange people coming in from the road. But the information that we had gotten was that Dr. Pierce was being transferred to the Med for higher level of care.
Q Did you know his name before he arrived?
A Yes, I knew his name.
Q Did you know who he was?
A No.
Q Had you ever met him before?
A No.
Q Did you know the extent of his injuries prior to his arrival?
A We had gotten some information about what he looked like, but he had just been stabilized at the other institution, they hadn't done too much of a workup.
Q Upon Dr. Pierce's arrival to the Med, what did you do?
A When patients are brought to the Med as trauma alerts like he was, which is the sicker of the patients, they go into

our resuscitation room and we do our ABCs, make sure their airway's secure, that they're breathing, they have vital signs. So he was brought in to the resuscitation room. He had been intubated at the outlying hospital and he had lines and access put in there. He was just worked up like any other patient would be initially from head to toe, head to toe exam, basic X-rays, blood work, and since he was hemodynamically stable, after all that basic workup was done, he went for CT scans.

Q What was the purpose of getting the CT scan?

A You want to rule out any occult internal injuries that you can't see from the outside, either head injuries or bony fractures or internal injuries to the intestines or to the bowel or to the liver or spleen, anything like that that you can't assess, especially on patients that aren't awake and valuable, that you can't physically examine because they've either been sedated or so badly injured or had a head injury, or in Dr. Pierce's case, he had been intubated and sedated and he really didn't have a physical exam that you could go by to determine internal injuries. Long bone fractures are easy to determine if the patient's even out of it because the bone will move, but the internal injuries, the ones that are life-threatening, you need to have more information.

Q When you got the results of the CT scan, did you see anything that concerned you?

A He had small pieces of metal not only in his abdominal

wall, which is really not that concerning, but he had small pieces inside his abdomen between his abdominal wall and the inside. It looked like it was in one of his internal organs.

Q What did you do when you saw that?

A Went and talked to his -- well, I went and explained to his wife what we needed to do, that he needed to go back to the operating room for us to do an exploration of his abdomen plus other procedures that he needed to have done. But we needed to specifically explore his abdomen to make sure that the piece of metal hadn't gone into his intestines or damaged his intestines.

Q Did Dr. Pierce undergo surgery on that day?

A Yes.

Q Were you the first surgeon to operate on Dr. Pierce?

A Yes.

Q Please tell us what you did when you got back into the OR.

A He was already intubated, so he was placed under general anesthesia. This was all coordinated with other services too because we needed multiple procedures done, so he didn't go immediately back as a patient normally would, we had to make sure that we had all the other services around to get as much done as we could that first night. But for our part, we prepped and draped the abdomen, which is, you know, prep it means make it sterile as best you can, cleaned off all the

stuff that was on him, and then do a laparotomy, which is a midline incision, and explore the abdomen for any injuries. And we found there was a piece of metal that was stuck in his cecum, which is the first part of the colon.

Right after your small intestine, the cecum is the beginning of the right colon, and this metal fragment was embedded through the wall of the cecum sticking in and out of it so nothing was actually leaking out. Plus he had bruising, contusions to parts of his small bowel and another area of his colon. The one part of the small bowel was so badly bruised it look like it was going to -- that it was already dead, so we had to take out a piece of his small bowel. We took the little piece of metal out of his cecum and repaired that hole. There was some other serosal injuries, which is not a full thickness injury to the bowel.

The bowel wall has several layers. The serosa is the outer part of it that you can just put back together. And we washed all that out, and when we were closing, we debrided some wounds on his abdomen and pulled out some more metal fragments to try to get those areas to heal.

Q Going back up a little bit when you're talking about draping and prepping him.

A Uh-huh.

Q You said you cleaned off the stuff that was on him. What stuff?

A He was all -- it looked -- when he first came in, it looked like he was burned from head to toe, he was covered all in black powder or looked like burns. But as we cleaned it off, it was clearly more of a residue of something rather than charred black skin which it initially appeared to be.
Q You made a comment that there was bruising. How can a bowel be bruised?
A From a blast effect, blunt. It's like bruising anywhere on your body. If you get punched in the arm, some people will get a big black and blue mark and other people won't. When a bullet rips through tissue, it not only puts holes in intestines or in the tissue that it goes through, but there's a blast wave. The force of the bullet damages all the surrounding tissue and any kind of force when a person's thrown from a vehicle or if there's a house fire and something explodes and they're hit by it, you can have nothing that actually penetrates from the outside but still cause bruising to the intestine, just from the force of the impact.
Q But in this case, there were items that had ended up in Dr. Pierce's abdominal area?
A Yes.
Q Did you remove those items from his colon?
A Yes.
Q What did you do with those items once you removed them?
A Any object that was removed from a patient is handed off

the table to the scrub nurse as a specimen and then it's taken from there.

Q And can you describe for the jury what the pieces looked like?

A It looked like a little metal fragment probably about a centimeter or so, maybe a little more, little less, that looks like a shard of metal that had broken off of something.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q Just handed you what's been marked for identification purposes as Government Exhibit 43-A. Have you seen these before?

A Yes.

Q And what are they?

A The little metal fragments that were removed during the case.

Q Do they appear to be in the same condition as when they were taken from Dr. Pierce's abdominal area?

A Yes.

MS. WHATLEY: Your Honor, at this time we move to admit Government Exhibit 43-A.

THE COURT: They're received.

(Government's Exhibit 43-A received in evidence.)

THE COURT: Let me ask a question. Mr. Hendrix, can

you come to the bench, please?

(Bench conference reported as follows:)

THE COURT: I know Mr. Hendrix objected to all of the pictures. I looked at him, and I didn't -- I just received this without making sure whether he objects to this piece of evidence.

MR. HENDRIX: And I do, Judge. I guess my objection would be to all the government's evidence from here on out that's medical in nature that goes to proving physical injury.

THE COURT: I show that the evidence was received over the objection of Mr. Hendrix and the defendant. Now, also let the record reflect that Dr. Mann objects to all of the remaining medical evidence that goes to the injury of Dr. Pierce, and we'll see it when it comes in, but if it is received, it's received over those objections.

MS. WHATLEY: Your Honor, just for the record, Government Exhibit 43-A, any exhibits that are received in the specimen containers are not received solely to show injury, they are also -- these were also pieces of evidence that were sent to the ATF lab that allowed the ATF lab to make a determination as to what type of device was used in the bomb.

THE COURT: Okay. Is there any other record that needs to be made?

MR. DUDLEY: I have one other thing. So that I don't always have to say that I join, can we say on the record

one defendant's objection is an objection by both?

THE COURT: The record will so reflect. Thank you.

(Proceedings continuing in open court at 9:27 a.m.)

BY MS. WHATLEY:

Q Dr. Magnotti, are those on the screen in front of you?

A Yes.

Q Is that the metal that was removed from Dr. Pierce during the surgery that you performed?

A Yes.

Q At the time you were performing the surgery, were you aware that law enforcement was in the building?

A Yes.

Q After you performed your surgery, did you hand him off to other doctors?

A Yes.

Q And for what purpose?

A He had multiple procedures that needed to be done with multiple other services, and they were all available. He was stable, so we proceeded with getting the necessary procedures done.

Q Do you have any idea how many surgeries Dr. Pierce underwent that first day?

A Approximately six.

Q There were certain surgeries that needed to be done?

A When patients come in with clearly penetrating wounds

through the abdomen, or if you're suspecting of some blunt intraabdominal injury, that needs to be done emergently because they'll either bleed or leak intestinal contents and get sick. With other injuries, if someone has a closed fracture which means the bone's broken but the skin is in tact, those can be delayed. When patients have open wounds associated with fractures or open wounds associated with bones, those things need to be done quickly, within about six hours, because then the risk of infection increases exponentially. He had all open wounds because of all these punctures everywhere that he needed debridements of his wounds by his arm and by his knee that the orthopedic service was taking care of.

His face was -- face and eyes were badly injured, and the ENT, both ENT, which is the ear, nose, and throat service, the otolaryngologists and the ophthalmologists were involved because, again, the eye's kind of important to save. And he also had a problem with his airway. He was intubated at the other hospital, but he had some foreign body in his airway that, again, the otolaryngologists were able to retrieve. It's something that needs to get done quickly that can't be put off.

Q How long was he in surgery that first day?

A About nine hours.

Q Did you continue to check on Dr. Pierce while he was at the Med?

A Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q Handing you what's been marked for identification purposes as Government Exhibit 62-A. What is this?

A A hospital record of procedures that were done during his hospital stay with corresponding diagnoses, Dr. Pierce's stay.

Q Is this a document that is maintained by the Med in the normal course of business?

A Yes.

Q Has this record been certified by the Med?

A Yes.

MS. WHATLEY: Your Honor, at this time, we move for the introduction of Government Exhibit 62-A.

THE COURT: It's received subject to the continuing objections.

(Government's Exhibit 62-A received in evidence.)

BY MS. WHATLEY:

Q In addition to the surgeries performed on Dr. Pierce on that first day on February 4th, did he have any additional surgeries while he was at the Med?

A Yes.

Q And this does show that the patient is Trent Pierce, correct?

A Yes, it does.

Q What is the admission date?
A 2/4/09.
Q What is the discharge date?
A 3/16/09.
Q Going to the bottom of that page and continuing on to the second page, does this show the operations that were undergone?
A It shows operative procedures as well as any invasive procedures that were done, not necessarily in the operating room.
Q Did you perform any of these additional surgeries?
A No.
Q How many different specialists operated on Dr. Pierce while he was at the Med?
A Five, I believe, five or six.
Q Did there come a time while Dr. Pierce was in the hospital that a code was called on him?
A Yes.
Q What is a code?
A When the patient's heart stops, they stop breathing, which then causes their heart to stop or their heart is beating but doesn't really profuse anything, it's called PEA, pulsus electrical activity. You could still have a rhythm and not have a palpable pulse. A code is essentially when someone has died.
MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q Just handed you what's been marked for identification purposes as Government Exhibit 62-B. What is this?

A A record of the code.

Q And this is a document that's maintained by the Med in the normal course of business?

A Yes.

Q Has this also been certified by the Med?

A Yes.

MS. WHATLEY: Your Honor, at this time, we move to introduce Government Exhibit 62-B.

THE COURT: Any objection to this?

MR. HENDRIX: No, Your Honor.

THE COURT: It's received.

(Government's Exhibit 62-B received in evidence.)

BY MS. WHATLEY:

Q What is the date that the code occurred?

A February 13th, '09.

Q And where was Dr. Pierce when this happened?

A He was in the radiology department in the CT scanner.

Q According to this document, were they able to resuscitate him?

A Yes.

Q While Dr. Pierce was at the Med, where was his bed?

A The trauma intensive care unit.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q Handing you what's been marked as Government Exhibit 62-C. What is this?

A Discharge summary.

Q And this is also a document maintained by the Med in the normal course of business?

A Yes.

Q Has it also been certified by the Med?

A Yes.

MS. WHATLEY: Your Honor, at this time, we move to introduce Government Exhibit 62-C.

THE COURT: Any objection?

MR. HENDRIX: No.

THE COURT: It's received.

(Government's Exhibit 62-C received in evidence.)

BY MS. WHATLEY:

Q Who is the patient that is listed on Government Exhibit 62-C?

A Trent Pierce.

Q What is the date of admission?

A 2/4/09.

Q Going down into the hospital course, does it state toward

the bottom of the page -- does it state his date of discharge and where he was discharged to?

A Yes.

Q What was his date of discharge?

A 3/16/2009.

Q Where was he discharged to?

A Healthsouth Rehab.

MS. WHATLEY: Your Honor, I have no further questions.

THE COURT: Cross-examination?

MR. HENDRIX: None, Judge.

THE COURT: Doctor, you can stand down. Call your next.

MS. WHATLEY: Dr. Nick Rachel.

NICK RACHEL, GOVERNMENT WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q Good morning.

A Morning.

Q Would you please state your name and spell it for the record.

A Nick R-a-c-h-e-l.

Q What do you do for a living?

A I'm an orthopedic resident.

Q I'm going to need you to speak up a little bit.

A I'm in orthopedic residence.
Q How long have you been a physician?
A For three years.
Q Where did you go to medical school?
A The University of South Alabama.
Q And where are you doing your residency?
A At UT, at the University of Tennessee at Memphis, Campbell Clinic.
Q Did you say Campbell Clinic?
A Campbell Clinic.
Q Do you ever do any work at the Med?
A I do.
Q Were you working at the Med on February 4th, 2009?
A I was.
Q Did you perform a surgery on Dr. Trent Pierce that day?
A I did.
Q Who was with you in that surgery?
A Dr. Ronnie Bender and Mark Gibbs.
Q Did you know Dr. Pierce prior to that date?
A I did not.
Q What injuries were you operating on that day?
A His orthopedic injuries were a right knee wound and then a right forearm fracture with an open wound over that on his forearm.
Q Before that surgery, were pictures taken of the injuries

to his arm and leg?
A They were.
Q And were X-rays also taken?
A Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q I just handed you what's been marked for identification purposes as Government's Exhibits 63-A through 63-F. Have you seen these before?
A I have.
Q In fact, did you take the pictures?
A I did.
Q What's the purpose of taking pictures?
A Just to document the location and kind of the severity of the wounds.
Q And what do these pictures depict?
A They show a -- A and B show a right forearm wound and then the C and D show a right knee wound.
Q And what about the X-rays?
A The two X-rays show a fracture in his right forearm.
Q And are the fractures E and F?
A Yes, E and F.
Q Do the pictures fairly and accurately show the injuries that Dr. Pierce sustained to his arm and leg?

A Yes, they do.
Q And do the X-rays fairly and accurately show the injury to Dr. Pierce's arm?
A Yes, they do.
MS. WHATLEY: Your Honor, at this time, we move for the admission of Government Exhibits 63-A through 63-F.
THE COURT: They are received over the continuing objections.
(Government's Exhibits 63-A through F received in evidence.)
BY MS. WHATLEY:
Q Dr. Rachel, if we can go through these looking at Government Exhibit 63-A.
A Okay.
Q What does this show?
A It shows an open wound over the right forearm.
Q Looking at the bottom right-hand corner of this screen, what date and time was this picture taken?
A February 2nd, 2009 at 9:46.
Q And going to Government Exhibit 63-B, does this just show a close-up version?
A Again, just a closer image of the same wound with the same date and time.
Q And 63-C.
A This shows the right knee wound and, again, from

February 4th, 2009, at 9:29.
Q And 63-D.
A Just a closer image of the same wound from the same time.
Q Let's look at 63-E. Can you explain the nature of the injuries to Dr. Pierce's arm?
A On these X-rays, he has a radius fracture of his right arm with a lot of metallic debris within his arm.
Q And looking at 63-F.
A It shows the same thing just from a 90-degree angle from the first.
Q And there appears to be an object at the site of the break. Is that correct?
A Yes.
Q Any of these items other than bone that are showing up on this X-ray, what are those?
A Metal, metallic object of some kind.
Q And we won't go back and look at the pictures of the legs, but can you please explain to the jury what the injuries were to the leg?
A He had a -- underneath this wound -- a fracture of his leg with communication to the knee joint.
Q We've heard a word and I don't think I had it explained. What does debridement mean?
A It just means for -- how we use it, just removal of any dead tissue or foreign material, anything that's not viable or

is not supposed to be there.
Q The injuries we've seen to Dr. Pierce's arm and leg, were those wounds debrided during the course of the surgery you performed that day?
A Yes, they were.
Q While you were performing surgery that day, did you remove any foreign objects from Dr. Pierce?
A Yes.
Q What was that?
A Dead tissue, dead muscle, as well as metallic pieces of debris.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q Just handed you what's been marked for identification purposes as Government Exhibit 43-B. Have you seen this before?
A Yes.
Q And if we can go back and look at Government Exhibit 63-F. Does this match the metallic object that is located at the site of the break?
A Yes, it looks --
Q Does it appear to be in the same condition as it was when it was removed from Dr. Pierce's body?
A Yes.

MS. WHATLEY: Your Honor, at this time, we move the admission of Government Exhibit 43-B.

THE COURT: It's received over the continuing objections.

MS. WHATLEY: Your Honor, may I approach to retrieve?

(Government's Exhibit 43-B received in evidence.)

THE COURT: Yes.

BY MS. WHATLEY:

Q Are these the metallic pieces that we just discussed?

A Yes.

Q Did you -- was an additional surgery performed on Dr. Pierce regarding his arm?

A Yes.

Q He was not plated on that first day, correct?

A No, he was not.

Q What does "plated" mean?

A Just how we would fix this fracture, just a metal plate and screws.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q Handing you what's been marked for identification as Government Exhibit 63-G. What is this?

A This is his fracture after it's been fixed, after he's

had his what we call plated.
Q And what was the date of the surgery?
A February 6, 2009.
Q Does the X-ray fairly and accurately show Dr. Pierce's arm after the surgery?
A Yes, it does.
MS. WHATLEY: Your Honor, at this time, we move to admit Government Exhibit 63-G.
THE COURT: It's received over the continuing objections.
(Government's Exhibit 63-G received in evidence.)
BY MS. WHATLEY:
Q In this X-ray, are there still metallic pieces that are located in the wound?
A Yes. Still, yes.
Q The big piece that we have just looked at that was at the site of the break, has that been removed by this time?
A Yes.
MS. WHATLEY: Your Honor, I have no further questions.
MR. HENDRIX: No questions.
THE COURT: Doctor, you can stand down. Call your next.
MS. WHATLEY: William Hickerson.
WILLIAM HICKERSON, GOVERNMENT WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q Good morning.

A Good morning.

Q Would you please state your name for the record.

A William Leslie Hickerson.

Q What do you do for a living?

A I'm a plastic surgeon.

Q How long have you been a plastic surgeon?

A Since 1985.

Q Where did you go to medical school?

A The University of Tennessee in Memphis.

Q When did you graduate?

A 1978. I did a general surgery residency from '78 to '83 and then plastic surgery residencies from '83 to '85.

Q Do you have -- I know you're a plastic surgeon, but do you specialize in anything with plastic surgery?

A Yes, ma'am. I do burns and reconstruction, reconstruction from both the standpoint of trauma and burns as well as other reconstructive efforts, breast reconstruction, abdominal walls and things of that nature.

Q And where do you practice?

A 95 percent of my work is done at the Med.

Q Is there a burn center located at the Med?

A Yes, ma'am.

Q Are you the head of the burn center?
A Yes, ma'am. I started the burn center in 1985.
Q Does the Med have a number of specialties that works at the hospital?
A Yes, ma'am. From a trauma center standpoint, not only do you have your trauma surgeons, your orthopedic surgeons, but you also have to have your neurosurgeons, your otolaryngologists, ENTs, oral surgery, plastic surgeon, neurologist, internal medicine, things of that nature, so it's really a big collection of physicians, if you will, that'll be on call each night.
Q And do those specialties work in conjunction with one another?
A Yes, ma'am.
Q Did you treat Dr. Trent Pierce?
A Yes, ma'am, I did.
Q Are you still treating Dr. Pierce?
A It's been a while since I've seen him, but we still see him on just a routine basis.
Q When did you first come into contact with Dr. Pierce as it relates to these injuries?
A It was -- the night that he was in the hospital itself, I was actually out of town the day that he was injured but the following day, I saw him at the Med.
Q Prior to his admission to the Med, did you know

Dr. Pierce?
A Didn't really know Dr. Pierce. I guess you could say that I was an acquaintance of Dr. Pierce. I ran the burn center and practiced at UAMS, the burn center at Children's Hospital here in Little Rock for three years from 2005 to 2008. And to obtain an Arkansas license, the state of Arkansas's a little different from some states, they have the requirement that you actually have to go and meet the board. So yes, ma'am, I did meet Dr. Pierce when I got my license.
Q Are you still licensed in the state of Arkansas?
A Yes, ma'am, I am.
Q And I'm assuming that since you're practicing medicine in Tennessee, you're also licensed there as well?
A That is correct.
Q Are you currently practicing in any clinics or hospitals in Arkansas?
A No, ma'am, I'm not.
Q Did you perform any surgeries on Dr. Pierce?
A Yes, ma'am, I did.
Q How many?
A Several. I guess there would probably be about three if I'm not mistaken.
Q When was the first one that you performed?
A Early in the course of his injury when we went in to see if we couldn't debride a bunch or a considerable amount of the

shrapnel, if you will, that was in his face, and also see if we couldn't take care of the open wounds that existed on a lower extremity and also the forearm.

Q Were there -- on that first day when you were dealing with his face, were there any other surgeons that were assisting you?

A Yes, ma'am, Dr. Langsdon was there.

Q Did you take pictures of Dr. Pierce before and during that surgery?

A Yes, ma'am, I did.

Q What's the purpose of taking those pictures?

A I take pictures for documentation purposes on most everyone that I do, for several reasons. One is from the teaching aspects to try to teach others some of the things that we've learned over doing this for 25 plus years. The other aspect is to see how I progress with how I'm treating a patient and what I need to do. And other aspects, then, they're always there in case there's people like you that come knocking on my door for any reason.

Q People like me meaning lawyers, right?

A Yes, ma'am.

Q Okay.

Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q I've just handed you what's been marked for identification purposes as Government's Exhibits 64-A through 64-F. Have you seen these before?
A Yes, ma'am, these are pictures that I took.
Q Do these pictures fairly and accurately represent how Dr. Pierce looked on February 6, 2009, before and during the surgery that you performed?
A Yes, ma'am.
MS. WHATLEY: Your Honor, at this time, we move for the admission of Government Exhibits 64-A through 64-F.
THE COURT: They're received over the objections.
(Government's Exhibits 64-A through F received in evidence.)
BY MS. WHATLEY:
Q What was the first part of the surgery that you performed that day?
A The first part of the surgery was that of the face. From the pictures that you see, he had numerous lacerations from the forehead across the eyes, the nose, the mouth, the chin. So all of these areas also had a dark material that was embedded within the skin itself at that time.
Q 64-A is on the screen in front of you. This is the left side of his face; is that correct?
A That is correct.
Q Let's go to 64-B.

A That's looking down from the head, looking toward the feet.
Q And did he have injuries to his nose that are seen in this picture?
A Yes, ma'am. You'll see a lot of injuries that are through here. A couple of things that we need to point out to start with will be the eye shield that's on the right. That was -- if you see that plastic piece, it's called an eye shield. And it's actually to protect the eye itself because it had been injured so. Then you see a tube that's in his nose and that's a tube that goes into his stomach to decompress his stomach.
Q What does decompress mean?
A Remove all of the air or other material that may be in the stomach to keep him from aspirating that or swallowing that down the lung pipe and causing pneumonia.
Q If we can, let's move to 64-C. What does this show?
A This is a closer view of that left side that shows where you have injuries that are along the lips, the cheek, and I don't know if I have a way of highlighting that or not.
Q I believe if you touch the screen, it will highlight.
A Okay. These areas are injuries through here where flaps have been raised, meaning it's not just a straight cut, but the skin has been elevated back in what we call undermining. So rather than cutting straight in like I would with a knife, it's

more like you skive underneath to raise that, and then the material has been embedded underneath that, and you see that all through the face. The lips have literally been torn apart all through this area, other areas through here. This was more like hamburger meat in this area. And then you have injuries out to the side of the eye, top of the eye, and then back over toward the nose again.

Q You made a comment when you were talking about the cheek that there was a material embedded. Material that you did not put there; is that correct?

A No, ma'am, this was material from the injury itself.

Q Other than his face, did you also work on his arm that first day?

A Yes, ma'am.

Q If we can go to 64-D. What does this show?

A This is an injury that was of that forearm where orthopedic surgery -- the injury itself has been cleaned up. The bones have been plated underneath. What you have here, we have two bones in the forearm, one that would go from here to here and another one from here to here. And they both were fractured. They've been repaired. The vessels you see through here would be his artery. That's exposed. We've taken muscle from here and moved that over in this direction to cover the bones so we don't have the fracture that's exposed. What we're trying to do in this case is get more blood supply over that

fracture to help it to heal and then we're going to come back and put a piece of artificial skin over this area to help the whole thing to heal and then come back and put a skin graft on at about three to four weeks.

Q Did you also or did he also sustain injuries to his leg?

A Yes, ma'am.

Q And if we can go to 64-E.

A This is of the thigh, and what you see is particles that have been embedded that are just scattered, but then you have other areas where you have more of a concentrated injury here, here, and up here.

Q What does it mean by a concentrated injury?

A This was more where it wasn't a splatter effect, but more where things hit it at once together. And it actually blew a hole in those areas. But not only did it blow a hole in those areas, it undermined as well, and you can see here where that looks like it's just a little lip of skin, literally the fat underneath has been blown away.

Q Did he also have an injury to his knee?

A Yes, ma'am.

Q If we can go to 64-F.

A This is the repair within his knee. Again, you see some of the black particles that have been embedded not only in the skin but you can see that overlying the cover of the muscle and the tendons down here. You can see the black particles that

are there. These have been repaired by orthopedics, this portion of the skin. This is basically the anterior aspect of the thigh and the attachments that are going to bring the knee back up when you try to straighten your knee out or what we call extending it. You can see the sutures that have been placed by orthopedic surgery at that time. We went back and cleaned all these areas up back to a very viable wound bed so that we could then get an eventual closure in this area as well.

Q During this surgery on February 6, 2009, did you remove foreign bodies from Dr. Pierce?

A Yes, ma'am, I did.

Q From which parts of his body?

A The best I recall, we removed foreign bodies from both areas such as the face as well as the extremities.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q Just handed you what's been marked for identification purposes as Government Exhibits 45-A, B, and C.

A Yes, ma'am.

Q Have you seen these before?

A Yes, ma'am.

Q And what are these?

A These are the particles that I removed. Obviously this

is not all the particles we removed, but representative sections of each one.

Q And do these appear to be in substantially the same condition as they were when you removed them from Dr. Pierce's body?

A Yes, ma'am.

Q What did you do with them after you removed them?

A After we removed them, we handed them to the nurse to pass off of the table itself.

Q And what was the purpose of storing them in this manner?

A Chain of command, ma'am, for what we took out of Dr. Pierce.

Q Was it your intention for law enforcement to receive these?

A Yes, ma'am.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 45-A, 45-B, and 45-C.

THE COURT: They're received over the continuing objection.

(Government's Exhibits 45-A, B, and C received in evidence.)

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:

Q I'm showing you what I just poured out of Government

Exhibit 45-A. Does this appear to be what was taken out of his right arm?

A This was the type of material that was removed from the arm, yes, ma'am, it is. Particle-like, that's the black specks that you see within the other pictures.

Q And 45-B, does this appear to be what was removed from his face?

A Yes, ma'am.

Q Were there numerous small pieces similar to this located on his face?

A All throughout the face, that's what you saw were those black specks on the pictures before.

Q And 45-C, is that what was removed from his leg?

A Yes, ma'am.

Q And were there similar pieces to this throughout his leg as well?

A Yes, ma'am.

Q Did you perform any additional surgeries on Dr. Pierce while he was still at the Med?

A Yes, ma'am, we did.

Q What were the purposes of those surgeries?

A To get these wounds to heal.

Q You made a comment earlier when we were looking at pictures that you eventually put skin grafts on these wounds. Explain that process.

A We put the skin grafts on the forearm and the leg, the knee. Basically what you have accomplished with these wounds, they're too large to close without some other type of coverage and so we applied, rather than doing some flaps from distant areas and moving that in with a microscope, which could have been done, we elected to utilize artificial skin to rebuild the bottom layer of the skin itself. The skin has two layers, what's called the epidermis and the dermis. The artificial skin allowed us to supply that bottom layer, the dermis, to give us more quality of the skin and not have contraction that occurs. Now, contraction is where things try to scar back together and draw together. And what we're trying to prevent is that from occurring because if it happened in the forearm, you'd have a hand that would draw up.

If it happened in the knee in that location, he wouldn't be able to bend his knee. So it's a two-stage procedure then rather than one, but one that gives us a better result overall. But we have more of a risk because we can get infection in those areas and we also have to have more surgery. But we felt that it was going to be the best to his benefit if we could supply that bottom layer. So we put that on at the time of the surgery and then had dressing changes a couple of times a week to make sure that that artificial skin was doing right, that it got blood supply coming from the wound itself, and then we were able to go back and do a skin graft. Now, a skin graft is

where we borrow from Peter to pay Paul. And we actually take it from the leg. And it's a thin layer of skin, and in this case, about ten one-thousandths -- between eight and ten one-thousandths of an inch.

If you were to hold it up and put your name tags behind it, you could actually read those name tags through this skin. Then we take that and put on the artificial skin where the upper layer, the outer layer of the skin is still the outer layer on that new dermis that we're applying it to. The skin's taken at a thin depth so then that area that we took it from called the donor site, will heal back. And so, therefore, although we've borrowed from Peter to pay Paul, Peter's just minus a little bit of skin and it grows back. So that basically, in a nutshell, is a skin graft.

Q Have you continued to follow Dr. Pierce since he was discharged from the Med?

A Yes, ma'am, I have.

Q What is the purpose of those visits?

A Several things. Number one, to make sure that things continue to do right, that we don't have any of those wound complications that we can have. And also to make sure that from the facial areas, we don't have undue scarring that's going to need to be approached.

Q And during the course of your follow-up with him, have you taken additional pictures of Dr. Pierce?

A Yes, ma'am, we have.
Q And are these taken to show just the progress of the wounds?
A They are. And these are also part of the things that we keep within our files to show the progress of what we do. Very similar to how a businessman may go back and review what he does in a meeting to improve his next meeting, I do the same thing with my surgery cases to see the progress that I've been able to obtain to see if I can tweak it some way to make it better the next time as well.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q Just handed you what's been marked for identification purposes as Government Exhibits 64-G, 64-H, 64-I, and 64-J. Have you seen those before?
A Yes, ma'am.
Q What are they?
A These are pictures that I took. 64-G and H are of the forearm, and I and J are of the leg.
Q Do these fairly and accurately portray what Dr. Pierce has looked like during his recuperation?
A Yes, ma'am.
MS. WHATLEY: Your Honor, at this time we move the admission of Government Exhibits 64-G, H, I, and J.

THE COURT: They're received over the continuing objections.

(Government's Exhibits 64-G through J received in evidence.)

BY MS. WHATLEY:

Q Let's look at 64-G. What did you say that this was of?

A This is the forearm, ma'am. It shows the fact that rather than having a smooth area that has all the fatty tissue there, that's missing, so it looks like what I would expect to see on my golf game where I took a divot, unlike what you may expect from a professional. So, it's a dug out area, scooped out. Looks more like a saucer. You see the skin graft that's overlying these areas both here as well as here, and you also see the tendons that are underneath that go to his wrist and hand.

Q If we can go to 64-H. Is this also a picture of his arm from a different angle?

A Yes, ma'am.

Q Does this also show the same skin grafts and things of that nature?

A It does. It shows the skin grafts. It also shows a little bit different area here where we were talking about a divot or what looks like a saucer that you have.

Q Let's go to 64-I. Is this his right knee?

A Yes, ma'am, it is. The skin graft that you see there and

some of the laceration repairs that you also see. You can see some of the embedded particles that are still around as well.

Q And let's go to 64-J. Is this the thigh area we saw earlier?

A Yes, ma'am. That's where we went in and actually excised. If you remember, we had all those circled areas where they were actually undermined from the blast itself that had the fat that was actually blown out. Those were all excised in that area, grafted as one unit.

Q While you have been treating Dr. Pierce, have you learned of the other surgeries and the treatment that he has received?

A Yes, ma'am.

Q What is your purpose for learning of that?

A If we don't work in conjunction as a team, then people are going in different directions and we don't get the best results that we possibly can get. If I'm going to have to go back and do a surgery on somebody that's had trauma and someone else has to do something as well, it's best if we can work in conjunction if it's a timely aspect that works for both teams.

Q Based on what you have learned and what you've personally seen from February 2009 until today, will Dr. Pierce have long term effects from these injuries?

A Yes, ma'am, he will.

MS. WHATLEY: No further questions, Your Honor.

THE COURT: Any cross-examination?

MR. LASSITER: No, Your Honor.

THE COURT: Doctor, you can stand down. Call your next.

MS. WHATLEY: Susan Raburn.

SUSAN RABURN, GOVERNMENT WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q Good morning, Ms. Raburn. Would you please state your name and spell your last name for the record.

A Susan Raburn, R-a-b-u-r-n.

Q Where are you employed?

A Regional Medical Center in Memphis.

Q What is your position at the Med?

A I'm the nurse manager of surgical services.

Q And does that also include being the nurse manager of the trauma operating room?

A Yes, it does.

Q And how long have you been the nurse manager there at the Med?

A This is my tenth year.

Q What did you do prior to that?

A I was the nurse manager at Baptist Memorial Hospital in Memphis.

Q And you're the nurse manager, so I assume you're a nurse?

A Yes.

Q And are you a registered nurse?
A Yes.
Q How long have you been an RN?
A Since 1981.
Q During trauma surgeries, are foreign bodies removed from victims?
A Yes.
Q What happens to those items?
A Items are either taken to pathology or they are signed for and taken by law enforcement.
Q Is there a mechanism by which you keep up with that?
A Yes.
Q What is that?
A We have the specimen labeled and we have what we call the bullet book. It's like a ledger, and bullets and other foreign bodies removed that are going to be picked up by law enforcement are logged in to the book and signed for by law enforcement.
Q And is this information also placed in the computer?
A Yes, on our documentation.
Q Have you heard of Dr. Trent Pierce?
A Yes.
Q To your knowledge, did he have surgery in the trauma OR?
A Yes.
Q And to your knowledge, were foreign bodies removed from

him?
A Yes.
Q I'm going to show you -- Your Honor, if I might approach, I'm going to show you what's been marked for identification as Government Exhibits 43-C1, C2, and C3. Have you seen these before?
A Yes.
Q What are these?
A 43-C1 is a screen shot out of our computer operating room record and it's the page that shows specimens taken.
Q And what about 43-C2 and C3?
A 43-C2 is a copy of a page out of the bullet book where we put a label, what the specimen was and the date, time, agency picking it up, and the name of the officer.
Q And is that the same for 43-C3?
A Yes.
Q Are these records kept in the normal course of business by the trauma operating room nursing staff at the Med?
A Yes, they are.
Q Were they created at or near the time of the occurrence?
A Yes.
MS. WHATLEY: Your Honor, at this time, we move for the admission of Government Exhibits 43-C1, C2, and C3.
THE COURT: They're received over the objections.
(Government's Exhibits 43-C1, C2, and C3 received in

evidence.)
BY MS. WHATLEY:
Q Let's look at 43-C1. Is this the computer screen shot you were discussing?
A Yes.
Q Who is the patient?
A Trent Pierce.
Q What is the operation date?
A The operation date is February 4, 2009.
Q Is that what is contained up in the upper right-hand corner of the screen?
A Yes.
Q Were specimens removed from Dr. Pierce that day?
A Yes.
Q And what were those?
A Small bowel metal fragments from cecum taken by Officer Tommy Estevan, ATF, and metal from right wrist forearm, and foreign body from pharynx.
Q If we can go to 43-C2. What is this?
A This is the picture of the page in the bullet book where this specimen was logged in and signed for by the officer.
Q Who is the patient that is listed on the sticker?
A Trent Pierce.
Q And what is the handwritten notation that is on the sticker?

A Metal from abdomen, colon, two pieces.
Q What is the date that it was signed for by law enforcement?
A 2/4/09 at 3:15.
Q What agency signed for it?
A ATF, Tommy Estevan.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q Does the information from the bullet book that you have in front of you match the information from Government Exhibit 43-A?
A Yes.
Q Now let's go to Government Exhibit 43-C3. What is this?
A This is another entry in the bullet book, metal from right wrist.
Q Who was shown to be the physicians on this surgery?
A Primary surgeons for this part of the operation were Dr. Gibbs and Dr. Perez.
Q To your knowledge, were other surgeons in this surgery?
A Yes, Dr. Nick Rachel was also present.
Q And on what day were these specimens picked up by law enforcement?
A On 2/4/09.
MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:

Q Does this match the information on Government Exhibit 43-B?

A I'm sorry, 43-B?

Q 43 -- does the information on the sticker on 43-C3 match 43-B?

A Oh, no.

Q Okay. If I can retrieve 43-B from you, please. Is there a different patient listed on 43-B?

A Yes, there is.

Q And have you done some checking -- did you learn of that prior to today?

A Yes.

Q And did you do some checking to determine anything about this patient that's listed on 43-B?

A Yes, I did.

Q What were you able to determine?

A That patient had surgery during the evening before Dr. Pierce had his surgery that morning and the surgery ended around 2:30 in the morning and that patient had a closed fracture with no specimens.

Q What is listed on the outside of 43-B, does it match what is listed in 43-C1 showing under specimens on 43-C1?

A Yes, it does.

Q It says B, shrap metal, right wrist slash forearm?
A Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q Is that what is listed on that specimen container?
A Yes, it is.
Q Are you confident this was actually taken from Dr. Pierce as opposed to the patient that is listed?
A Yes, I am.
Q Were other items removed from Dr. Pierce while he was at the Med?
A Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q I just handed you what's marked as 45-D1 and D2. Have you seen these before?
A Yes.
Q What are these?
A 45-D1 is another screen shot out of the computer from our OR record on the specimen page. And 45-D2 is the sticker and signatures from the bullet book.
Q Are these records kept in the normal course of business by the trauma operating room at the Med?

A Yes, they are.
Q And are they created at or near the time of the occurrence?
A Yes.
MS. WHATLEY: Your Honor, at this time, we move for the admission of Government Exhibits 45-D1 and 45-D2.
THE COURT: Received over the continuing objections.
(Government's Exhibits 45-D1 and 45-D2 received in evidence.)
BY MS. WHATLEY:
Q If we can look at 45-D1, please. Who is the patient that is listed on this screen shot?
A Trent Pierce.
Q What is the date of the surgery?
A 2/6/09.
Q Under specimens, what does it show?
A Foreign bodies times three to Bureau of Alcohol, Tobacco, and Firearms, from right arm, face, and left leg.
Q What does times three mean?
A That there were three separate specimens.
Q And if we can go to 45-D2. What does this show?
A This shows a copy of the page out of the bullet book where we have the patient's sticker, the description of the items, and the signature of the person picking it up.
Q Who is the doctor that is listed above the patient name?

A Dr. Hickerson and Dr. Graves.
Q And where were the -- A was showing it came from what part of the body?
A A was right arm; B is face; and C is left leg.
Q And were these items picked up by law enforcement?
A Yes, they were.
Q On what day?
A On 2/7/09.
Q By whom?
A By ATF Officer Tommy Estevan.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:
Q I just handed you Government Exhibits 45-A, B, and C. Does the information on these specimen containers match the information contained in 45-D1 and 45-D2?
A Yes, they do.
Q Were other items removed from Dr. Pierce while he was at the Med?
A Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:
Q I've handed you Government Exhibit 49-A1. Have you seen that before?

A Yes.
Q And what is that?
A This is a screen shot out of the computer for our record.
Q Is this also maintained in the normal course of business?
A Yes, it is.
Q And made at or near the time of the occurrence?
A Yes.

MS. WHATLEY: At this time, we move for the admission of Government Exhibit 49-A1.

THE COURT: It's received over the continuing objections.

(Government's Exhibit 49-A1 received in evidence.)

BY MS. WHATLEY:
Q Who is the patient that is listed?
A Trent Pierce.
Q What is the date of the surgery?
A 2/20/09.
Q What specimens were removed from Dr. Pierce this day?
A Left globe, and then there was removal of foreign body from lower lip. Specimen taken by Dr. Langsdon to pathology.
Q I also put before you Government Exhibit 49-A2. What is this?
A This is a surgical pathology report.
Q Who is the patient listed on the surgical pathology report?

A Trent Pierce.
Q Does it show the date that the pathology report was received or that items were received to pathology?
A Yes, on 2/20/2009.
Q Is this the same day as the surgery we just discussed?
A Yes, it was.
Q Are these documents certified as business records by the pathology lab?
A Yes.
MS. WHATLEY: Your Honor, at this time, we move to admit Government Exhibit 49-A2.
THE COURT: It's received over the continuing objections.
(Government's Exhibit 49-A2 received in evidence.)
BY MS. WHATLEY:
Q Going to the top of that page, who is the patient?
A Trent Pierce.
Q What day were the specimens taken?
A 2/20/09.
Q What was the material submitted?
A Material submitted was: A was foreign body removal; B was eye enucleation, left globe.
Q Going to the bottom of the page where it says gross description, does this continue to the second page?
A Yes, it does.

Q We can start reading the last sentence on this first page. Can you read that out loud for the jury starting with the last sentence of the first page?
A Starting with "Also present"?
Q Yes, ma'am.
A "Also present in the container are two tan yellow focally hemorrhagic soft tissue fragments, and then it gives dimensions. The specimens were placed back in the container for gross examination only and returned to Dr. Langsdon for care in this matter."
Q So pathology did not keep these?
A Correct.

MS. WHATLEY: Your Honor, I have no further questions.

THE COURT: Any cross-examination?

MR. HENDRIX: No, sir.

THE COURT: You can stand down, Ms. Raburn. We've been going about an hour and a half, let's take ten minutes and let's come back at 10:40. We'll be in recess until then.

(Recess at 10:28 a.m., until 10:42 a.m., jury present.)

THE COURT: Call your next.

MR. ROBLES: The United States calls D.J. O'Clare, Your Honor.

D.J. O'CLARE, GOVERNMENT WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MR. ROBLES:

Q Will you please state and spell your name for the record.

A D.J. O'Clare. It D-J and it's O-'-C-l-a-r-e.

Q Tell us where you are currently employed.

A West Memphis Police Department.

Q How long have you been employed at the West Memphis Police Department?

A Five and a half years.

Q What division are you currently assigned to?

A The narcotics division.

Q Have you previously been assigned to any other division at the West Memphis Police Department?

A Street crimes and a patrolman.

Q And in February of 2009, what division were you working?

A I was in the patrol division on day shift.

Q Before becoming a police officer, what did you do?

A I was in the Marine Corps for nine years.

Q What occupation did you hold in the Marine Corps?

A Military police.

Q What was the highest rank you achieved in the U.S. Marine Corps?

A E-6, which is staff sergeant.

Q Specifically where were you stationed?

A I was stationed at Quantico and did security for the president's helicopter.

Q Officer O'Clare, I'd like to talk to you about the morning of February 4th, 2009. Were you on call that morning?
A Yes, sir, I was.
Q Did you receive a call from dispatch?
A Yes, sir, I did.
Q What was the nature of that call?
A Possible explosion at 411 North Avalon.
Q In all your years of working law enforcement, have you ever received a call like that?
A No, sir.
Q How long did it take you to arrive at the scene?
A A minute, minute and a half.
Q Did you know whose residence that was before you arrived?
A No, sir, I didn't.
Q Did you find out afterwards?
A Yes, sir, I did.
Q Whose residence was that?
A Trent Pierce's.
Q Were you the first to arrive on the scene?
A I was second. I pulled up as soon as the first officer was getting out of his car.
Q Who was the first officer?
A Jimmy Evans.
Q Could you describe to us what was happening when you arrived?

A As I pulled up, I noticed the condition of the white vehicle sitting in the driveway and immediately noticed a white female which later was Ms. Pierce sitting on the lap of later found out it was Dr. Pierce.
Q Where was everybody located?
A They were sitting at the -- if you're looking at the front of the vehicle, off to the right near the driver headlight.
Q Was this all in a driveway?
A Yes, it was.
Q You said there was a car. What type of car was it?
A It was a white Lexus SUV.
Q Where was Mr. Pierce in relation to the car when you first arrived?
A Three, four feet to the right of the driver headlight.
MR. ROBLES: Your Honor, may I approach the witness?
THE COURT: You may.
BY MR. ROBLES:
Q Officer O'Clare, I'm handing you Government's Exhibits 61-A through D. Could you take a look at those, please?
A Yes, sir.
Q What do these exhibits show?
A Pictures of the crime scene.
Q Specifically what are these pictures of?
A The vehicle at the crime scene and the damage of the

vehicle as we arrived on scene.
Q Is the damage shown in these pictures consistent with what you saw when you first arrived?
A Yes, sir, they are.
Q Officer O'Clare, could you take a look specifically at Exhibit 61-C. You see that exhibit on the screen in front of you?
A Yes, sir, I do.
Q Now, by touching the screen, could you indicate with a circle where you first saw Dr. Pierce when you arrived?
A Approximately right there.
Q Thank you. Now, could you take a look at Government's Exhibit 61-D. For this exhibit, could you also indicate where you saw Dr. Pierce?
A He was sitting right along that brick wall or that stone wall.
Q Thank you. Did an ambulance or EMT eventually arrive on the scene?
A Yes, sir, about a minute, minute and a half after we arrived on scene.
Q What did the paramedics do while they were there?
A They immediately grabbed Dr. Pierce and loaded him on the stretcher and left.
Q Were they there very long?
A Not long at all.

Q Do you know where the paramedics took Dr. Pierce?
A Yes, they took him to Crittenden Regional Hospital.
Q Did either you or Sergeant Evans escort the ambulance to the hospital?
A I escorted the ambulance out.
Q How long did it take you to arrive?
A A minute, minute and a half.
Q What did you, yourself, do when you arrived?
A I escorted them into the hospital and once they got on the bed, I went back to the crime scene.
Q Why did you go back to the crime scene?
A To start a crime scene log.
Q Describe to us what you saw when you arrived back at the crime scene.
A There was several more officers on scene and they were all standing out actually in the middle of the street at the time I pulled up.
Q Had anybody began gathering evidence at that point?
A No, sir.
Q Had a perimeter been set up?
A As I was pulling up, someone made the decision to set up a perimeter around the residence.
Q Could you explain to us what a perimeter is?
A It's pretty much the outer area of the crime scene allowing people to come in and out and whoever comes in and out

of the crime scene gets logged on the crime scene log sheet.
Q You mentioned a crime scene log. Could you explain what a crime scene log is?
A It just dictates who comes on the scene, what time, what department or where they're from and why they're on the scene and when they leave.
Q You said you arrived back at the scene after escorting the ambulance to the hospital. Did you leave the scene at any other time?
A Yes, sir, I did. I was instructed by a supervisor to go to the hospital and pick up the evidence bag of Dr. Pierce's clothing.
Q Could you describe that bag to us?
A It was a red plastic bag from the hospital.
MR. ROBLES: Your Honor, may I have a moment to speak with defense counsel?
THE COURT: Yes.
MR. ROBLES: Your Honor, may the record reflect that I'm showing defense counsel what has been marked for identification as Government Exhibit 66-A.
THE COURT: Okay.
MR. ROBLES: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. ROBLES:
Q Officer O'Clare, I'm handing you what has been marked for

identification as Government's Exhibit 66-A. Could you tell us what that is?

A It's a picture of the red plastic bag containing Dr. Pierce's clothing.

Q Does this picture fairly and accurately depict the bag that held Dr. Pierce's clothes that you retrieved?

A Yes, sir, it is.

MR. ROBLES: At this time, Your Honor, I move that Government's Exhibit 66-A be admitted into evidence.

THE COURT: Is there any objection?

MR. HENDRIX: No, sir.

THE COURT: It's received.

(Government's Exhibit 66-A received in evidence.)

BY MR. ROBLES:

Q Officer O'Clare, what did you do with this bag after you picked it up from the hospital?

A I secured it in my patrol vehicle and went back to the crime scene.

Q Approximately how long did you maintain possession over that bag?

A I actually picked up the evidence bag from the hospital at 8:43 and it was turned over to one of our investigators at 12:48 in the afternoon.

Q What was the name of that investigator?

A Jimmy Turnbow.

Q Did you return to the crime scene at any point after retrieving the bag?
A From the hospital?
Q Yes, sir.
A Yes, sir. Once I retrieved it from the hospital, I went back to the crime scene because I was in charge of the crime scene log and then when I was instructed to turn over the evidence bag, I went to the police department and turned it over to Turnbow.
Q At the scene, can you tell us whether or not there were more individuals there -- before you had left, could you tell us whether or not there were more individuals there?
A Yes, because at that time is when all the different agencies were pulling up.
Q Which agencies, do you remember?
A ATF, FBI, Memphis bomb squad, Shelby County.
Q Other than delivering the bag of Dr. Pierce's clothes, have you collected or maintained any evidence regarding this case?
A No, sir.

MR. ROBLES: Pass the witness, Your Honor.

THE COURT: Cross-examination?

MR. HENDRIX: Very briefly, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q Officer, your crime scene log, do you have it?
A I don't have it with me, no, sir.
Q Do you still have it though?
A Yes, sir.
Q Or did you turn it over to somebody?
A I turned it over to the investigators.
Q To ATF?
A Yes, sir.

MR. HENDRIX: Thank you.

THE COURT: Anything else?

MR. DUDLEY: No, Your Honor.

THE COURT: Any redirect?

MR. ROBLES: No further questions, Your Honor.

THE COURT: Officer, you can stand down. Call your next.

MR. GORDON: The United States calls Jimmy Turnbow.

JIMMY TURNBOW, GOVERNMENT WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q Good morning, sir.
A Good morning.
Q Please state your name for the record.
A Jimmy Turnbow.
Q How are you employed?
A I'm a detective at the West Memphis Police Department.

Q How long have you worked there?
A I've worked there for a little over three years.
Q How long have you been a detective?
A A little over two years.
Q What did you do before that?
A First year at West Memphis, I was a patrol officer.
Q Do you have any other law enforcement experience?
A Yes, sir, three and a half years at the Jonesboro Police Department as a patrol officer.
Q Do you have any prior military experience?
A I was in the Army for four years.
Q What did you do for the Army?
A Counter-intelligence special agent.
Q Were you on duty on February 4th of 2009?
A Yes, sir, I was.
Q Did you respond to an explosion call at 411 North Avalon?
A Yes, sir, I did.
Q Did you respond by yourself or with someone?
A Detective Robert Hester went with me.
Q When you arrived on scene, was the victim on scene?
A No, sir.
Q He had already been transported away?
A Yes, sir.
Q Were there any law enforcement agencies there?
A The West Memphis Police Department was there, also West

Memphis Fire Department, fire and rescue was there.
Q When you arrived on scene, did you notice any signs of an explosion?
A Yes, sir. There was a Lexus sport utility vehicle in the driveway and the hood was open and the bumper was hanging off where it looked like it had a lot of front end damage.
Q Was there debris in the driveway?
A Yes, there was.
Q And elsewhere?
A Yes, sir.
Q When you and Officer Hester arrived on scene, what did y'all do?
A Detective Hester had the camera so he photographed the scene. And while he was photographing the scene, I took orange fluorescent paint and tried to identify potential evidence and I marked the evidence with circles around it.
Q What were you looking for?
A Anything that looked like it may have came from that vehicle or anything that could have came from that explosion that didn't belong there.
Q If you found something, what was the purpose of marking it with paint?
A So that if there actually was some type of a criminal incident, that whoever processed the scene would be able to identify it and process it.

Q I'm going to show you what's been marked as Government's Exhibits 61-I.

May I approach, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q And 61-U. Do you recognize those?

A Yes, sir, I do.

Q Are those two of the items that you marked with paint on the morning of February 4th?

A Yes, they are.

MR. GORDON: I'd like to offer these two exhibits, 61-I and 61-U, into evidence.

MR. HENDRIX: No objection.

THE COURT: They're received.

(Government's Exhibits 61-I and 61-U received in evidence.)

BY MR. GORDON:

Q Detective Turnbow, looking at 61-I, that's one of the objects you marked?

A Yes, sir, it is.

Q Do you know what that is?

A No, sir, I'm not certain what that is.

Q And just so we're clear, did you just circle anything that seemed out of place?

A Yes, sir, just to err on the side of caution, if I

thought it could potentially be evidence, I went ahead and marked it.

Q Then later on, someone else would determine --

A Right, someone with more training and experience who processed the scene could identify if it was evidence or not.

Q Then in 61-U, did you mark that as well?

A Yes, sir.

Q If you would, if you'll touch the screen up there, draw a little circle on the evidence that you were actually marking.

A All right.

Q What is that item?

A It's a small spring.

Q Now, did you mark more items of potential evidence than just these two pictures?

A Yes, sir.

Q Were you able to fully process the scene?

A No, sir, I did not process the scene.

Q Okay. Your search for evidence, was it interrupted?

A Yes, sir, it was.

Q By what?

A When we discovered that it was actually some type of explosive device, we were advised to get a certain distance away from the potential threat, for safety, so we -- I don't remember exactly what the distance was, but we went out to that perimeter and stayed there.

Q Once the perimeter was set up, what did you do?
A I remained in my car with Detective Hester to make sure that no one other than the people who were dealing with the scene came to the scene.
Q Did you later receive evidence from anyone in this case?
A Yes, sir, I did.
Q If you would, tell the jury what the evidence was and who brought it to you.
A Officer O'Clare received a red biohazard bag containing clothes from Dr. Pierce. I met him at the West Memphis Police Department criminal investigation division at about 12:48 p.m. on the 4th of February. I received the bag from him. You want me to go into what I did?
Q Yeah, when you got the bag, what did you do with it, please?
A I took the bag down to the mini crime lab which is a small lab we have at the police department and it's a secure lab that's only accessed by certain personnel. I went down there with Detective Robert Powder and we took all the evidence out of the bag, and everything that was heavily soiled we placed on brown paper so that it could air dry. I photographed all the evidence while Detective Powder logged the evidence onto a sheet to identify what it was. After everything had dried, I placed it into the brown paper evidence sacks and sealed and initialed everything and maintained a log of the

evidence.
Q Detective Turnbow, if you would look at the screen at 66-A. Is that the bag you received from Detective O'Clare?
A Yes, sir.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q I'm going to show what's been marked as Government Exhibits 66-B through 66-R. Did you review those before testifying this morning?
A Yes, sir.
Q Are those pictures of the contents of the red bag in 66-A?
A Yes, sir.
Q Are those the pictures you took?
A Yes, sir.
MR. GORDON: Your Honor, I'd like to offer 66-B through 66-R.
THE COURT: Any objections?
MR. HENDRIX: No, sir.
THE COURT: They're received.
(Government's Exhibits 66-B through 66-R received in evidence.)
BY MR. GORDON:
Q Detective Turnbow, in 66-B, what are we looking at here?

A It's a piece of a black wool coat.
Q 66-C?
A It's a maroon sweater.
Q 66-D?
A It's a pair of underwear.
Q 66-E?
A It's a pair of trousers with a black belt.
Q 66-F?
A It's another piece of a black wool coat.
Q 66-G?
A It's a black leather glove and a bag of Halls cough drops.
Q Did you make note of where those two items came from?
A Yes, sir. The previous evidence item, the piece of the black wool coat, these two items came from the pocket of that coat.
Q The coat that was shown in 66-F?
A Yes, sir.
Q 66-H?
A A black leather glove.
Q 66-I?
A It's a wool scarf.
Q 66-J?
A A maroon tie.
Q 66-K?

A It's a fleece top, long sleeve.
Q 66-L?
A A pair of black shoes, look like crocodile skin shoes.
Q 66-M?
A It's a long sleeve turtleneck shirt.
Q 66-N?
A Pair of socks.
Q 66-O?
A A white button-down shirt.
Q 66-P?
A A white T-shirt.
Q 66-Q?
A A pair of eyeglasses.
Q 66-R?
A It's a tooth.
Q Did you -- after you stored the evidence, did you later turn it over to someone else?
A Yes, I did.
Q Who did you turn it over to and when?
A Special Agent Glen Cook with the ATF on the following day, February 5th.

MR. GORDON: Thank you, sir. Pass the witness.

THE COURT: Cross-examination?

MR. HENDRIX: No, sir.

THE COURT: Okay. Mr. Gordon, do you have any other

witnesses this morning? I know you have some for this afternoon.

MR. GORDON: I'm being told yes, I do, Judge.

THE COURT: You can stand down. Call your next.

MR. GORDON: The United States calls Dean Fitzgerald. Your Honor, this witness has not been sworn.

THE COURT: Officer, come down and we'll get you sworn in first.

DEAN FITZGERALD, GOVERNMENT WITNESS, DULY SWORN

THE COURT: You can have a seat.

DIRECT EXAMINATION

BY MR. GORDON:

Q Morning, sir.

A How you doing, sir?

Q Please state your name for the record.

A Dean Tracy Fitzgerald.

Q How are you employed?

A Shelby County Sheriff's Office bomb squad and SWAT team.

Q How long have you worked for the Shelby County Sheriff's Office?

A 13 years.

Q And Shelby County, are we talking Tennessee or Arkansas or what?

A That'd be Tennessee, sir.

Q You said you're on the SWAT team and the bomb squad?

A Yes, sir, I am.
Q How long have you been on the bomb squad?
A I've been on the bomb squad approximately eight years.
Q How about the SWAT team?
A Five years, sir.
Q Do you have any prior military service?
A I do, sir, United States Army.
Q What did you do for the Army?
A Basically airborne infantry, just a front line soldier.
Q How long were you in the Army?
A Active and reserve, total of nine years.
Q If you would, please, tell the jury what the Shelby County bomb squad does.
A Our job basically is to render safe or remove any energetic materials up to and including high explosives, explosive mixtures, chemical mixtures, pyrotechnics, and ammunition. We do this many different ways. We try to do it remotely as much as possible using robots. Sometimes we can't use the robots. At that point, we become the robot. We actually have to put on a big heavy suit called a EOD9. The E0D9 weighs about 100 pounds and it can generate 130 degrees in a matter of a minute or so. It's not much fun. But, again, we have to do it.

We try to render these things safe remotely again as best we can by separation of components or by counter-charge. A

separation of components is just what we say, you just separate all the components, the explosives from the components and that renders it safe. Otherwise we do it by counter-charge which we actually go up with an explosive charge and do it controlled to where we can get rid of it explosively.

Q Will you do me a favor?

A Yes, sir.

Q Talk slower.

A I'm sorry. I apologize.

Q When Karen's eyes here get real big, that's a bad sign.

A I apologize.

Q It's okay. What training and experience do you have that qualifies you to be a member of the bomb squad?

A In order to be on the bomb squad, we have to go through POST certified training, that's Police Officers Standard Training. In other words, I am a police officer in the state of Tennessee. We attend a basic bomb school, which is HDS, Hazardous Devices School, in Red Stone Arsenal, Alabama. That's in Huntsville. All bomb techs have to go through this basic school. I've been through several FBI seminars on improvised explosives and IEDs. IEDs are improvised explosive devices. It's basically the things that are killing all the guys in Iraq. Been through several advanced schools, advanced explosive destruct techniques and advanced electronics disablement course for IEDs.

I have been through several post blast schools. The basic post blast school I went through in Milan, Tennessee, and then I went through the advanced post blast school which would be a large vehicle bomb school, where they actually blow up a large vehicle and we have to go back in and recreate what we believe did it, the vehicle itself, where the vehicle came from. Everything investigative, we have to do.

Q Are you a certified bomb technician?

A Yes, sir, I am.

Q How long have you been certified?

A I certified in 2004. I recertified three years later and I'm up for another recertification now, so approximately six years.

Q And you already told us some of your training and experience in post blast investigations. Tell us what that is, first of all. What's a post blast investigation?

A It's basically the investigation of the scene after the blast. Again, we go in and try to figure out where the seat of the blast was, which is where the actual ignition spot of the blast was, we try to find the farrest piece of evidence to say how big the radius of the blast was. We try to find components to find out what the trigger of the device was, we try to find explosive residues or explosive powders or part of the explosive to figure out what the explosive was. Just that's pretty much the general of it right there.

Q And other than your training in post blast investigations, how many investigations have you actually participated in?
A Just a round estimate, probably 20 or so.
Q Were you part of the Shelby County bomb squad on February 4th of 2009?
A Yes, sir, I was.
Q Did you respond to a bomb scene at 411 North Avalon in West Memphis, Arkansas?
A Yes, sir, I did.
Q All right. Tell us why a bomb squad from Tennessee is responding in Arkansas.
A Basically we're the only tier 1 bomb squad for miles around. We're actually a regional bomb squad. It's a region called the UASI region. If you ask what UASI means, I'm really not going to be able to tell you.
Q Karen's going to ask you how to spell it, so go ahead and spell it.
A U-A-S-I.
Q Thank you.
A And basically what that is is we cover an area of 13 counties in three different states because we're regional.
Q What time did you arrive at the bomb scene?
A Approximately 10:00 that morning.
Q When you arrived, had a perimeter already been set up?

A It was a very loose perimeter at that time. I wouldn't really call it a perimeter as such. People had been moved back away from the scene. There was nobody up on the scene at that time.
Q Was the perimeter firmed up later?
A Yes, sir, it was.
Q How many members of the squad responded?
A Be honest with you, sir, I'm not sure. Probably five of us. That's a guess.
Q More than just you?
A Yes, sir.
Q And when y'all arrived on scene, what did you do?
A When we arrived on scene, we went to -- we actually sent a K-9 and a spotter up. A K-9 is an officer who carries the bomb detection dog who's basically there to detect if there's any secondary devices. A secondary device is, you know, you had the first blast, the bomber might set a secondary blast just to take you out. So we're up there looking for secondaries to secure the scene for the investigators to come in.
Q How many dogs were y'all running that day?
A Two, sir.
Q How long did it take for the dogs to search the area?
A Approximately an hour, maybe a little longer, maybe a little less.

Q Were any secondary devices found?
A No, sir.
Q Did y'all conduct a physical search after that?
A Yes, sir, we did.
Q What's that mean?
A We actually went physically up on the scene. We searched the house for secondaries and the general area around the scene for secondaries.
Q Was anything found?
A No, sir.
Q After that, did you begin the post blast investigation?
A Yes, sir, we did.
Q And were you personally part of that investigation?
A I was, sir.
Q Where did your investigation start?
A I actually went to what we call the seat of the blast, which is the ignition point of the blast, I searched from there out.
Q Tell us what you were looking for.
A I was looking for, again, the blast seat and any components of what caused the blast.
Q During the post blast investigation, were any photographs taken of the area that the search was being conducted?
A Yes, sir, there were.
MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to hand you what's been marked as Government Exhibits 61-E through 61-V, and ask you to look at those. Do you recall reviewing those before testifying?

A Yes, sir, I did.

Q All right. Are those fair and accurate depictions of the area where the post blast investigation occurred and the items that you found?

A Yes, sir, they are.

MR. GORDON: Your Honor, I'd offer Government's Exhibits 61-E through 61-V.

THE COURT: E through V?

MS. CASSINELLI COUCH: No objection.

THE COURT: They're received.

MR. GORDON: Thank you.

(Government's Exhibits 61-E through 61-V received in evidence.)

BY MR. GORDON:

Q Let's look at 61-E real quick. Just so we're all clear, is this the general area of where your search began?

A Yes, sir, it is.

Q During your search, did you find any evidence of an explosive device?

A Yes, sir, I did.

Q Did you find a grenade fuse system?
A Yes, sir, I did.
Q Tell us where you found that, please.
A I actually found it in the flower bed which would be on the driver's side of the vehicle.
Q Let's look at 61-F, please. Is that the flower bed area?
A Yes, sir, it is.
Q Can you actually see the grenade fuse system in that picture?
A Yes, sir, I can.
Q If you would, take your finger and real slowly draw a circle around it on your screen. Kind of in the center of that circle?
A Yes, sir.
Q Let's look at 61-G. Is that a close-up of the fuse system in place?
A Yes, sir, it is.
Q Now, when you found something, did you remove it?
A No, sir, I did not.
Q If you found something, something that you thought was evidence, what did you do to mark it?
A We have a little stick in the ground, construction type flags that we mark it with. We'll poke a hole in the ground and set it right next to it so we know where they are.
Q Let's go back and look at 61-E. If you'll look in the

flower bed there, see a little red thing shining up?
A Yes, sir.
Q Circle it so we can all see it, please. Make sure we're looking at the same thing. Is that the red flag that you marked the fuse system with?
A Yes, sir, it is.
Q Tell us what a grenade fuse system is.
A Basically the grenade fusing system is the detonator of the grenade. What it does is it has a striker in it. When you pull the pin and you release the lever on the side of it, the safety lever on the side of it, the actuator, it's actually an arm under spring tension that flips when it makes contact with the primer, the primer goes off and it sets off a little piece of what we call time fuse, which causes a delay, the delay. Four to five seconds later, the actual detonator goes off inside, sets off the filler, whatever the filler might be, and then makes the explosion.
Q Was this a significant find?
A Yes, sir.
Q What did it tell you?
A Basically it told me that I possibly might be working with a military style device. Either way, it was a military style initiation.
Q Did you find any other evidence of an explosive device?
A Yes, sir, I did.

Q What do you recall?
A A little further out closer into the road, I found what we call a safety lever or spoon of the grenade stem system.
Q Let's look at 61-H. Is that the spoon?
A Yes, sir, it is.
Q Let's look at 61-I as well. Is that the spoon after someone had marked it?
A Yes, sir, it is.
Q Couldn't put a flag in the middle of the street, so you did paint around it?
A Yes, sir.
Q All right. Tell us what the grenade spoon is.
A That's actually the safety lever. If you pull the pin and you've got the lever in your hand, until you release the lever, the explosive train won't start. So as long as you hold that in your hand, you're fine. But when you pull the pin and release it, the spoon flies off and releases that actuator and starts the time part of the fuse.
Q So when you found the spoon, what did that indicate?
A Again, it just basically told me -- it told me two things. Number one, it told me that I, again, was working with a military style device. And also if you notice, the spoon is a very straight spoon, and I had seen that before working with a particular device.
Q What particular device?

A An MK3A2 grenade.
Q Did you find any other evidence of an explosive device?
A I did, sir.
Q What was that?
A A little further out into the courtyard, I found a tire, a balloon style spare tire if you will.
Q Let's look at 61-J, please. Does this picture show the area where the tire was found sort of?
A Sort of, yes, sir.
Q Okay. Draw a circle, help us out here.
A It was actually found behind this wall.
Q For the record, there's a short wall on the left. It was behind that wall?
A Yes, sir.
Q On the side of the house?
A Yes, sir.
Q Let's look at 61-K. Is that the tire?
A Yes, sir, it is.
Q And is that the tire in place where it was found?
A Yes, sir, it is.
Q Was there any damage to the tire?
A Yes, sir.
Q Describe it for us, please.
A The tire, the rubber part of the tire itself was shredded, as you can see, and also the rim, which is the metal

part of the tire, was bent significantly.
Q Let's look at 61-L, please. 61-M, 61-N, please. Do those three pictures accurately show the damage to the tire?
A Yes, sir, it does.
Q Was there any evidence of tape on the tire?
A Yes, sir, there is. There was.
Q Can you see it in 61-N here?
A Yes, sir, I can.
Q If you would circle it for us. Let's go back to 61-M also, please.
A Circle that one too?
Q Yeah, circle if you see any tape, evidence of tape. Let's try that again. When you found the tire, did you believe that the tire was used in the blast, in the explosion?
A Yes, sir, I did.
Q Okay. Why did you think that?
A It basically looks like something I've set up before, sir, in training.
Q Explain that to us.
A Part of my job is I'm an instructor at our training academy in booby traps and IEDs. And during the training, I'll actually set up some booby traps with training devices and I've, again, set up a device similar to what I'm looking at here.
Q When you say booby trap, what do you mean?

A How do I explain that? A victim-initiated explosion where the person actually goes up and moves something or steps on something or trips something which actually starts an explosion, and it's designed to harm the person who trips it or sets it off.
Q Based upon your training and experience, you thought this was a booby-trapped tire?
A Yes, sir, I did.
Q Was there any damage to the white SUV that was parked in the driveway?
A Absolutely, sir.
Q Where was the damage to the car?
A The damage was on the front. It would have been the driver's side bumper on the front.
Q Let's look at 61-O, please. Is that the damage?
A Yes, sir, it is.
Q Was there any damage elsewhere on the car except for the front?
A Not as I recall, sir, no.
Q And if you look at the bumper there, on 61-O, is there black residue on the bumper?
A Yes, sir, there is.
Q Is that significant to you at all?
A Yes, sir. That basically shows that there was thermal action done on the front of the car.

Q What does that mean?
A A thermal effect, if you will. Part of an explosion is a thermal effect. You get a ball of fire, it might be just for a flash, but it's very intense and very hot, and it'll leave a black residue a lot of times on stuff like that.
Q Does that also indicate the proximity of the explosion?
A Yes, sir, it does.
Q Did it also help you determine the blast seat?
A Absolutely, sir.
Q Tell us again what the blast seat is.
A The blast seat was on the front bumper of the vehicle, around the front bumper of the vehicle, obviously where the most damage was done to the vehicle.
Q When you say in front of the vehicle, are you talking about on the ground or up against the vehicle?
A No, sir, it would have been up against the vehicle.
Q Why not the ground?
A If you look on the ground, you'll see those are cobblestones, and cobblestones is like a cement block, very thin, maybe this thick, maybe 3 inches thick. It's not a very strong material until you put it together with other cobblestones. If an explosive would have been laying against that, it would have had a cratering effect. You've seen it on the movies when a bomb goes off on the ground, it makes a big crater under it, there would have been a crater where those

rocks were. There was no crater at all.
Q Let's look at 61-R, please. Any damage to the cobblestone there?
A None that I can see, sir, no.
Q 61-S. Does that show the blast seat area?
A Yes, sir, it does.
Q Where would you say it was?
A Circle it?
Q Sure, please.
A I'll say it was here on the vehicle, sir.
Q So that would be in front of the driver's side tire?
A Yes, sir.
Q Let's look at 61-T, please. Again, any damage to the cobblestones?
A No, sir.
Q Did you find any frag, any evidence of frag?
A Very, very little, sir, very little.
Q Tell us what frag is.
A Fragmentation is a part of the device when the explosion goes, it flies off at a high rate of speed. Sometimes you get very small fragmentation when you have like fiber or cardboard box or something like that, a very soft material. Large frag would be from a fragmentation grenade, bullet-size fragments of metal coming off. I didn't see any evidence of that here.
Q What would you see if you saw evidence of fragmentation?

A You'd see large holes in part of the vehicle, you would actually probably see chips taken out of the blocks, chips taken out of the cobblestones. You might even have seen chips taken out of the tree and the wall for several meters around. I saw no evidence of that.
Q Let's look at 61-P. Any fragmentation in that picture?
A No, sir.
Q 61-Q, any fragmentation?
A If you look -- I'm going to draw again -- in this general area right here, very, very little fragmentation right there. You can see very small, very small holes.
Q Will all grenades give off some fragmentation?
A Yes, sir, most. I would venture to say all would of some kind, very small pieces. Like a fiber casing would put off very small shards of whatever fiber it was, but you might get part of the blasting cap, things of that nature, but they'd be very, very small.
Q So the lack of evidence of fragmentation, was that significant to you?
A Yes, sir, it was.
Q How so?
A Well, it told me that I wasn't -- that I was not dealing with a fragmentation style device. Many of y'all have seen on like military shows, MK3A2, the pineapple grenade, it'll send off big pieces of metal. Our fragmentation grenade, the

baseball style grenades now will send off large pieces of fragmentation. There was none of that here.

Q Let's look at 61-S, please. Do you see any blood in this picture?

A Yes, sir.

Q Did that help your investigation at all?

A Yes, sir, that told me where the victim was.

Q 61-T. Same thing there?

A Yes, sir.

Q Blood on the driveway and it goes up the wall into the bushes?

A Yes, sir.

Q Did you find any suspected explosive material during your investigation?

A Yes, sir, I did, at the front of the vehicle.

Q Let's look at 61-S. Can you see it in that picture?

A Yes, sir, I can.

Q Circle it for us, please. For the record, it's kind of a powder on the cobblestones on the right, just right of center. Is it unusual to find explosive material in a post blast investigation?

A It's not unusual, sir. You find it now and again.

Q So the explosion itself won't always consume the explosive material?

A No, sir, not always.

Q Does the bomb squad have the capability to test materials like this, powder like this to see what it is?
A No, sir, but we usually call a Hazmat unit over, fire department Hazmat unit to test things.
Q Was one called in this morning?
A Yes, sir, it was.
Q Do you recall where the Hazmat team was from?
A I believe it was from Memphis Police Department, Memphis Fire Department, sir.
Q Let's look at 61-V. Is that the picture of the suspected explosive material after they moved the car?
A Yes, sir, it is.
Q What's that yellow kit on the left?
A That's the actual testing device that the fire department uses to figure out what the material actually is.
Q Do you know how they operate that?
A I know that they put a little of a small sample of the substance on some kind of reader in there and it reads it or it tests it. I don't know exactly how it works.
Q Did they test the material?
A Yes, sir, they did.
Q What was it found to be?
A It was TNT, sir, trinitrotoluene.
Q Is that a high explosive?
A Absolutely, sir.

Q Is that found in military explosives?
A Yes, sir, it is.
Q Military grenades?
A Yes, sir, it is, some.
Q Who is Lieutenant Perry McEwen?
A Lieutenant Perry McEwen is my boss. He's the second in command of our bomb squad.
Q Was he present during the post blast investigation?
A Yes, sir, he was.
Q Did he participate in it as well?
A Yes, sir, he did.
Q I just want to clarify one thing. You were talking about different types of grenades and you mentioned the MK3A2 and then a pineapple grenade.
A Yes, sir.
Q Are they the same thing or are they different?
A No, they're very different.
Q What's the difference?
A The MK2 is a World War II and early Vietnam style grenade. It's made of like a pot metal, and it actually has grooves in it so that when it blows up, those grooves will fracture and send big chunks about that big, about say an inch by an inch metal in all directions, killing radius probably about 5, 6 meters, guaranteed to hurt somebody bad. The MK3A2 is an offensive grenade. What it does is it uses overpressure.

They'll use it in demolition procedures. Also, like if you throw it into a building, the overpressure, the pressure given off by this thing is what kills people. Used in a large area where there's no walls and no enclosing, it can kill in a very small radius. It's used more for knocking people out in a large radius. But if you throw it inside of an enclosed building, it's almost guaranteed to kill everybody in the room.

Q And the MK3A2 grenade, what is the body of the grenade made of?

A It's made of a fiber almost like a plastic, but it's really a carbon. I don't even want to say a carbon fiber. It's some kind of a fiber. It's not a fragmentation style device. That fiber is either going to go off in very small or it's going to be consumed, one of the two.

Q Consistent with what you saw on North Avalon?

A Yes, sir. Yes, sir, it was.

MR. GORDON: Thank you. Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q Officer, I just wanted to make sure that I had gotten my notes correctly on this. Did you actually or the bomb squad seize items from the scene?

A No, sir, we did not seize any items from the scene.

Q Y'all found the tire?

A Yes, sir, we did.
Q On that tire, I think you identified it was a tape?
A It was looked like duct tape residue.
Q Duct tape. The third item that I had written down was the powder, the explosive material under the car.
A Yes, sir.
Q And that's when Hazmat came in?
A Yes, sir.
Q Who actually then collected the tire, do you know?
A Sir, I can't tell you. I don't have any idea, myself, who collected the tire.
Q Not a problem. The tape, you weren't involved in the actual collection of either it or the powder either; is that right?
A No, sir, I was not.

MR. HENDRIX: That's all I've got. Thanks.

THE COURT: Any redirect?

MR. GORDON: No, Your Honor.

THE COURT: You can stand down. Call your next.

MS. WHATLEY: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MS. WHATLEY: Our next witness is John Norris and he's obviously here at counsel table. The problem is we need to bring in all of the evidence from the bomb scene and some of

that's quite bulky so we didn't bring it in, we were hoping to do that over the lunch break.

THE COURT: Here's the problem I have. At 12:15, I have a sentencing. And so if we break now, maybe I can take a quick break and then come back for my sentencing at 12:15 and then we can be back here at 12:45. Does that give everybody enough time or do we need more time?

MS. WHATLEY: I guess my question is will it bother the Court. We're going to have it covered up obviously until it's admitted, but the bumper of the vehicle is rather large and we're going to have it laid out on visqueen and all that so it doesn't hurt your courtroom, but would that bag bother you to have it in here for your sentencing?

MR. HENDRIX: While we're here and I feel like complaining, there are two women in the gallery that are intent on getting into a staring down contest either with Dr. Mann or me or Ms. Couch. And it's just become fairly obnoxious.

THE COURT: Who are they?

MS. CASSINELLI COUCH: It's particularly the lady in the purple.

MR. HENDRIX: They're on the second row, Judge. It's two middle-aged women, one in purple and one in white.

MS. CASSINELLI COUCH: She appears to be trying to call the jury's attention to something.

MR. HENDRIX: That's the main problem.

THE COURT: Will you do me a big favor and when we break for lunch before anybody leaves the courtroom, will you go back and tell the people in the gallery that we don't need them or, no, specifically do not stare down the parties, the lawyers. If they become a distraction, I'm going to have to have them removed. I don't want to point it to anybody in particular, but just let everybody know. Can you do that?

COURT SECURITY OFFICER: I can do that.

THE COURT: And stare down jurors either. There's a report that there are -- that there are people from the public who will stare intently at the lawyers and the jury and the parties and that's a distraction, and if they can't stop, we're just going to have to start removing people.

COURT SECURITY OFFICER: Yes, sir.

MS. WHATLEY: Do we want to take up this other issue?

THE COURT: Do we know who they are?

MS. WHATLEY: I think I do, Your Honor. One of them I haven't met, but I have a feeling I know who she is.

THE COURT: Do you think they're relatives?

MS. WHATLEY: I think they are linked to Dr. Pierce, but I can also deal with it. But I haven't met the lady in purple, but she walked in with the lady I met yesterday.

THE COURT: That's fine.

MS. CASSINELLI COUCH: I kind of thought that after

we went (indicating) she'd back off, but it didn't happen.

MR. HENDRIX: I always lose the staring competition.

THE COURT: That's not all that uncommon, but, people, just stop. Anything else we need to take up?

MS. WHATLEY: We may have something, we can bring it back up.

THE COURT: So you think 12:45 or 1:00?

MR. HENDRIX: 1:00.

(Proceedings continuing in open court at 11:41 a.m.)

THE COURT: All right. Ladies and gentlemen, we are going to break now because we have some witnesses that we need to get here, a couple witnesses. We have some exhibits we need to bring in the courtroom. I have another hearing at 12:15 and so we are going to break until one o'clock. I give you the same admonition that I've given you before, don't talk about the case, don't form opinions, wait till you've heard all the evidence before you decide, you start deciding what your verdict is going to be. Also wait until you've had a chance to go back into the jury room and deliberate with your fellow jurors and discuss everybody's points of view. Also refrain from communicating with any of the parties, anybody about the case, but mainly talking to the parties or the lawyers. We want this process to not only be fair, but to appear to be fair. With that, we'll recess until one o'clock.

(Lunch recess at 11:43 a.m.)

C E R T I F I C A T E

I, Karen Baker, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Karen Baker, RMR, CRR, CCR

United States Court Reporter

Date: March 10, 2011

(Proceedings continuing in open court at 1:03 p.m.; jury present.)

THE COURT: How many witnesses do we have ready to be sworn?

MS. WHATLEY: Two, Your Honor.

THE COURT: Can we call them in?

MS. WHATLEY: John Norris and Larry Smith.

THE COURT: And, ladies and gentlemen of the jury, I know that as we proceed through this trial, especially as you hear one witness after another and time goes on, that you might want to get up and stretch out a little bit, kind of shake some of the cobwebs off. Feel free to do that between witnesses. I would say do not start talking between witnesses, but anytime we take a little break like this, if you want to stand up and stretch out, you can. Okay.

Let's have both of you sworn in.

(John Norris and Larry Smith duly sworn.)

THE COURT: Thank you. Call your next.

MS. WHATLEY: John Norris.

JOHN NORRIS, GOVERNMENT WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good afternoon.

A. Good afternoon.

Q. Would you please state your name?

A. My name is John Norris, N-O-R-R-I-S.
Q. And how are you employed?
A. I'm a special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives.
Q. And how long have you worked for ATF?
A. Five years.
Q. What did you do prior to that?
A. I was a police officer in Germantown, Tennessee, for five years.
Q. You're going to have to slow down just a little. And how long were you a police officer?
A. For five years.
Q. And what do you do as an ATF agent?
A. ATF agents investigate violations related to federal firearms and explosive laws primarily.
Q. And to what office are you assigned?
A. Little Rock, Arkansas.
Q. And have you been in the Little Rock office the entire time you have been an ATF agent?
A. I have.
Q. How many agents does the Little Rock office have?
A. At this time, seven.
Q. Does the Little Rock office kind of service the entire state?
A. It does.

Q. Other than the Little Rock -- Little Rock proper, do you have an agent who is assigned to the Little Rock office, but is outside Little Rock?

A. That is correct.

Q. And how many?

A. That would be one agent at this time.

Q. And where is that agent?

A. It's in Fort Smith, Arkansas.

Q. Can you please name the agents, the ATF agents, in Arkansas?

A. In Arkansas will be Special Agent Tony McCutcheon; ATF Special Agent Ed Starr; ATF Special Agent David Oliver; ATF Special Agent Shannon McKittrick; ATF Special Agent Warren Newman; ATF Special Agent Glen Jordan.

Q. And who is the resident agent in charge of the Little Rock office?

A. The resident agent in charge would be Grover Crossland.

Q. Do you have any task force officers assigned to the ATF here in Little Rock?

A. We do.

Q. And who is that person?

A. That's going to be a Little Rock police officer, Detective Russ Littleton.

Q. Do sometimes local agencies loan their officers to various federal agencies?

A. Yes.
Q. And is that what's referred to as a task force officer?
A. That is correct.
Q. Were you working on February 4th, 2009?
A. Yes.
Q. And were you requested to go to a bomb scene in West Memphis, Arkansas?
A. Yes.
Q. And who notified you that you needed to go to West Memphis?
A. Senior Special Agent Glen Cook.
Q. And at that time was Agent Cook in the Little Rock office?
A. Yes.
Q. Is he still with the Little Rock field office?
A. He is not.
Q. Where is he?
A. He has since assumed a supervisor's position in El Paso, Texas, with ATF.
Q. Did Special Agent Cook perform the role as the lead agent in the West Memphis case?
A. Yes.
Q. Were you the only Little Rock ATF agent that went to West Memphis that day?
A. No.
Q. Who else went?

A. The entire Little Rock office responded to the West Memphis bombing scene.
Q. Is it unusual for the entire office to get called out?
A. For a call like that, no, it is not unusual.
Q. What do you mean "for a call like that"?
A. Where you're going to have a large scene to be processed, a potential explosive event or a fire, an arson, something to that effect, the whole office or most of the office would respond to a scene like that.
Q. And what -- what address did you go to in West Memphis?
A. We were requested to go to 411 North Avalon.
Q. And did you know whose address that was?
A. I did not.
Q. Did you later learn whose it was?
A. I did.
Q. Whose was it?
A. It was Dr. Trent Pierce's residence.
Q. What time did you arrive at the residence?
A. Approximately between 10:30 and 11 o'clock.
Q. And when you arrived at the residence, was the scene roped off?
A. Yes.
Q. What was the weather like that day?
A. It was very cold that day.
Q. When you arrived at the residence, were other law

enforcement personnel present?
A. Yes.
Q. From which agencies?
A. From my recollection, West Memphis Police Department, some FBI agents. ATF agents from the Memphis office had responded. A few of our agents had gotten there before I did. Shelby County, Tennessee, Bomb Squad was there. Memphis Bomb Squad was there. Arkansas State Police Bomb Squad was there.
Q. That's a lot of agencies.
A. Correct.
Q. Was a decision made at some point regarding which agency would take the lead role in the investigation?
A. Yes.
Q. And who did that fall to?
A. It was going to fall to the ATF Little Rock field office.
Q. Which agency was responsible for the collection of evidence that day?
A. ATF.
Q. And how was the collection to be handled?
A. There was a team assigned to process the scene. Three of us out of the Little Rock office were tasked with actually documenting and collecting that evidence. And it would be myself, Special Agent Shannon McKittrick, and ATF Special Agent Ed Starr.
Q. And why was an evidence team set up?

A. There were other individuals that were helping locate evidence at that time. And the team was going to process the evidence once it was located.

Q. Even though there were other people helping with the location, who was responsible for the collection?

A. The collection would be myself, Ed Starr, and Shannon McKittrick.

Q. What if someone other than the three of you found an item? What would happen?

A. They would not touch it. They would not move it. They would come and get myself and Special Agent Ed Starr and we would come and photograph it in place and take measurements.

Q. And what was Agent McKittrick's job?

A. Agent McKittrick's job was she was in a stationary location and she was set up to receive the evidence once it was photographed and packaged.

Q. Were items actually located that day?

A. Yes.

MS. WHATLEY: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. WHATLEY:

Q. I just handed you what's been marked for identification purposes as Government's Exhibit 2.

A. Yes.

Q. What is this?

A. This is going to be two pieces of cloth; one consistent with the jacket, and one consistent with the pair of pants that Dr. Trent Pierce was wearing.
Q. And where were these items located?
A. Out of the flowerbed.
Q. And you say that they are consistent with what Dr. Pierce was wearing that day?
A. Correct.
Q. Have you actually compared those to items previously introduced in this trial?
A. Yes.
MS. WHATLEY: May I approach, Your Honor?
THE COURT: Yes, you may.
BY MS. WHATLEY:
Q. I've just handed you Government's Exhibits 22 and 26. Are the items taken out of Government's Exhibit 2 consistent with those items?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 2.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 2 received in evidence.)
BY MS. WHATLEY:
Q. This gray cloth I'm holding in my left hand, what is that

consistent with?
A. That's going to be consistent with the pants that Dr. Pierce was wearing that day.
Q. And what I'm holding in my right hand?
A. That would be consistent with his jacket.
Q. You're talking about the overcoat?
A. The overcoat, yes, ma'am.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes, you may.
BY MS. WHATLEY:
Q. I just handed you what's been marked for identification purposes as Government's Exhibit 3. What is that?
A. This is going to be a grenade fuse that was located in the flowerbed.
Q. Is that what is pictured in Government's Exhibit 61g?
A. It is.
MS. WHATLEY: Sorry, Your Honor. Trying to lessen the brightness. Okay.
BY MS. WHATLEY:
Q. Is that the -- is that what's being pointed to by the ink pen, I believe?
A. It is, yes.
Q. Do you recall who pointed Government's Exhibit 3 out to you?
A. Mr. Dean Fitzgerald, the bomb squad officer with Shelby

County, Tennessee's, bomb squad.
Q. And is the grenade fuse in substantially the same condition as it was when you located it in the flowerbed?
A. It is.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 3.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 3 received in evidence.)
BY MS. WHATLEY:
Q. Is that the fuse?
A. It is.
Q. Is that what it looks like from all sides?
A. Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I just handed you what's been marked for identification purposes as Government's Exhibit 4.
A. Yes.
Q. Would you please tell us what that is?
A. This is the grenade spoon.
Q. And where was it located?
A. It was located right off the driveway actually in the street on Avalon.

Q. Is that what is pictured in Government's Exhibit 61i?
A. It is.
Q. There's a 4 in this picture?
A. Uh-huh.
Q. And I told you that I handed you Government's Exhibit 4?
A. Correct.
Q. The items that were located at the bomb scene, have we maintained the consistent numbers between the numbers that ATF gave them that day and the numbers that they are being given at this trial?
A. Yes.
Q. Do you recall who pointed the grenade spoon out to you?
A. That would be Mr. Dean Fitzgerald again.
Q. And is the grenade spoon in substantially the same condition as it was when it was located on February 4th, 2009?
A. It is.

MS. WHATLEY: Your Honor, at this time, I move for the admission of Government's Exhibit 4.

THE COURT: Any objection?

MR. HENDRIX: No.

THE COURT: It's received.

(Government's Exhibit 4 received in evidence.)

BY MS. WHATLEY:
Q. Is that the top of the spoon?
A. Yes.

Q. And the underneath side of the spoon?
A. Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I just handed you what has been marked for identification purposes as Government's Exhibit 6.
A. Yes.
Q. What is this?
A. This is going to be plastic pieces removed from the flowerbed.
Q. Is it kind of a variety of pieces?
A. It is.
Q. And are they in substantially the same condition as they were when they were located?
A. They are.
MS. WHATLEY: Your Honor, at this time I move for the admission of Government's Exhibit 6.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibit 6 received in evidence.)
MS. WHATLEY: May I retrieve the exhibit?
THE COURT: Yes.
BY MS. WHATLEY:
Q. Does part of what was in this bag appear to go to

something that has previously been admitted in this trial?
A. Yes, it does appear to.
Q. And what is that?
A. That's going to be a piece to the glasses that were admitted earlier.
Q. The glasses that were obtained from the bag?
A. From the hospital, yes, ma'am.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I just handed you what's been marked for identification purposes as Government's Exhibit 7.
A. Yes.
Q. What is that?
A. It's going to be a Band-Aid that was removed, I believe, in the flowerbed.
Q. And is it in substantially the same condition as it was when it was located?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 7.
THE COURT: Any objection?
MR. HENDRIX: No.
THE COURT: It's received.
(Government's Exhibit 7 received in evidence.)

BY MS. WHATLEY:

Q. Is this the Band-Aid that was obtained or found in the flowerbed?

A. Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I'm handing you what's been marked for identification purposes as Government's Exhibit 8.

A. Uh-huh.

Q. What is that?

A. This is going to be a piece from the front bumper of the Lexus vehicle.

Q. Is this part of what is seen in Government's Exhibit 61d?

A. It is.

Q. And is this piece of the bumper in substantially the same condition as it was when it was removed from the vehicle?

A. It is.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 8.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 8 received in evidence.)

BY MS. WHATLEY:

Q. This is only a portion of the bumper; is that correct?

A. That is correct.
Q. And was the remainder of the bumper also obtained?
A. It was.
MS. WHATLEY: May I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I'm handing you what's been marked for identification purposes as Government's Exhibit 9. What is that?
A. This is going to be another piece of cloth that was located from the blast seat area.
Q. And where was the blast seat area?
A. Just in front of the vehicle.
Q. And have you compared that to clothing that was removed from Dr. Trent Pierce when he was at the hospital?
A. I have.
Q. And what does this appear to be a part of?
A. It appears to be another piece of his pants.
MS. WHATLEY: Your Honor, we move for the admission of Government's Exhibit 9.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 9 received in evidence.)
MS. WHATLEY: I keep forgetting to ask. May I --
THE COURT: You may. You don't have to ask. You may walk back and forth.

BY MS. WHATLEY:

Q. This piece of cloth is consistent with his pants?

A. It is.

Q. I just handed you what's been marked for identification purposes as Government's Exhibit 10. What is this?

A. This is going to be duct tape that was removed from the driveway area.

Q. And is it in substantially the same condition as it was when it was located?

A. It is.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 10.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 10 received in evidence.)

BY MS. WHATLEY:

Q. Is this one piece of the duct tape that's contained in Government's Exhibit 10?

A. It is.

Q. Mr. Robles can help me out. I'm showing you what's been marked for identification as Government's Exhibit 11.

A. Yes.

Q. What is this?

A. That's going to be the bumper from the front of the vehicle.

Q. And did anyone assist you in removing this bumper?
A. Yes.
Q. Who?
A. ATF Special Agent Warren Newman.
Q. And other than it not being on the front of the vehicle, is it in substantially the same condition as it was when it was located?
A. It is.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 11.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 11 received in evidence.)
BY MS. WHATLEY:
Q. And just so I'm making sure I'm right, the side Mr. Robles is holding, is that the driver's side of the bumper?
A. That is correct.
Q. Looking at Government's Exhibit 61d, is this the side that Mr. Robles was holding?
A. It is.
Q. And is this the side I was holding?
A. It is.
Q. So it just had to be physically pulled or cut off the vehicle?
A. That's correct.

Q. I just handed you what was marked for identification purposes as Government's Exhibit 12. What is this?
A. This is a spring.
Q. And where was it located?
A. It was located in the street on Avalon close to Cooper.
Q. Is it what is shown in Government's Exhibit 61u?
A. It is.
Q. Can you please point on this picture where this spring was located?
A. (Witness complies.)
Q. Do you remember who pointed this out to you?
A. Mr. Dean Fitzgerald.
Q. And is this spring in substantially the same condition as it was when it was located?
A. It is.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 12.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 12 received in evidence.)

BY MS. WHATLEY:
Q. What street did you say this was located on?
A. It was on Avalon.
Q. But it was actually in the street itself?
A. It was.

Q. I just handed you what's been marked for identification purposes as Government's Exhibit 13. What is this?
A. This is going to be a yellow powder residue that was collected from the blast scene.
Q. And is that the yellow powder that is pictured in Government's Exhibit 61v?
A. It is.
Q. I'm going to zoom in one more time. Is that this in here?
A. Yes, it is.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 13.
THE COURT: It's received.
(Government's Exhibit 13 received in evidence.)
BY MS. WHATLEY:
Q. Is it just a fine powder, Agent Norris?
A. It is.
MS. WHATLEY: Do you mind?
BY MS. WHATLEY:
Q. Mr. Robles is going to show you what's been marked for identification purposes as Government's Exhibit 14?
A. Yes.
Q. What is this?
A. That is the tire.
Q. And where was this located?
A. It was located behind that small wall in a little

courtyard area off of the driveway.
Q. Is that what is pictured in Government's Exhibit 61k?
A. It is.
Q. See how strong Mr. Robles is? 61-l?
A. Yes.
Q. 61m?
A. Yes.
Q. And one more, 61n?
A. Yes.
Q. Is it in substantially the same condition as it was when it was located that day?
A. It is.
MS. WHATLEY: Your Honor, we move for the admission of Government's Exhibit 14.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 14 received in evidence.)
BY MS. WHATLEY:
Q. Is the damage on the back side of the tire? Is there damage on the back side of the tire?
A. Yes, there is.
Q. Is there also some damage to the front of the tire?
A. Yes, there is.
Q. All right.
MS. WHATLEY: Mr. Robles, you can put it down now.

BY MS. WHATLEY:

Q. Do you remember who pointed the tire out to you?

A. It would be Mr. Dean Fitzgerald again.

Q. I just handed you what's been marked for identification purposes as Government's Exhibit 15. What is this?

A. It's going to be the gold teeth located on that cobblestone driveway.

Q. Do you recall who pointed those out to you?

A. These were pointed out to me by ATF Special Agent Warren Newman.

Q. Are they in substantially the same condition as they were when they were located?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 15.

MR. HENDRIX: No objection.

THE COURT: Received.

(Government's Exhibit 15 received in evidence.)

MS. WHATLEY: Want to see them, Judge?

THE COURT: No, I don't need to see any gold teeth. I've seen enough of those walking around Helena.

BY MS. WHATLEY:

Q. Just briefly, is that the teeth?

A. That is.

Q. I've just handed you what's been marked for identification

purposes as Government's Exhibit 16. What is this?
A. This is going to be another piece of the bumper. This is going to be the insulation that's back behind the white part of the bumper that we saw earlier.
Q. And is it in substantially the same condition as it was when it was located?
A. It is.
MS. WHATLEY: Your Honor, we move to admit Government's Exhibit 16.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibit 16 received in evidence.)
BY MS. WHATLEY:
Q. Why are we both smiling, Agent Norris?
A. Because of what this next item is.
Q. I'm not going to be mean to you and make you pull it out, but tell me what Government's Exhibit 17 is.
A. No. 17 is going to be some type of body fluid that was recovered from the scene. And apparently it is a -- I don't remember the correct terminology for this, so excuse me for saying it this way, but it's eye fluid from the way I understand it.
Q. And is it pictured in 61s?
A. It is.
Q. And is that what I'm pointing to there?

A. That's the fluid there.
Q. How did you collect this piece -- this evidence?
A. A piece of gauze was used to collect that.
Q. And last night did we open that envelope up and ensure that there's a piece of gauze in there?
A. That's correct.
Q. And did I promise you I wouldn't make you open it up today?
A. Yes, you did.
MS. WHATLEY: Your Honor, we move for the admission of Government's Exhibit 17.
THE COURT: Any objection?
MR. HENDRIX: No.
THE COURT: It's received.
(Government's Exhibit 17 received in evidence.)
BY MS. WHATLEY:
Q. I just handed you what's been marked as Government's Exhibit 18. What is this?
A. Car parts, car parts that were located in the driveway.
Q. Were these some of the miscellaneous pieces that are seen in Government's Exhibit 61s?
A. Yes.
Q. And are they in substantially the same condition as they were when they were located?
A. They are.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 18.

MR. HENDRIX: No objection.

THE COURT: Received.

(Government's Exhibit 18 received in evidence.)

BY MS. WHATLEY:

Q. Is this one of the items that is in this bag?

A. That is one of the items.

Q. I've handed you what's been marked for identification purposes as Government's Exhibit 20. What is that?

A. This is a blasting cap fragment that was located in the flowerbed.

Q. And do you remember who pointed that out to you?

A. Again, that would be Mr. Dean Fitzgerald.

Q. And is it in substantially the same condition as it was when it was located?

A. It is.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 20.

MR. HENDRIX: No objection.

THE COURT: Received.

(Government's Exhibit 20 received in evidence.)

BY MS. WHATLEY:

Q. Is that the fragment?

A. It is.

Q. The box is almost empty.

I show you what's been marked for identification as Government's Exhibit 21. What is this?

A. These are yet again pieces collected from the blast seat.

Q. Some more pieces are located or seen in Government's Exhibit 61s?

A. That is correct.

Q. Are they in substantially the same condition as when they were found?

A. They are.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 21.

MR. HENDRIX: No objection.

THE COURT: Received.

(Government's Exhibit 21 received in evidence.)

BY MS. WHATLEY:

Q. What did you do with all of this evidence after it was collected?

A. After it was collected, as I said earlier, Special Agent Shannon McKittrick was set up at a stationary location. We would take the evidence to her. She would make a log of what we were bringing to her. And then at a later point after it was all collected, it was packaged up in a vehicle and taken to the Little Rock ATF vault.

Q. As you were collecting the evidence, did you do anything

besides just pick it up?
A. Yes.
Q. What did you do?
A. I assisted ATF Special Agent Ed Starr in taking measurements of those key pieces of evidence.
Q. What was the purpose of taking the measurements?
A. So that at a later date a diagram could be made.
Q. And were those measurements utilized by other ATF personnel?
A. Yes, they were.
Q. Who was that?
A. Those measurements were later given to ATF Agent Larry Smith.
Q. For what purpose?
A. To create the diagram.
MS. WHATLEY: Your Honor, I'm sorry. I put them over here behind -- four things right behind you, Mr. Gray. I'm sorry. I'll make Mr. Robles hold them.
BY MS. WHATLEY:
Q. Okay. I'm showing you -- you've looked at these before, correct?
A. I have.
Q. And Government's Exhibits 51-A, B and C, are these what was created based on some of the measurements you took?
A. That is correct.

Q. And are they diagrams -- what are they diagrams of?
A. They are diagrams of the Pierces' residence at 411 North Avalon.
Q. And do they fairly and accurately show the area around 411 Avalon?
A. They do.
Q. And just so that you can identify it, Government's Exhibit 55-B contains evidence numbers on various -- at various locations?
A. That is correct.
Q. Will those evidence numbers correspond to government exhibit numbers?
A. Yes.
Q. After the evidence was collected that first day, did you and other members of law enforcement meet and strategize?
A. Yes, later that night.
Q. And what was the main purpose of your meeting?
A. The main purpose of the meeting was to let everybody know what we were working with and then to later make assignments on what the next steps in the investigation would be.
Q. After that meeting and in the days to follow, to your knowledge, were grand jury subpoenas requested?
A. Yes.
Q. Why were they requested?
A. To obtain information from outside sources.

Q. I'm showing you what's been marked for identification purposes as Government's Exhibits 140-A through H. Have you seen these before?

A. I have.

Q. And what are they?

A. They are federal grand jury subpoenas.

Q. And, to your knowledge, were these subpoenas actually served on the entities that are listed thereon?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 140-A through 140-H.

MR. HENDRIX: Actually, Judge, I do object.

THE COURT: Okay. Do you want to come up here? Bring it -- bring it to the bench.

(Bench conference reported as follows:)

MR. HENDRIX: I guess the first objection, Judge, is, it's documentary evidence that will contain hearsay and are hearsay documents. Two is, I don't guess, unless Agent Norris was the one that served the subpoena, that he would be the proper foundational witness for introduction. And, third, I guess I'm unsure of the relevance of why a document showing that a subpoena was served on someone or somebody is relevant, or at least why the witness from that institution who was served with a subpoena is not the best witness.

THE COURT: What is the response?

MS. WHATLEY: Your Honor, they are relevant because one of the elements that we have to prove, especially in the obstruction counts, is that there was an official proceeding. A grand jury proceeding qualifies as an official proceeding under the definition. So we are showing that the grand jury begins to get involved in this, in the bombing, as soon as February 5th, 2009.

THE COURT: Okay.

MR. HENDRIX: I think we would be willing to stipulate that the grand jury was investigating this matter. The problem then would be -- and I get that purpose. What you're doing --

MS. CASSINELLI COUCH: We're not stipulating to anything.

MR. HENDRIX: I don't know the necessity then of -- how many, Ms. Whatley?

MS. WHATLEY: Eight.

MR. HENDRIX: May I look at --

THE COURT: Do you want a chance to speak, Ms. Couch, not on the record? Did you want a chance to confer with Mr. Hendrix before you make argument?

MS. CASSINELLI COUCH: Yes, I would.

THE COURT: Take a couple of seconds. I see you trying to talk. I don't want that to end up on the record if you don't intend for it to.

(Ms. Cassinelli Couch and Mr. Hendrix confer briefly.)

MR. HENDRIX: Again, the objection is, one, it's also going -- if the purpose is to show that the grand jury was seated, there was a grand jury investigation as a component of the obstruction case, most of these, if not all of them, would be irrelevant, particularly because they contain information showing subpoenas to Verizon for Dr. Pierce's financial records to Yahoo. It's going to leave more questions in the jurors' mind about: What are these subpoenas for? Are we going to see this information? And if not -- like this one is to Nissan. I don't see the relevance of any of it.

MS. WHATLEY: Your Honor, if I may respond?

THE COURT: You may.

MS. WHATLEY: Special Agent Norris is going to testify he was aware that all of these subpoenas were being issued. We are going to go through each one and talk about why each one was issued. And we're just offering them to show there was an investigation, that they began doing the investigation as soon as this began, and that -- all of the different areas that they were looking into during the course of the investigation.

THE COURT: Anything else before I rule?

MR. HENDRIX: Yeah, just a final thing. I think the issue on the obstruction counts are -- is going to be, were our clients aware of the grand jury investigation that they obstructed. So, again, I just don't see the relevance of the subpoenas themselves.

THE COURT: I'll overrule it. If you want to make a further record on that, I'll permit you to do that if you want to. But as of right now, I will overrule.

MR. HENDRIX: I objected -- just thought I had a chance.

THE COURT: I understand. Thank you.

(Proceedings continued in open court as follows:)

MS. WHATLEY: Your Honor, for the record, 140-A through H are admitted?

THE COURT: That's right. Over the objection of the defense, they are received.

(Government's Exhibits 140-A through H received in evidence.)

MS. WHATLEY: Mr. Williams, can I get you to flip me back to Ms. Newton?

LAW CLERK: I'm not sure which one.

MS. WHATLEY: If not, I'll do them on the ELMO. I just thought I would ask.

THE COURT: Please do it on the ELMO. I think it would be easier to do it that way than Mr. Williams to do it over here. What do you need him to do?

MS. WHATLEY: Right now what is shown on the jury's is the projector, and I need it flipped back to Ms. Newton's computer.

THE COURT: Do you know how to do that?

MS. WHATLEY: I think I told Ms. Tyree I wouldn't do that to him this afternoon.

Let's go through 140a -- okay. Never mind. We'll put them on the ELMO. I'm sorry, Your Honor.

BY MS. WHATLEY:

Q. Who is Government's Exhibit 140a -- which entity is this to?

A. It's going to be Verizon Wireless.

Q. And does this say, "Subpoena to testify before grand jury"?

A. Uh-huh. Yes, it does.

Q. Is it for a person to come, or to -- for documents or objects to be sent?

A. Documents or objects.

Q. And what was the date this was issued?

A. February 5th, 2009.

Q. And who is the issuing attorney?

A. Michael Gordon.

Q. What were the documents to be produced?

A. Related to two phone numbers.

Q. And have you seen an unredacted copy of this?

A. I have.

Q. And whose phone numbers were they?

A. It would be Dr. Trent Pierce's phone number and Melissa Pierce's phone number.

Q. What was the purpose of getting those phone records?

MR. DUDLEY: Your Honor, I object. There's been no showing he has personal knowledge of why the grand jury issued the subpoena. And if he's been told, then it's hearsay.

THE COURT: That's sustained.

BY MS. WHATLEY:

Q. Why are grand jury subpoenas issued in cases?

A. Grand jury subpoenas are issued in cases to obtain information from outside sources.

Q. Can agencies like ATF just go out and knock on people's doors and get stuff?

A. No.

Q. What mechanism does ATF utilize in order to obtain information from various entities?

A. That would be the grand jury.

Q. I'm showing you 140b. Who was this to?

A. The Family Practice Center of West Memphis.

Q. And 140c?

A. Family Practice Center of West Memphis.

Q. What was the date this one was issued?

A. February 11th, 2009.

Q. And the date this one was issued?

A. February 11th, 2009.

Q. And for 140b, what were the documents that were being requested?

A. Name, date of birth, Social Security number, address, telephone numbers for patients treated by Dr. Trent Pierce within the past year.

Q. Do you have personal knowledge as to why this was issued?

A. Yes.

Q. Why was this subpoena issued?

MR. DUDLEY: Your Honor, I still object. Just saying he does doesn't mean that he does. Unless he was in the grand jury when they discussed why to issue it, he wouldn't have personal knowledge.

THE COURT: Lay a foundation for it, Ms. Whatley.

BY MS. WHATLEY:

Q. Each and every time a grand jury subpoena is issued, does an agent have to physically go before the grand jury to issue that subpoena?

A. No.

Q. How does an agent get a grand jury subpoena?

A. Request it.

Q. From whom?

A. We can request it through the U.S. Attorney's Office that a grand jury subpoena be issued for information to an outside source.

Q. What happens when the information comes in?

A. It comes in to the grand jury and the U.S. Attorney's Office for review, and that information is then used in the

investigation.
Q. So the first -- when the materials first come in, who is it directed -- according to Government's Exhibit 140c, who is it directed to be sent to?
A. The U.S. Attorney's Office.
Q. Is it directed to be sent to a specific Assistant United States Attorney?
A. It is.
Q. Who is that?
A. Michael S. Gordon, Assistant United States Attorney.
Q. And was Michael S. Gordon, who is not in the courtroom right now, the AUSA assigned to assist ATF in the investigation --
A. Yes.
Q. -- of the bombing?
A. Yes.
Q. Do the ATF agents themselves make some of the decisions as to what to request from the grand jury?
A. We give suggestions on what we would like to get.
Q. And were these two subpoenas requested by the ATF?
A. Yes.
Q. And do you know why ATF requested that these subpoenas be issued?
A. Yes.
Q. Were you involved in the discussion and the

decision-making?
A. Yes.
Q. Why was Government's Exhibit 140b issued to the Family Practice Center of West Memphis?
A. The task force that was set up to investigate the West Memphis bombing basically had discussions of wanting to get information on the patients at the clinic.
Q. Why?
A. To look for any leads within those.
Q. And 140c was also sent to the Family Practice Clinic of West Memphis, correct?
A. Yes.
Q. What was it requesting?
A. The same information on patients attempting to collect any unpaid debt.
Q. What was the purpose of this one?
A. The same thing, to have any leads out of those patients.
Q. The next four subpoenas -- 140d, who is it to?
A. It would be Yahoo.
Q. 140e?
A. Microsoft.
Q. 140f?
A. AOL.
Q. And 140g?
A. Google.

Q. Do each of these -- are each of these subpoenas requesting the same information from the four different entities?
A. They are.
Q. And what is it requesting?
A. Any and all records pertaining to search queries through Yahoo or any of the other ones that were listed that this subpoena was sent to in reference to searching for 411 North Avalon, West Memphis, Arkansas, between -- from January 1st, 2009, to February 4th, 2009.
Q. Were any records relevant -- or were these entities able to fulfill that request?
A. No, they were not.
Q. Looking at Government's Exhibit 140h, when was this issued?
A. February 19th, 2009.
Q. And to what entity?
A. Nissan Corporation.
Q. What was requested?
A. A description was given of a Nissan spare tire, and it was requesting information related to that, what types of vehicles.
Q. And do you know where this information came from that's listed here at the top?
A. That information describing the nomenclature on the Nissan tire that was found at the bombing scene.
Q. So this is -- so information that was listed on this

subpoena is information that was found on Government's Exhibit 14?

A. Correct, it's information that was found on the rim.

Q. Since this is a federal case, which entity makes the ultimate charging decision in the case?

A. The grand jury.

Q. As part of the investigation, were you -- were agents also tasked with determining who was at the crime scene the morning of the bombing?

A. Can you say that again?

Q. Toward the beginning of the bombing investigation, were agents tasked with finding out who some of the first people were on the scene that morning?

A. Yes.

Q. And was one of those people Jason Haycraft?

A. Yes, he was.

Q. What did he do that morning?

A. He was the individual that came up directly after the bombing, after the explosion, and allowed Melissa Pierce to use the cell phone.

Q. As part of the investigation, did you learn of any activities in which Dr. Pierce was involved, any outside activities?

A. Yes.

Q. And what were those?

A. That he was involved on a bank board there in West Memphis, Arkansas; that he was involved in the Arkansas State Medical Board, in which he was a -- the sitting chairman.
Q. And did he have any church affiliation?
A. Yes. We learned that he was an avid churchgoer and that he was actually a member of the choir there.
Q. Were you tasked with following up on the bank board information?
A. I was.
Q. And did you find any leads to the bombing based on what he did?
A. No, I did not.
Q. On February 7th, 2009, did you get a call about another piece of evidence?
A. Yes.
Q. I've handed you what's been marked for identification purposes as Government's Exhibit 46. What is this?
A. This is going to be a piece of tire that was located at 500 North Avalon, which is just catercorner from 411 North Avalon, the Pierces' residence.
Q. And is it in substantially the same condition as it was when it was located?
A. It is.
Q. And what did you do with this?
A. I labeled it and later took it to the Little Rock ATF

vault.
Q. And why was this -- why was Government's Exhibit 46 seized?
A. 46 was seized because on that date, the 7th, the homeowner, just being out in his yard, noticed this piece of evidence and knew what had occurred in the neighborhood, called us, alerted us to it. And we collected this piece of evidence. We also had a small team come out and just look through the yard as well.
Q. And what did you say it was?
A. It is a piece of tire.
MS. WHATLEY: Your Honor, we move for the admission of Government's Exhibit 46.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibit 46 received in evidence.)
BY MS. WHATLEY:
Q. And are the markings on the tire consistent with Government's Exhibit 14?
A. Yes, it is consistent.
Q. Agent Norris, did you ever see Dr. Pierce while he was in the hospital?
A. I did.
Q. For what purpose?
A. To collect DNA from him.

Q. Were you present at the hospital on March 5th, 2009?
A. Yes.
Q. Was DNA taken from him that day?
A. It was.
Q. Who actually took the DNA from him?
A. The DNA was actually collected by West Memphis Police Lieutenant Detective Ken Mitchell.
Q. And what happened with that DNA?
A. After he took that DNA, he then turned it over to me.
Q. And what did you do with it once you got it?
A. It was later sent to the ATF lab.
Q. Earlier you testified about taking measurements on February 4th, 2009, at 411 Avalon?
A. Yes.
Q. Did you ever take any additional measurements at that location?
A. I did.
Q. And when did you do that?
A. Months later. I want to say it was in -- I don't recall.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you a document. Whose handwriting is on that document?
A. It's going to be my handwriting.

Q. And does that help refresh your recollection as to when you took these measurements?
A. It does.
Q. When did you take these measurements?
A. April 20th.
Q. Of?
A. Of this year.
Q. Of 2010?
A. Uh-huh.
Q. Why did you take the measurements?
A. These are measurements in relation to a witness seeing an individual the night before the bombing.
Q. And who was the witness that you talked to?
A. Ms. Velma Gales.
Q. What did you do with these measurements?
A. These measurements were taken and then sent again to Mr. Larry Smith with ATF.
Q. I'm going to show you Government's Exhibit 55d.
A. Yes.
Q. Is this the diagram that was created based on those measurements?
A. It is.
Q. And, to your knowledge, are these -- is this a fair and accurate depiction showing the measurements that you sent him?
A. Based on the measurements that I took, yes.

Q. Agent Norris, I want to clear just one thing up and I'll be done with you. When was the first time -- were you ever present when Dr. and Mrs. Pierce were informed that charges had been brought in this case?
A. Yes, I was present.
Q. That bombing charges had been brought?
A. Correct.
Q. And when was that?
A. That was in January of this year.
Q. Is that the first time that the Pierces were told about charges being brought in the bombing?
A. Yes.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Agent, when you and Ms. Whatley were going through these grand jury subpoenas -- you guys were calling them grand jury subpoenas, right?
A. Correct.
Q. What I understood was there is no grand jury that was telling you guys -- that was leading an investigation and telling you, "Agent Norris, issue a subpoena for these records"; is that right?
A. That is correct.

Q. It was you telling the prosecuting attorney, "This is information I want. You guys issue a subpoena," right?
A. It was ATF requesting the subpoenas.
Q. And it was requesting the United States Attorney's Office, is that right, to issue a subpoena?
A. Correct.
Q. Okay. And Ms. Whatley made a point of saying it was the grand jury that charged the Manns in this case. And let's talk a little bit about that. You've been in front of grand juries before, right?
A. Yes.
Q. Okay. And they consist of between 16 and 23 people, right?
A. Yes.
Q. And the point is to act as a buffer between the prosecution-law enforcement side of this and a possible suspect; is that right?
A. To act as a buffer?
Q. Uh-huh. It's between 16 to 23 citizens who are going to make a decision, right?
A. Right, based on --
Q. Right. Okay. And in that grand jury room, defense counsel aren't allowed, right?
A. That is correct.
Q. There's nobody there to present the defendant's side of

the story, right?
A. That's correct.
Q. Okay. You talked about -- are you the lead case agent now on the case?
A. Now? Yes.
Q. And describe for us what a lead case agent is.
A. In this case, it's a little bit different than in a normal case because I was not the lead case agent from day one. A lead case agent, in this instance, in a bigger case, is going to coordinate kind of how the case -- how the case goes.
Q. The lead case agent acts in a supervisory capacity, right?
A. No. Everybody works together. The lead case agent takes suggestions from all different sources and does not have a supervisory authority over any other agents that are working on the case with them. In this instance, there were a number of agents working on different aspects of this case and still are.
Q. All right. So you've got many agents working on this scene at the same time. Is somebody responsible as the ultimate decision person, the point man?
A. Yes.
Q. And that's the lead case agent, right?
A. To an extent.
Q. Okay. Who was the original lead case agent in this case?
A. The original lead case agent on the West Memphis bombing case was Lieutenant -- I'm sorry -- was Special Agent Glen

Cook.

Q. Okay. And did it change after Agent Cook?

A. Yes.

Q. To whom?

A. To me.

Q. So it went directly from Agent Cook to you?

A. On the West Memphis bombing case, yes.

Q. You're making a distinction on the West Memphis bombing case. Is there some other -- is there some other case we're talking about? I don't mean that flippantly. You just were careful to say that, and I want to make sure you and I are on the same page.

A. We're on the same page.

Q. Now, as part of this inside being the lead case agent and having folks work with you and under you, the point is to get to a crime scene and investigate, right?

A. That's correct.

Q. And the point of obviously a crime scene investigation is simply to gather as much evidence and material as you can to see where it leads you, correct?

A. That's correct.

Q. To figure out who committed the offense, right?

A. Yes, that's correct.

Q. Now, part of that process -- we talked about a crime scene log. Will you tell the ladies and gentlemen of the jury what a

crime scene log is?
A. The crime scene log is going to be as the evidence was collected.
Q. Say that one more time.
A. As the evidence was collected, it was logged.
Q. There's also a thing -- a crime scene log that is a catalog of everyone that goes into a crime scene, correct?
A. Yes, there is. Yes.
Q. And that's the type of crime scene log that I guess it was Detective O'Clare from West Memphis PD was testifying to about earlier?
A. I believe it was him.
Q. Okay. And did he give that to you, his crime scene log?
A. He did not give that to me personally, no.
Q. Are you aware of whether he gave it to anybody with ATF?
A. I believe ATF has it.
Q. The second thing you're talking about is a catalog of evidence, right? So there is a catalog that, you know, we took this tire and you put an evidence number and so forth on it, right?
A. It is -- yes.
Q. Okay. And the point of getting to this crime scene is that crime scenes contain a lot -- from an investigative standpoint, a lot of valuable information, right?
A. Sometimes, yes.

Q. And you've got a fairly extensive crime scene here. I mean, it's at least the area around the Lexus expanding out through the driveway, correct?
A. Yes.
Q. And I think it even -- the spring was found out in the street, right?
A. Yes.
Q. So it's a pretty big crime scene?
A. Yes.
Q. And there is a lot of information that can be taken from that scene to see where it leads you, right?
A. Sometimes, yes.
Q. Well, and in this case, here's a bunch of what we call physical evidence, right?
A. Yes.
Q. And physical evidence is one type of thing. It's something tangible you hold. It's like that bumper, right?
A. Correct.
Q. There's other type of evidence that can be collected, biological evidence, for instance, right?
A. Yes.
Q. That was the eye fluid we talked about, right?
A. Yes.
Q. Trace evidence. Do you know what trace evidence is?
A. Yes.

Q. Can you tell the ladies and gentlemen of the jury what trace evidence is?
A. Trace evidence -- the way I understand it, and I am not a crime scene expert, trace evidence is going to be those small things that you can find.
Q. Fibers?
A. Correct, fibers.
Q. Hairs?
A. Correct.
Q. That sort of thing? And the point is to gather as much and all of that information as you possibly can to, one, see where it goes and then, two, to submit it to experts in the field to have them analyze it, right?
A. That's the point, yes.
Q. Yeah. And so, for instance, trace evidence, you find a fiber at a crime scene, you develop a suspect, you take a fiber from there, you're going to submit that to, in this case, a trace evidence specialist or a criminalist, and they are going to usually microscopically compare those fibers to determine whether they are from the same origin, right?
A. In most cases.
Q. Yeah. So let's develop this a little bit further, Agent. After this evidence was gathered, at some later point, search warrants are run on Dr. Mann's house, correct?
A. Yes.

Q. His medical clinic?
A. Yes.
Q. A piece of property, I think?
A. Yes.
Q. And a storage unit?
A. Yes.
Q. And evidence was taken from that to oftentimes compare to the evidence that y'all have seized from the crime scene, right?
A. I'm not -- I believe so.
Q. Okay. Well, I'll give you a quick example. There was a possibility of developing fingerprints from this crime scene, right?
A. Right.
Q. Okay. You took Dr. Mann's fingerprints. Someone took Dr. Mann's fingerprints?
A. Someone did.
Q. And that's to be able to compare what's found at the crime scene to the suspect to see if you can draw a link, correct?
A. Correct.
Q. And here's my question without getting too bogged down in it. In the universe of evidence that you all took, can you give me just roughly a number of items that were taken from the crime scene? Well, let me give you more universal than that. From the crime scene, from Dr. Mann and his property, can you

put a number on that universe of items that were taken?
A. I would have -- from the crime scene is where I can speak from. From the crime scene, if you don't take each piece of evidence -- for instance, there's a large portion of evidence where there are several bags that say "miscellaneous items from the blast seat." Those are going to contain a large number of small items.
Q. Right.
A. But just item numbers, right off the top of my head, in the 30s, 40s, from the crime scene.
Q. Okay. And then another level that was taken from Dr. Mann's personal property and so forth for comparison reasons, right?
A. I would have no clue as to what number there was taken from his residence. I was not involved in those search warrants until the last one.
Q. Until the very last one?
A. That is correct.
Q. Do you remember how many items were taken in the one you were involved in?
A. No.
Q. Are we talking two, or 20, or 200?
A. Probably in the hundreds on the very last search warrant.
Q. In the hundreds from Dr. Mann?
A. At least a hundred.

Q. Okay. And do you have a sense of how many items from both sources were submitted for any type of forensic testing? And by that, I mean DNA, trace evidence analysis, chemical analysis. Not to put you on the spot, if you want to do -- I'm fine with "a lot," or "a little," or just general.
A. Yeah, items were sent to the lab for comparison.
Q. Okay. Topic change. Did I understand on your direct testimony that it was February 20th when you made those measurements back at the scene because Velma had said something about the person she saw?
A. February 20th? No, sir.
Q. April 20th?
A. April 20th of this year.
Q. Of 2010?
A. That is correct.
Q. Gotcha'. Gotcha'. Now, when -- the very first day of this incident, you all were out there. In your direct testimony, I think you said you got there about 10:30 or 11:00 a.m., something like that?
A. Correct.
Q. And at that point there was lots of law enforcement personnel, right?
A. Yes, sir.
Q. You had ATF agents from different districts, you had local police, state police, FBI, all of that, right?

A. Yes, sir.
Q. And you testified at some point a decision was made that ATF Little Rock would take over the investigation; is that correct?
A. That is correct.
Q. Why was that a debate? It's -- West Memphis is in your Arkansas district, correct?
A. That is correct.
Q. Okay.
A. It was not so much that it was a debate. It was -- I guess you would call it a professional courtesy because there were so many entities there with -- especially within just the state that do have jurisdiction over bombing investigations. One would be West Memphis, one would be -- although they don't have the things that they might would need to conduct a full bombing investigation, that is their jurisdiction. The county, it's their jurisdiction. Arkansas State Bomb Squad was there. They do conduct explosive type investigations. And then we were there. So in being all of those entities there, everybody wanted to stop everything that was going on and get together and put our heads together and say, "Okay. What are we going to do?" And the fact that we are such a small office, we were going to need assistance from those agencies on certain things. So everybody just wanted to make sure that they knew what hat they were wearing in the investigation before it got started.

Q. Well, was there some sense of competition among the agencies, "This is going to be a high profile case," who was going to be able to get ahold of it?
A. I was not involved in the decision-making on that meeting.
Q. Okay. Just last area. Rough notes, field notes, you know what I'm talking about?
A. Uh-huh.
Q. Just tell the ladies and gentlemen of the jury what I'm talking about.
A. That would be, for example, the notes, the measurements that I took when I met with Ms. Gales on April 20th, 2010, when she showed me where she had previously told me where the man was. I had her meet with me again and physically show me so that I could take measurements.
Q. Okay. And then more broadly -- that is an instance of a field note. More broadly, your field notes are the notes that you are taking during the course of investigation when you have some function; is that right?
A. If you do take them, yes.
Q. Okay. And did you take them in this case?
A. In relation to the measurements?
Q. No, your entire course of this investigation.
A. Some.
Q. What type of quantity are we talking about?
A. I did not do very many reports related to this

investigation, so very, very few.
Q. Have you maintained the integrity of those field notes --
A. Whatever I took --
Q. -- in the event it becomes possible that we can get them?
A. Whatever I took and had, yes.
Q. Do you still maintain them?
A. Yes.
Q. Okay.
MR. HENDRIX: Can I have just one second, Your Honor?
THE COURT: Yes.
MR. HENDRIX: I'm sorry, Judge. Can I have just 30 more seconds?
THE COURT: Okay.
BY MR. HENDRIX:
Q. And just for clarity because I did leave this off, one of the many items -- there was duct tape on that tire; is that right?
A. There was residue of duct tape on the tire.
Q. And were you part of the search of Dr. Mann's house when they took duct tape from his house?
A. No.
Q. That was not part of your deal?
A. (Shaking head.)
Q. That's all I've got. Thanks, Agent.
THE COURT: Mr. Dudley.

MR. DUDLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. DUDLEY:

Q. Agent Norris, were you the lead agent when this case was presented to the grand jury?

A. No, I was not.

Q. Did you testify before the grand jury?

A. I did not.

Q. These subpoenas that Ms. Whatley introduced through you, they say "Subpoena to testify before the grand jury," right? I'm not trying to trick you. I'll bring them up there and let you see --

A. Right. Yes.

Q. Do you know whether the grand jury actually issues or authorizes these subpoenas?

A. Yes.

Q. Okay. And do they?

A. Yes.

Q. So it's your testimony that somebody went before the grand jury and got authority to issue this subpoena?

A. No.

Q. Okay. I saw you look at Ms. Whatley. Do you really know?

A. No, nobody went before the grand jury and --

Q. In fact, the grand jury wasn't even in session when this subpoena was issued, correct? Do you know when the grand jury

meets?
A. When they actually physically meet?
Q. Sure.
A. It's usually within the first week of the month.
Q. Actually, I may be wrong, but it's either the second or third Monday of the month, I think. Does that sound right?
A. I'm not sure.
Q. So this subpoena is issued February 5, correct? You can look at the date on it.
A. Yes, it is.
Q. And who was it issued by?
A. AUSA Michael Gordon.
Q. So this subpoena is actually issued by the U.S. Attorney's Office, correct?
A. I'm not sure.
Q. Okay. You would agree that if the grand jury wasn't in session, the grand jury wouldn't even have had any way to know these subpoenas were being issued, correct?
A. Correct.
Q. Thank you.

THE COURT: Redirect?

MS. WHATLEY: Briefly.

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Do agents know everything that goes on before the grand

jury?
A. No.
Q. In a case if a subpoena has been issued by the grand jury and -- have AUSAs ever contacted you to say, "Hey, Agent Norris, have you gotten that information back?"
A. Yes.
Q. Do you know the purpose of them calling and asking you that?
A. Just to request if we had gotten the information back.
Q. Does that information have to be given to the grand jury that you did get information back? If you don't know --
A. Yes, I believe so, I mean, at some point.
Q. So at some point the grand jury does know that there are subpoenas issued?
A. At some point they learn that subpoenas were issued and information -- whatever you get back or you don't get back.

MS. WHATLEY: No further questions.

MR. HENDRIX: No more followup, Judge.

THE COURT: Okay. You can stand down.

Let's go about another 20 minutes before we take our afternoon recess.

You can call your next witness.

MS. WHATLEY: Larry Smith.

LARRY SMITH, GOVERNMENT WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Would you please state your name?

A. Larry Smith.

Q. And where are you employed?

A. I'm employed as a special agent with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, assigned to the arson, explosives program divisions of -- headquarters.

Q. I'm sorry. What was the last word you said?

A. ATF headquarters.

Q. Okay. How long have you been an ATF agent?

A. Since September of 1989.

Q. And what is the unit that you work with?

A. I'm on the National and International Response Team. We respond usually within 24 hours to major incidences of arson or explosives, explosions.

Q. And what is your role when you respond?

A. Our team is comprised of people that have different expertises. I'm a certified explosives specialist, certified fire investigator, and a forensic mapper.

Q. Did you assist in the investigation of the bombing in West Memphis which occurred on February 4th, 2009?

A. Yes, ma'am, I did.

Q. And what was your role with that investigation?

A. To provide the forensic mapping to document the evidence

at the scene.
Q. Did you go to West Memphis?
A. Yes, ma'am, I did.
Q. Did you go on February 4th, 2009?
A. No, ma'am, I did not.
Q. When did you go?
A. I believe I arrived there on February 17th, I think.
Q. And I know you say you were there to do forensic mapping. Had you been given anything prior to that date that led you there?
A. Yes, ma'am, I had.
Q. And what was that?
A. I was provided by Special Agent Edwin Starr of the Little Rock ATF field office a -- several pages of measurements of triangulations that he had used to document evidence at the scene.
Q. And was that enough for you to do what you needed to do?
A. He was asking me to provide a drawing. I couldn't do that from that because, when you have triangulations, you have to have the item there to triangulate from to place the evidence at a location. So, no, ma'am, I could not.
Q. And just so that the jury understands, can you explain in laymen's terms what forensic mapping is?
A. Forensic mapping is a system we utilize to document the location of physical evidence at a critical incident.

Q. I'm going to go ahead and stop you now because I'm about to get a dirty look. Can you slow down just a little bit?
A. Yes, ma'am. You want me to repeat it?
Q. Please.
A. Forensic mapping is a system that we utilize to document physical evidence at a critical incident scene that we go to. For instance, if we had a piece of evidence to the right of this cabinet here -- or, I'm sorry -- to my left of it, out here not close to anything, we have an instrument that we use called a total station that will shoot a beam -- infrared beam to that location. And utilizing theodolite, which is part of the instrument, and an EDMI, which is an electronic distance measuring instrument, through angles and geometry and everything -- I don't have to provide the angles and geometry. The instrument and software does that. It feeds back into our data collector. So that will provide us the location of each piece of evidence. And we also would draw in usually the outsides of buildings and other structures, trees, sidewalks, streets and things of that nature, into the scene to give you relation to those where the evidence is located.
Q. Is there something called a site map?
A. Yes, ma'am. We have a site map or a scene map.
Q. And in this case which one did you do?
A. The site mapping.
Q. And why -- what's the difference between a site map and a

scene map?
A. The difference between site and scene mapping is site mapping would be like this incident I responded to was after the evidence had been collected, but it had been documented. But after it had been collected, the victim was not still at the location. The vehicle was not still at the location. So once that is removed, that's referred to as a site mapping. It would be a scene mapping if we were able to respond immediately when the victim was still on the scene, the vehicle was still on the scene, and prior to any evidence actually physically being collected.
Q. And in this case, you did a site map, correct?
A. Yes, ma'am, that's correct.
Q. Did you actually go to the home in West Memphis, Arkansas, where this had occurred?
A. Yes, ma'am, I did.
Q. And what did you do when you arrived?
A. First, when I arrived, I met actually another forensic -- it takes two people to do the forensic mapping. I had Special Agent Tony Waldrop also assigned to the National Response Team with me. We met with Special Agent Edwin Starr of the Little Rock field office of ATF and did just a survey of the scene in order to tell where Special Agent Starr had triangulated from to come up with where we would have to place the flags or the other markers in order to shoot the scene, and also to see how

many reference points we would need to move to to provide sight to all of the evidence.

Q. And how many reference points do you remember utilizing in this case?

A. I believe there was four, either four or five.

Q. Does that take you having to physically move your equipment four or five times?

A. Yes, ma'am, it does.

Q. In moving the equipment, does it mess the measurement up on it?

A. No, ma'am.

Q. Is there a way that you can determine that it's still measuring properly?

A. Yes, ma'am. Do you want me to explain to you how we set it up and move it?

Q. As briefly and untechnically as you can.

A. Yes, ma'am. When we set up the instrument, it's on a tripod. And it's very similar -- actually it's the same instrument that you would see if they are surveying -- or surveying on a highway or something of that nature. We just use it in a different manner. You set the instrument up. You have a compass on it that will allow you to turn the instrument to magnetic north. At that time you will zero out the instrument which, at that point, you have zero minutes, zero seconds north. From that time on, then you will set the back

site. And you can set the back site on any side of the instrument you want to. You take a tape measure and put down what we call a PK nail under the instrument, and we use -- 20 feet is what we use any direction. We go over 20 feet, and then we shoot into an optical prism the 20 feet. It will measure that 20 feet. We make sure it's correct. That sets up the instrument initially. Then when we move the instrument, we see where we want to move it to, select a site, put down another PK nail. We shoot from our reference point 1 to reference point 2 to the optical prism. And then once we make that shot, we then reverse and we bring the prism back to where reference point 1 was, take the instrument to reference point 2, shoot back to the reference measurement. That tells the instrument where the instrument is now located.

Q. So maybe to try to simplify it, each time you move it, you make sure that it's --

A. Yes, ma'am.

Q. -- calculating the correct measurement?

A. Right. We can use the reference measurement protocol which will allow us to shoot to any known location we have. The original back site or from RP2 to RP1 any site that's a known measurement, we can shoot back to periodically to make sure the instrument is still in the location that it thinks it's in.

Q. And was that done each time you moved it in this case?

A. Yes, ma'am.
Q. And were the measurements still correct each time you moved it?
A. Yes, ma'am. They were within the tolerance.
Q. What is the tolerance?
A. The tolerance we usually use is 5/100 of an inch.
Q. So the measurements are accurate to 5/100 of an inch?
A. The measurements are actually accurate to probably a thumb's width at 440 yards.
Q. And did you actually shoot the location at 411 Avalon?
A. Yes, ma'am, we did.
Q. We're talking about shooting it. You're measuring the house, the driveway, the wall, all of that?
A. Yes, ma'am, the curbs, the trees, the shrubs, and everything that -- the driveway and everything that was pertinent.
Q. And what did you do with those measurements?
A. Once we -- those measurements, when you shoot them at the scene, you have a data collector attached to your instrument to your total station, which is nothing more than a small computer. You then take that -- download it from the small computer into a laptop computer that has software that reads the geometry from the original EVR software, and it will draw the scene in front of you on the laptop.
Q. And did you do that in this case?

A. Yes, ma'am.
Q. I show you what's been marked for identification purpose as Government's Exhibit 55-A. Can you please tell the ladies and gentlemen of the jury what this is?
A. That's a forensic drawing of the scene at 411 Avalon we started on, I believe, February 17th.
Q. And --
A. It has the outline of the residence on the right side. The checkered part on the left, that would be the circular drive. And the black part is the vehicle parked in the driveway. And then it's got the -- where the trees are located and the shrubbery in front near the corner, has a signage on the Avalon Street and Cooper, and in the sidewalks and curbs.
Q. And the measurements, are these -- is this diagram accurate based on the measurements that you took in February of 2009?
A. It is.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 55-A.
THE COURT: Any objection?
MR. HENDRIX: No.
THE COURT: It's received.
(Government's Exhibit 55-A received in evidence.)
BY MS. WHATLEY:
Q. Let me ask you this. On Government's Exhibit 55-A, is

this just kind of a starting point?
A. It is, yes, ma'am.
Q. Are there any -- any part dealing with the bomb scene other than the vehicle located on this diagram?
A. No, ma'am.
Q. Did you do another diagram to actually put the location of where different pieces of evidence were located?
A. Yes, ma'am. It's actually the same diagram. We're just able to turn layers on and off of what we shoot. So that's just one with all of the layers turned off on it.
Q. Did you do one with the layer turned on showing the different pieces of evidence that were located at the scene?
A. Yes, ma'am.
Q. I'm showing you what's been marked for identification purposes as Government's Exhibit 55-B. Is this that diagram?
A. Yes, ma'am, it is.
Q. And how did you receive the information to know where the different pieces of evidence were located?
A. It would be from the documents I received from Special Agent Edwin Starr with the measurements, triangulations from certain portions of the residence, and the concrete wall. And then I also received from him the actual ATF evidence numbers that I put into the library on this drawing.
Q. And are the -- where it says "EV," are those the pieces of evidence that were located?

A. Yes, ma'am. "EV" would be evidence, and the number after it would be what evidence number it was.
Q. And does this diagram fairly and accurately depict where the various pieces of evidence were located at the scene at 411 Avalon?
A. Yes, ma'am, it does.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 55-B.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 55-B received in evidence.)
BY MS. WHATLEY:
Q. Just to make sure I'm correct, if it says "EV," that means evidence?
A. Yes, ma'am.
Q. If it says "14," that means Evidence No. 14?
A. Yes, ma'am, that's correct.
Q. Did you do another layer?
A. Yes, ma'am.
Q. I'm showing you Government's Exhibit 55-C. What was this layer?
A. That layer is the layer that is showing the debris field from the blast site in front of -- from the blast seat in front of the vehicle in the driveway.
Q. And were you able to tell where the blast seat was when

you got there?
A. Yes, ma'am, I was.
Q. Was there still a discoloration on the cobblestone?
A. Yes, ma'am, there was.
Q. And does this fairly and accurately depict the debris field based on all of the information that you obtained?
A. Yes, ma'am, it does.
MS. WHATLEY: Your Honor, we move for the admission of Government's Exhibit 55-C.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 55-C received in evidence.)
BY MS. WHATLEY:
Q. The debris field, is that just where these red lines are that are coming out from in front of the vehicle?
A. Yes, ma'am.
Q. And what does that -- what does a debris field mean?
A. A debris field is the way that -- once the blast went off, once the detonation occurred, the direction of the travel of the debris where the debris was located, where it came to its final resting place, we shot a point to there. And we can shoot lines or points or whatever. In this situation, we shot a line from the blast seat to the final resting place of each piece of debris that Special Agent Starr provided me with. And then we put a solid yellow line from the blast seat to the

final resting place of each piece of the debris that they had marked.

Q. So when you were doing these, are you basically reconstructing the scene?

A. Yes, ma'am.

Q. Did you later obtain other measurements?

A. Yes, I did.

Q. And from whom did you obtain those measurements?

A. It would be from Special Agent John Norris of the Little Rock field office with ATF.

Q. Based on those measurements, did you do another diagram?

A. I added to the original diagram, yes, ma'am.

Q. So you used the original points of the house and the vehicle and all of that?

A. Yes, ma'am, that's correct.

Q. So you just added information to that?

A. That's correct.

Q. I'm showing you what's been marked as Government's Exhibit 55-D. Is this the diagram you created based on the measurements provided by Special Agent Norris?

A. Yes, ma'am, it is.

Q. On this diagram, is the debris field highlighted?

A. No, ma'am, it is not.

Q. Are the evidence pieces highlighted?

A. No, ma'am.

Q. What was the purpose of creating this diagram?
A. There were two additions on this diagram. Just below the stop sign, at the intersection of Avalon and Cooper, adjacent to the residence, there is a figure of a person. And then to the right side -- on Cooper Street, to the right of the residence, there's a vehicle, outline of a vehicle.
Q. And you created this solely based on the information provided by Special Agent Norris?
A. That's correct, yes, ma'am.
Q. You have no personal knowledge as to whether or not these items were actually ever at the scene?
A. No, ma'am.
MS. WHATLEY: Your Honor, we move for the admission of Government's Exhibit 55-D.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibit 55-D received in evidence.)
BY MS. WHATLEY:
Q. So on this one, you added this vehicle that's located on the diagram at Cooper in the top right-hand side of 55-D; is that correct?
A. Yes, ma'am. That's correct.
Q. And you also added the person -- or the outline of the person located near the stop sign at the corner of Cooper and Avalon kind of off-center on 55-D?

A. Yes, ma'am, that's correct.

MS. WHATLEY: Your Honor, I have no further questions.

THE COURT: Okay. If you have a substantial cross, we'll wait until after the break.

MR. HENDRIX: Three minutes, I imagine, at the most.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Agent, as I understood what you were saying, you were not on scene until February 17th, which would have been two weeks after the incident?

A. Yes, that's correct.

Q. And the information that you used to develop the charts to do the forensic mapping is based on what you were told and documents you received from someone else, Ed Starr; is that right?

A. What I was told and documents I received and then also Special Agent Starr accompanied -- what he showed me at the scene as well, yes, sir.

Q. So the information and data that you used to come up with this is to you secondhand information?

A. That's correct.

Q. And so the reliability of your charts is dependent upon the reliability of the information that you're getting?

A. Yes, sir, that's correct.

Q. So if any of the information that you have received is

unreliable, your charts are going to be unreliable?
A. That's correct.
Q. Okay. And so, for instance, one of these has a little red pickup truck on it, doesn't it?
A. It would be d, I believe.
Q. Here it is. So the information you received about a pickup truck being on this exhibit, 55-D, if that witness was mistaken and that information is inaccurate, you're not trying to portray this as a fact that that vehicle was, in fact, there, right?
A. No, sir, I'm not.
Q. And same thing, there's a little diagram of a man here. This exact same proposition. It's not to suggest that that is a fact that that man was ever there. It's dependent totally on the reliability of that information? If that witness is mistaken, this chart is wrong; is that correct?
A. That is correct.
Q. On the debris field -- just for my own clarity, I'm looking at 55-C, the debris field goes outward from the car out towards the street. Is that the direction of the blast?
A. That's the direction of the blast according to the markings that have been placed on the street for me where I shot to of the data -- that's the data that I was shown of what had been collected. So, yes, that would be the direction.
Q. And again, it's just to help me understand because I think

I've got it. It's the debris field, it's the direction where you were told debris was found?
A. That's correct.
Q. Okay. In your experience and your expertise, is the debris field the same as going to be -- how do I say this -- the direction of a blast itself?
A. It could be, but it's dependent on several items. A blast will take the path of least resistance. So you had the vehicle behind it and I understand the spare tire. So it's going to take the path of least resistance. So it's dependent upon all of those factors.
Q. And the only reason I'm asking you this -- and again, I'm not suggesting it makes a lot of sense to me either. But there was testimony that the blast field was straight up. Would that change your -- would it be consistent, or inconsistent with your findings here?
A. More of it will most likely be straight up because of the hard surface under the blast. And, as I say, it takes the path of least resistance. There had to be some angle for it though or the items that were located had to be light and the wind blowing for them to come to rest where they did.
Q. Understood.
A. It's dependent on all of those factors.
Q. I've gotcha'. Thank you very much.
THE COURT: Any redirect?

MS. WHATLEY: No, Your Honor.

THE COURT: All right. Stand down.

All right. We're going to take our afternoon break. We'll take 15 minutes and be back at 3 o'clock. We'll come back at 3:00.

How many witnesses do you have after 3:00?

MR. GORDON: That's a good question, Your Honor.

THE COURT: That's fine.

Remember all of the admonitions I've given you so far.

(Recess at 2:48 p.m. until 3:04 p.m.; jury present.)

THE COURT: Call your next.

MR. GORDON: United States calls Lloyd Erwin.

LLOYD ERWIN, GOVERNMENT WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Please state your name.

A. Lloyd T. Erwin. That's E-R-W-I-N.

Q. What do you do for a living, Mr. Erwin?

A. I'm a forensic chemist with the Bureau of Alcohol, Tobacco and Firearms in Atlanta, Georgia.

Q. Do you work in the forensic laboratory there?

A. I do.

Q. How long have you worked there?

A. 46 years.
Q. What is your job there?
A. My job, I specialize in explosives and also in identification of explosives, explosive residues and device components.
Q. What's your job title?
A. Forensic chemist.
Q. Okay. Tell me again what fields or disciplines you specialize in.
A. Explosives and incendiary materials and devices, components.
Q. Does that include device component recognition?
A. Yes.
Q. Tell us what device component recognition is.
A. Well, you've got explosives, certain explosives don't have to have any kind of containment to blow up. Others has to have some kind of containment. They all have to have other -- some kind of device components -- even high explosives that has no containment has to have a thing like a detonator which involves wires, it involves electric current of some form. But in a device for -- an explosive device for a bomb, then it has to have a power source right next to it. So you're talking about we find it's a simple device which would be, say, a dynamite bomb or TNT bomb, it would have to have a detonator, a power source hooked to an automobile, say. And I would find possibly

pieces of the wire, pieces of the detonator, and maybe identify the explosive. That would be all you could find.

If it's put in a pipe or a box or a can or a steel -- steel pipe or a plastic pipe, I'm going to find components or parts of that device. It's going to be blown to pieces. It's not like the movies. It looks like everything disappears, but it doesn't. If I can't see it with my naked eye, I've got microscopes which I can put the debris under a microscope and go through it and I know what the stuff looks like after it's blown up.

Q. Okay. To simplify it, and correct me if I'm wrong, you are brought -- you are brought evidence from a crime scene or a bomb scene, and you go through the evidence and try to figure out what caused the explosion?

A. That's my job to identify the explosive, to identify any components that may have been used in connection with the explosive material.

Q. Okay. And what training or experience do you have that qualifies you to do your job?

A. Well, I've been to numerous bomb schools over the years and chemist schools and analysis explosives. My first real formal school on explosive devices was at Cherry Point Marine Base back in around 1970, identification of military explosives, military explosive devices, commercial explosives, and homemade or improvised explosives.

Q. And this has been your job since 1964?
A. No, not since 1964. In 1964 when I came to work, our basic job was we were part of the Bureau of Narcotics. We worked in the laboratories of Bureau of Narcotics. I analyzed a lot of narcotics drugs. I analyzed -- our main job was moonshine, chasing moonshiners. And I analyzed a lot of evidence involved in moonshining, which would be physical evidence. It might be soil, it might be paints, identifying materials used in manufacturing moonshine, and tying people, you know, to the site of the still by various kinds of things like paints and soils and greases and tool marks and all kinds of stuff like that.
Q. Let me ask you then, how long have you been working with explosives?
A. Since 1968.
Q. Okay. And have you ever served as an instructor in the field of explosives?
A. Yes. I've been -- at least over 40 years. And I've taught state and local, federal agents. I've taught some military. I've taught the State Department, schools. I've instructed lots of foreign students. We used to bring a lot of -- we still have classes where we train people in law enforcement and foreign countries, but they are trained now in the foreign countries. I've not been to any of those. But until -- prior to that, we had at least four or five schools a

year at our Federal Training Center in Glynco, Georgia. And I instructed all of those. We made all kinds of devices. I say we. I was just part of the team that did that. Blow up cars, have the students work on the stuff. We blow up -- assimilate buildings, burn buildings. Use all kinds of devices, commercial, homemade, and military. And the students -- it was their job -- we try to train them how to pick up evidence, what to look for, how to look for it. We also teach things like how to prevent contamination where you don't go out and work a scene and contaminate the evidence. Or if you do a search on somebody's house where you don't carry contamination to the search warrant, contaminate the evidence there. And I do that, you know, on average four or five times a year at the minimum.

Q. Since 1968, how many cases involving explosives would you say you've worked?

A. I couldn't give you the exact number, but in 1990, I had a case -- I won't tell you the case, but it involved national attention. But the prosecuting attorney was a special prosecutor, insisted that I come up with a number. We were missing about ten years of old records, which I couldn't go into. But minus that, I'd done over 1500 then. So I average -- since then, I've probably averaged 25 a year at least.

Q. Okay. So a lot?

A. And -- yes. So it's getting on up there. Now, I say I

average 25. I might not do -- depending on my teaching abilities. I'm also a member of the National Response Team, which gets called out on large explosives or fire scenes. So I have a lot of teaching. And I don't do as many explosives as I used to. I do a lot of training. I train other chemists. So, you know, it's on up there. It's close to -- it's over 2,000.

Q. Have you testified as an expert before?

A. Yes, I have.

Q. In federal court?

A. Yes, I have.

Q. And state court?

A. Yes, I have.

Q. Military court?

A. Yes, I have.

Q. Foreign courts?

A. Yes, I have.

Q. About how many times have you testified as an expert?

A. In this area in the field of explosives, I've testified over 150. It's on up past that. That's calculated back in the middle '80s.

Q. Have you testified here in Arkansas before?

A. Yes, I have. I don't know -- can't remember whether I testified in this court or not, but I've testified in Little Rock before in other cases. I've testified in various places in Arkansas. I think I've testified in all of them.

Q. Welcome back. Obviously you analyzed the evidence in this case; is that correct?
A. That's correct.
Q. When did you receive the evidence?
A. If I remember right, it was around February the 10th of 2009.
Q. And when evidence comes into the laboratory, what is done with it?
A. Well, the normal procedure when it comes into the lab, we have an evidence technician. An evidence technician takes the evidence. She puts it into the evidence vault. She assigns a case number to it. And it usually -- and it sits there until it's checked out to somebody to analyze it. And we have various priority systems we give cases. If it's a case where we just have the explosion in a dumpster, nobody seen anything or heard anything, have no suspects, then it's given a low priority.

If someone is injured, then it's given a high priority. So this one happened to be involving an injury, it was given a high priority. It came in. It didn't even go into the evidence vault. I was there when it came in. It was assigned to me before it came in. And she fixed the books like it came to the evidence vault, but I checked it out immediately, so I started working on it right then that day.
Q. And was this case assigned a lab number?

A. Yes, it was.
Q. Can you tell us what the lab number was, please?
A. 09A0048B.
Q. And were you asked to sift through the evidence in this case and see if you could identify any device components?
A. Yes. That was -- they have a request on what they check for. And it had "explosives" checked. And explosives includes identifying the explosive material, identifying anything that was used in conjunction with this explosive material.
Q. As you examined the evidence, did you find any device components?
A. Yes, I did.
Q. Okay. And based upon what you found, were you able to form an opinion about what device you thought was used in the explosion?
A. Yes, I did.
Q. All right. And let's go ahead and give the answer and then we'll go back and figure out how we got there. In your opinion, what was the device that was used in the explosion?
A. It was a U.S. military offensive hand grenade, MK3A2.
Q. Are you familiar --
A. And it contained TNT.
Q. Are you familiar with the MK3A2 hand grenade?
A. Yes, I am.
Q. How are you familiar with it?

A. Well, I've seen a few of them over the years. I've had a few cases, not recently, but a few years back involving those kind of grenades. I have all of the manuals of all of the military grenades. I have the military encyclopedia of explosives. And I've worked with military guides for years. We have our explosive technology branch employees, enforcement officers, are mostly ex-military EOD, which is explosive ordnance disposal, bomb techs.

Q. And are you familiar with the components of an MK3A2 and how they operate?

A. Yes, I am.

MR. GORDON: Your Honor, can we approach for just a moment?

THE COURT: You may.

(Bench conference reported as follows:)

MR. GORDON: I just wanted to alert the Court that I have the inert MK3A2, and I was going to present it at this time, and I didn't want the Court or anyone else -- I've already showed it to defense counsel. I didn't want you all to be alarmed.

THE COURT: This is not the live one?

MR. GORDON: It is not live.

MS. CASSINELLI COUCH: You scared me.

MR. GORDON: I just wanted the Court to know.

THE COURT: Any record on that?

MR. HENDRIX: No. It's fine, Judge.

THE COURT: Thank you.

(Proceedings continued in open court as follows:)

BY MR. GORDON:

Q. Now, Mr. Erwin, you and I talked about 30 minutes ago, right?

A. Yes, we did.

Q. And during our discussion, did I show you an MK3A2 hand grenade that had been made safe?

A. Yes.

Q. Okay. It had -- all of the explosive materials had been removed from it?

A. Yes.

Q. And you actually pulled it apart to make sure that there's nothing unsafe about this grenade; correct?

A. That's correct.

Q. Okay.

MR. GORDON: May I approach the witness?

THE COURT: You may.

BY MR. GORDON:

Q. Mr. Erwin, I'm going to hand you what's been marked as Government's Exhibit 69. Do you recognize that?

A. Well, it looks just exactly like the one we just looked at a little while ago.

Q. Okay.

THE COURT: Are you not sure that that's the one you looked at a little while ago? It better be more than one you think --

THE WITNESS: It's got some markings on it that I recognize, too.

MR. GORDON: Here.

THE WITNESS: It's been in his possession.

BY MR. GORDON:

Q. Separates, there's nothing inside. Okay? It's safe?

A. Okay. Yes.

Q. Is that a -- that's a real MK3A2 that's been demilitarized, correct?

A. Yes, it is.

MR. GORDON: Your Honor, we'd like to offer Government's Exhibit 69 into evidence.

MR. HENDRIX: Can I ask Your Honor to withhold ruling on that until after cross-examination?

THE COURT: We'll withhold ruling.

BY MR. GORDON:

Q. Mr. Erwin, I would like to walk through the evidence that you reviewed in this case and identify some of the components that you found that made you -- that helped you form the opinion that an MK3A2 caused the explosion in this case. All right?

A. Okay.

MR. GORDON: May I approach the witness?

THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibit 3. And there's a bunch of bags there. Did you examine this exhibit?

A. Yes, I did. I've got -- it's got a seal and got my initials and the date and my laboratory number on it.

Q. Okay. And actually, to help us move along more quickly, when you did your examination, did you take some photographs?

A. Yes, I did.

MR. GORDON: May I approach?

THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to hand you Government's Exhibits 68-A through 68-FFF. Did you review those before testifying?

A. Yes, I did.

Q. Are those the pictures that you took during your examination?

A. They are.

Q. Are they fair and accurate depictions of the evidence that you reviewed?

A. Yes, except the photos may not be as good as what I think I can see. I'm not an expert photographer.

MR. GORDON: Your Honor, we would offer 68-A through

FFF.

MR. HENDRIX: No objection.

THE COURT: They are received.

(Government's Exhibits 68-A through 68-FFF received in evidence.)

BY MR. GORDON:

Q. I'll retrieve those back from you, Mr. Erwin. And as we go through these, they'll pop up on the scene right here.

A. Okay.

MR. GORDON: Let's look at 68-A, please. Everybody got it?

BY MR. GORDON:

Q. All right. Mr. Erwin, you see it up there on your screen?

A. I do.

Q. And is that a picture of Government's Exhibit 3?

A. It is.

Q. All right. What is that?

A. That's the main body part of the fuse assembly for this type of grenade.

Q. And what is its function?

A. Well, if I had it where I could show it to you, I could show you, but the long part in the top, there would have been a primer. There's a little striker pin that comes down and hits the primer like in a shotgun shell or a pistol shell. It fires and it has a little -- that little tube has what they call a

delay element. It's kind of like a fuse, it burns slow. So when it fires, and somebody, say, actually throws it, which it's designed to be, it's designed to be -- pull the thing and throw it, the striker hits, it lights the delay element, and you've got a few seconds before it blows up. In other words, you throw it, you've got time to duck behind something before it blows up.

And this little tube, the long part, has the delay element in it. It's a pyrotechnic mixture. And the little crimped end is where a blasting cap or a detonator would have been. And then when it gets past the delay element, that's when it hits the detonator, the detonator goes off, the explosive goes off.

Q. Can you show us on Government's Exhibit 69 where it is?

A. I'm going to have to take it apart. It's this main part my thumb and forefinger is holding here with this little part sticking up. This has some fibrous material on it which is gone off of here.

Q. I'll take that from you for just a moment.

So it's -- Mr. Erwin, if you will, you can touch your screen and it will --

A. Okay. I don't have that same picture. I just have the original one. Now I've got it.

Q. Okay. I think it's fairly clear, but if you would, on the part from Government's Exhibit 69, circle where Government's Exhibit 3 is.

A. Okay. It's about -- do I need to use this thing?
Q. You've got to push it a little hard. There you go.
A. There you go.
Q. Okay.
A. It actually extends out a little bit, but you can't see it because the handle is covering it. This part over here sticks back in over here next to the handle.
Q. Okay. Thank you.
MR. GORDON: May I approach the witness again, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to hand you what's been marked as Government's Exhibit 4. Did you examine that?
A. Yes, I did. It has a number and lab number and my initials and date on it, marked my Exhibit No. 4.
Q. And did you take a picture of that?
A. Yes, I did.
Q. Let's take a -- if we could take a look at Government's Exhibits 68b and c. What part of the grenade is that?
A. That's what's known as the safety lever, or the spoon as most people calls it. That's -- it's got a pin, and if you pull the pin, as long as you hold your hand around the grenade and hold that around this handle, it's safe. If you hold it like this, you can pull all of the safety pins out and it won't

blow up until you turn it loose. And there's a spring that kicks this thing off, and that's when the striker hits.

Q. Okay. I'm going to take the top part off of 69 again. Government's Exhibit 4 is flattened out?

A. Yes, it's flattened out.

Q. Okay. If --

A. And it's still been damaged also sideways.

Q. Did you compare the hooks on Government's Exhibit 4 with the hooks that attach the spoon to the real MK3 --

A. The hooks don't -- it's got the hooks on it, but that's not what makes it unique about it for this particular grenade.

Q. Tell us about it.

A. If you'll look -- turn it back sideways. Lay it on its side. This grenade comes out and it's -- that handle is straight. And this one is bent right here, but you can tell that that was a straight handle.

Q. And if you were to straighten out --

A. And this other part is what laps across the top right here. This is the little hook that would be up under here.

Q. And if you --

A. And the thing that makes it unique about that, there's only -- most grenades that are used that are called fragmentation grenades, probably the kind most people have seen is what we call the pineapple type. It looks like a pineapple body. And it's designed -- when those things blow up, the body

is metal, it's cast iron, and it breaks into pieces, and these pieces go flying in all directions. And if you're anywhere nearby, it's going to probably hit you and kill you or injure you severely. Those handles are curved to the shape of the grenade body. There's some that's shaped like a baseball, they're round, they're more curved. The pineapple one won't have quite as much curve. But the ones that has straight -- the only one I know that is an explosive grenade that has a straight handle is this one. They have other grenades that have a straight handle like this, but they are like a thermite grenade, they are smoke grenades, or signal flare grenades. And they have a cardboard -- round cardboard tube that they are in. And they have a straight handle. But the rest of them have curved handles except for this one. It's got what you call an offensive hand grenade, it does not have any metal fragmentation except for the fused parts.

Q. If you were to straighten out this spoon here on Government's Exhibit 69, would it be the same length as Government's Exhibit 4?

A. Yes.

Q. And when this spoon is released on an MK3A2 grenade, what happens to the spoon? Does it fly off?

A. If I was going to turn it loose and throw it, the spoon is probably going to land about right here and the grenade is going to land wherever I threw it to because it kicks off

immediately.
Q. Could the spoon be straightened out by a blast?
A. Yes.
Q. Could it also -- let's say it landed in a road and something ran over it. Would that straighten it out as well?
A. Probably -- it probably -- since it's already curved, it would probably just fold it down where it's curved at. It wouldn't -- I'm not saying it couldn't happen, but it's not likely.
Q. Okay.
MR. GORDON: May I approach, Judge?
THE COURT: Yes.
MR. GORDON: Thank you.
BY MR. GORDON:
Q. I'm going to hand you what's been marked as Government's Exhibit 12. Did you examine that?
A. Yes, I did. It has my laboratory number and exhibit number and initials.
Q. Did you photograph that as well?
A. I did.
Q. Let's look at Government's Exhibits 68-D and 68-E, please. What is that, Mr. Erwin?
A. That's a spring from a grenade fuse.
Q. Is that what it normally looks like?
A. Well, no. There's some of it missing.

Q. Okay.
A. It's a little bit longer than that.
Q. All right. Did you compare it to any known springs, any known grenade springs?
A. Yes.
Q. Let's look at 68-F. Is that the photograph of the comparison?
A. It is. I've got a grenade fuse exemplar. That's from a known grenade fuse.
Q. Okay. What would cause the difference? They don't look exactly the same, but what would cause the difference?
A. Well, this one has -- the No. 12 has explosive damage on it.
Q. Where would this spring be located in Government's Exhibit 69?
A. Okay. It's right -- it's right underneath where my finger is from that point right there. When you pull these pins out, there's a little flap that's turned back this way that has a firing pin in it. And that spring, it kicks the firing pin over and it throws the handle off. And the firing pin hits. It's the spring that makes the firing pin hit and fire the primer that sets the grenade in motion to fire.
Q. And did you bring me a picture -- a new picture to kind of help show the jury better where this spring sits?
A. Yes.

MR. GORDON: Your Honor, I'm going to be offering a new exhibit. Can I mark it as 69-GGG and add it to the end of this series?

MR. HENDRIX: No objection.

THE COURT: Whatever you choose.

MR. GORDON: I'm sorry, 68. May I approach?

THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to show you what's marked as 68-GGG. What is that?

A. This is a photograph of various stages of dismount of a grenade fuse that I took myself. I took them yesterday.

Q. Does that show the position of the spring that we've been talking about?

A. Yes, it does.

MR. GORDON: Your Honor, we would offer Government's Exhibit 68-GGG.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 68-GGG received in evidence.)

BY MR. GORDON:

Q. Let me see if I can rotate this. Mr. Erwin, if you would, point out where the spring would be located.

A. Okay. Again, it's right here on this -- underneath this corner right here. And what I did right here -- here's the

little firing pin, that part right there. I just marked it out. I didn't mean to. And I had to cut the spring in order to keep this intact where I could take a picture of it because it's -- the little spring is stout. Here's the firing -- in the center, you see the little dimple where it has fired that primer.

Q. Go ahead and mark it for us.

A. Okay. That little dimple in the middle. Over here on the right side is where I cut this thing completely away so you could see the spring and tag. So this spring arm does not go down in this hole. It goes around the part of this little firing pin. But when I took it off, it flopped down in here. So I took this part out with the primer, and it has a large hole over here. And then here's the one with the primer taken out, so we just have a hole where the primer went.

Q. Okay. And then is that -- the picture on the top on the far right, does that show the spring in place?

A. Yes, it's in place, but the little firing pin has been cut away so I could -- the only way I could do it, had to hold it down with my thumb, and my thumb got in the way, so.

Q. Okay. Thank you. Did you compare Government's Exhibit 12, the components of that spring, with the compounds in the exemplar?

A. It's mostly just iron with a little bit of zinc, some trace element.

Q. Did you compare the composition of the known with the -- with the exemplar to the spring that was recovered from the bomb scene in this case?

A. Yes. They are basically -- all of the grenades springs are basically same. It just depends on who manufactured it.

MR. GORDON: Okay. May I approach again, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibit 16. Did you examine that?

A. Yes, I did. It has my laboratory number and exhibit number and initials, my initials and date.

Q. Did you take a picture of it?

A. I did.

Q. Let's look at 68-G. What is that?

A. That's some black foam-like insulation that's behind the plastic bumper on the vehicle.

Q. What did you do with that piece of evidence?

A. Well, it had little pock marks in it where something had stricken it. And I, you know, would dig through the little places where something would penetrate it. Most of them I found little fragments, tidbits of the plastic bumper that had went into it, but I found some of the pieces of metal in one spot.

Q. Let's look at 68-H. Is that what you dug out of 16?

A. Yes, these -- these things up here are -- stuff up here is plastic fragments probably from the bumper.
Q. Then on the --
A. These are little metal fragments right here.
Q. Let's look at 68-I. The black stuff is plastic?
A. This is plastic over here. This is metal.
Q. Okay. The two kind of silvery objects just off-center are silver?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. And actually -- describe this for us. What --
A. It's -- it's a little piece of metal that's kind of flat on the back side and it's humped over, rounded over this way, and flat on the bottom.
Q. Let's look at 68-J. Is that a closeup of the metal fragment?
A. Yes. This end you can probably tell better that it's -- that it kind of goes up and over. And then the bottom side here is kind of flat.
Q. Let's look at 68-K. Is that the flat bottom side?
A. That's the flat bottom side. You know, it's damaged, but it's still -- it's flat across here, across that way.
Q. And what, in your opinion, was that?
A. That's consistent with the safety clip that's on the

grenade.
Q. Okay. If you would pick up Government's Exhibit 69 and show us where the safety clip is.
A. Okay. You see this ring, this little ring hanging down, that's what you call the pull ring. You put your finger in that ring and you pull the pin out. And this pin is a two-layered thing. And the best way I can explain it, some of you might know and some of you might not, it's a cotter pin, like a lot of automobile parts, you've got an axle or a wagon wheel that's got an axle with a hole in it, you put a cotter pin in, and you stick -- you bend one that way and one the other way to keep the wheel from coming off. That's the same kind of pin. So it's flat on the two sides, and then it's rounded, but got one flat side. And that's the way this thing is made, too.
Q. Can you pull the pin? There's a safety pin on there, right?
A. There's a safety clip on there, too.
Q. So you can pull the pin and nothing will happen?
A. Well, it ain't going to happen unless I turn it loose. But you pull it out, and it's a double thing.
Q. This one is kind of twisted. So can you -- is that the part that you're talking about, Mr. Erwin?
A. My screen is blank, so I don't know. Okay. As you can see it there, it's not very clear. It's -- you know, you don't

have a microscope to magnify it a little bit better. Can you magnify that?

Q. If I can find where it went. I don't know about this.

A. Okay. You can see it right there. It's -- if you can hold it still a minute.

Q. I'll try. Talk fast.

A. Okay. But you can see this side right here is flat, and then it goes around here on -- a little. But the inside part is flat. That's why when you put them together, then it becomes round, and then you can stick it through a round hole, and then you can bend it out when you get it in there.

Q. Okay. So what would make this from Government's Exhibit 69 look like it does in Government's Exhibit 68-K?

A. Well, because it has explosive damage. It's been involved in an explosion, it's an explosive.

Q. When you examined the evidence, did you find anything similar to what you found in Exhibit 16?

A. Yes, I did somewhere.

Q. Is that Exhibit 43?

A. Yes, it's 43-A. That's my number.

Q. What do you have as 43-A?

A. It's something that was removed from the victim.

Q. Did you take a photograph of 43-A?

A. I should have.

Q. Let's look at 68-L, then let's look at 68-M.

A. Okay. Again, it's laying on its flat side, even though it's very damaged, but you can still look at it up close and tell it had a flat side and one side was rounded.
Q. Let's look at 68m. What are we looking at here?
A. You're looking at 16 -- I'll draw a line between them. Well, that ain't working.
Q. Hang on. Okay. Tell you what -- just tell us what we're looking at.
A. If you're facing it, it would be your left side, it says 16, and it has the big and a little small piece of metal. That is the one from the bumper. 43, the one over to the right, the big long piece and the small one, is the one from the victim.
Q. And it's your opinion that both of those are part of the safety pin?
A. They are not part of the vehicle. And I didn't see anything else that they could have come from. And that's what should have been on the grenade. And it's -- it fits the size.
MR. GORDON: May I approach?
THE COURT: You may.
BY MR. GORDON:
Q. Let's look at Government's Exhibit 18. Did you examine that?
A. I did. I can identify it with my number and my laboratory number and my initials and the date.
Q. Did you take a picture of it?

A. Yes, I did.
Q. Let's look at 68-N, please. What is this stuff?
A. Okay. That's materials that picked up at -- has car parts in it. Most of this stuff down here is plastic, got a little piece of -- this is a rim that goes around a -- I don't remember. Seems like this was a Mercedes vehicle. I'm not sure. But whatever it was, this thing right here is a -- the lens, which is like a huge magnifying type glass. It's real thick. It probably went in this framework. And there's part of a little lightbulb right up here which probably was in the vehicle. But it's this stuff right over here that is consistent with the body parts of this grenade.
Q. Okay. And just for the record, if I'm looking at this the right way, on Government's Exhibit 69-N, you've identified the six pieces that are immediately below the ATF -- six black pieces?
A. On the router and to the left of that round metal ring.
Q. And what is that?
A. It's a -- it's fragments that are fibrous -- cellulose fibers impregnated or mixed with an asphalt type product to make this body of this grenade out of.
Q. Let's look at 68-O, please. Is that one of the pieces up close?
A. It is. And it's hard to see, but you can see these little lines. That's the various kinds of -- it's a mixture of

various kinds of cellulose fibers. And it's got the right thickness from here to here. And it has one or two -- it has a piece in there that's curved.

Q. Let's look at 68-P. Is that the curved piece?

A. That's the piece that's curved. It's somewhere -- it's somewhere on the side of the body. It's got a little bit of a curve to it to make -- if you had enough of them, you could make the circle.

Q. And did you actually do that? Did you actually match the curvature to see if it would come out to the same size cylinder as the MK32 --

A. Not on that piece there, I didn't.

Q. On a later one? Did you find other similar fragments of fibrous material when you examined the evidence?

A. Yes, I did.

MR. GORDON: May I approach?

THE COURT: Yes.

BY MR. GORDON:

Q. Did you examine Government's Exhibit 21?

A. Yes, I did. I identified it by the number and my laboratory number and my initials and the date.

Q. Did you take a picture of it?

A. Yes, I did.

Q. Let's look at 68-Q, please. Is there any fibrous material in this picture?

A. Yes. I mean, there's a little bit of dirt, there's a little bit of explosion material in there and a piece of metal, but the parts that belongs to the grenade, as far as the body parts, are -- I'm going to circle them is all I'm going to circle -- are these right here.
Q. And for the record, it's the --
A. Right above the "21."
Q. Thank you. Let's look at 61-R -- I'm sorry -- 68-R.
A. And some of these have a curve on them.
Q. Is that a closeup of the pieces?
A. Yes, but not in focus. That might have been my photography.
Q. 68-S?
A. Okay. That one is a better one. This is just a closeup of one of the -- showing the fibers sticking out of the asphalt material.
Q. Is that the same thing in 68-T?
A. Again, that's just another picture showing that it's got the fibrous material and the asphalt body.
Q. Now, I'd like to go back to 68-R, please. In this picture, were you able to identify any specific parts of the body of an MK3A2 grenade?
A. Okay. This one right here has some curve here to the outside. This one is a big piece that's curved. This is the curved part on the back side. And then this piece, it has

curvature, but it also has from the center piece of the grenade.

Q. Why do you think it's from the center piece?

A. If you see right here is the seam, there is the inside portion.

Q. Show us on Government's Exhibit 69 what you're talking about.

A. If I take this thing apart, it's in this area. If I took a piece out right here up to about right like this, so I've got the big part and the little part where it comes together -- see, this piece don't have that. It has one thickness all the way down, but this one has the two thicknesses. And you can look at it and turn it up on its side and see it. And it also has a curvature to it. And this piece right here came somewhere on the bottom right here. It's the outer edge. It has a curvature on it.

Q. And if you -- if you were to extend the curvature of that piece all the way around, would it be similar in size to the MK --

A. It would be hard to make it exactly accurate because you have no way to -- since it's damaged. But the book shows this one is about 5.4 centimeters in diameter. And just doing a best you could trace that, it came out about 5.6, which, you know, can't be perfect on it. So I couldn't say. It's been in an explosion.

Q. Let's look at Government's Exhibit 20.

MR. GORDON: May I approach?

THE COURT: Yes.

BY MR. GORDON:

Q. Did you examine that, Mr. Erwin?

A. Yes, I did. It's got the number and my laboratory number and initials and date.

Q. Did you take a picture of it?

A. Yes, I did.

Q. Let's look at 68-U. What are we looking at here, Mr. Erwin?

A. It looks like a little glob, but it's actually a small piece of thin aluminum metal that's folded up.

Q. How do you know that?

A. Well, I analyzed it. I know it's aluminum.

Q. Okay. And in your opinion, what is that?

A. It matches the type of metal that should have been in the detonator which was on -- you've got it, on the end of that fuse, the fuse assembly, the little part that -- it's not -- here it is. I'm going blind, I guess. It's the part that would have been from here down, down about this far, it's the detonator. And if you look at this one, you can see some -- there's some remnants of it up where it was crimped on the aluminum metal right up here at the top. That's what we're talking about.

MR. GORDON: May I approach again, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibits 33-A and 33-B. Did you examine that?

A. Yes, I did. I identified it with the laboratory number and initials and date.

Q. Did you take any pictures?

A. I did.

Q. Let's look at 68-V. Are those the shoes?

A. These are a pair of shoes.

Q. And let's actually go to 68-W. Is that one of the shoes as well?

A. That's the left shoe.

Q. Are there any components of a grenade in that shoe?

A. Yes, there are.

Q. If you would, please circle them for us.

A. Right in the side here in the heel area, and also right up here just past the arch.

Q. Let's look at 68-X. Can we see it there as well?

A. That's just looking at it from the bottom side, you've got -- it's a piece of wire stuck in the shoe in different places.

Q. 69y, is that a closeup?

A. That's a closeup of it. And it's a curved piece of wire.

It went in the bottom and the side of the heel.
Q. And 68-Z, please?
A. And this is the other little piece that went in the side of the sole past the arch.
Q. In your opinion, what component of a grenade are we looking at in the shoes?
A. You're looking at a thing called a safety clip.
Q. I'm going to hand you Government's Exhibit 69 back. And I put the safety pin back in, so if you want, you can take off the clip. Show us what you --
A. First of all, it's -- a safety clip, if I pull the pin -- all grenades don't have safety clips. Some do and some don't. If I pull the pin, it's still got a safety clip and it'll still hold the lever down, and it's easy to kick off with your thumb. I'm going to go ahead and take it apart to get it out easier.
Q. Okay.
A. But that's the little safety clip. If you put it on there, I can show you better which pieces we're talking about. Okay. This part right here is what's in the heel of the shoe. This little part right here is in the sole in front of the arch in the left shoe.
Q. Okay. Did you take a picture of the two parts that were in the shoe -- take a picture of them together?
A. I think I did.
Q. Let's look at 68-AA, please.

A. Yes, I took that picture.
Q. So the part on the bottom is the curved part of the safety clip?
A. And the other part was the little piece here I said you could take your thumb and push against it to knock it off.
Q. The little part?
A. The little square part. And, of course, it's spread apart, but that's what it is, that's where it came from.
Q. Did you find any other pieces of this safety clip in any of the other evidence?
A. Yes, I did.
Q. Which piece was that?
A. If I remember right, I think it was No. 49.
Q. And what do you have marked as 49? In your report, what do you have marked as Exhibit 49?
A. It was identified to me as coming from the victim.
Q. From his jaw?
A. Yes.
Q. Did you take a picture of it?
A. Yes, I did.
Q. Let's look at 68-BB. Is that the evidence right there?
A. That's it.
Q. Let's look at 68-CC. Is that a closeup?
A. That's just a little bit closer. It just shows -- this is a broken edge, this is a factory edge here on this end, that

flat end.
Q. And let's look at 68-DD. What are we looking at in this picture?
A. You're looking -- this one is from the victim's jaw.
Q. The one marked 49?
A. This one over here is from the area in the little square part that's in the sole, front of the arch. This is the curved part that's in the heel. This is a factory edge here. This is a factory edge. This is a broken edge. This is not factory.
Q. So based upon this comparison, you believe Exhibit 49 is also part of the safety clip?
A. Yes, both -- all measure 50/1000 of an inch in diameter. They have the same elements.
Q. Same compounds made of the same thing?
A. Yes. I think if you look at the safety clip on the end of the curve, I think one end turns up. I think that's where that came from.
Q. I'm going to hold it still.
A. You can see it right there, that little tip, it turns the other way. Now you can see it. That length to where it starts to curve matches pretty close to that.
Q. And you're talking about --
A. The one out of the victim.
Q. Out of the jaw, Government's Exhibit 49?
MR. GORDON: May I approach?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibit 43-B. Did you examine that?

A. Yes, I did. It's got my number and lab number and date and my initials on it. Yes, I identified that. I examined that.

Q. Did you take a picture of it?

A. Yes, I did.

Q. Let's look at 68-EE, please. And in your report, do you identify this as "Shrapnel removed from Pierce at hospital"?

A. That was the way it was identified to me, that it came from a guy named Pierce.

Q. And what are we looking at here in 43-B? What is that?

A. We're looking at two pieces of metal. This particular one right here --

Q. The one on the right?

A. -- that's -- part of that fuse assembly that held the primer was set right there, it's part of that thing with the circle where the firing pin would hit right here. Of course, that part is missing. This piece over here is just another piece of the -- that damaged fuse -- main body of the fuse assembly. It's all the same kind of metal, but that's what it is.

Q. Let's look at 68-FF. Is that just a closeup?

A. That's just a little bit closer-up view. You can see the beveled edge going around here. And then that's where the center was for the primer.
Q. At the same time, let's see if we can put 68-GG up there. On the bottom of 68-GG, what's that a picture of?
A. This is a picture of one of those grenade fuses with the little primer removed. It's just the primer would have sat right here in the little seat that the little firing pin hits, it hits right there. That's taking it out so you have the little hole where it was gone here.
Q. So the one on the bottom is an exemplar?
A. It's an exemplar. It's a known grenade component -- fuse component.
Q. Let's look at 68-HH.
A. This is the -- my Exhibit 43-B. This is set down beside so you can see the beveled edges and the distance from here to here, like here to here, and there's where the hole would have been. It's a little bit off.
Q. Is there any real explosive material -- any explosive material inside a real MKA32?
A. Yes.
Q. What is the explosive material?
A. Well, it's commonly called TNT. That stands for trinitrotoluene. That's T-O-L-U-E-N-E.
Q. Is that a high explosive?

A. Yes, it is a high explosive.
Q. Tell us a little bit about TNT.
A. Well, it's military. There's some commercial use of it nowadays, but it's used in things called cast boosters in the mining industry. But it's one of the main explosives that the military uses besides their plastic explosives; used in big bombs along with little bombs.
MR. GORDON: May I approach, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government's Exhibit 13. Did you test that?
A. Yes, I can identify that by my laboratory number and initials and date and No. 13, and I did analyze this.
Q. Let's look at picture 68-RR. Is that a picture of the contents of Government's Exhibit 13?
A. Yes.
Q. And did you test that to find out what that material is?
A. Yes, I did. That was identified as sweepings, and it's got the little black specs and organic material, probably pieces of leaves, sticks. And the kind of pale yellow-looking material is TNT.
Q. When you examined the rest of the evidence, did you also test some of the items for the presence of TNT?
A. Yes, I did.

Q. And did you find TNT on any other items?
A. Yes, I did.
Q. Can you tell us what they were?
A. Well, number -- I can give you the exhibit numbers. No. 3, which was the --
Q. Grenade fuse assembly?
A. -- grenade fuse assembly. No. 8, 9, 11 --
Q. Hang on. Hang on.
A. Okay.
Q. Just want to make sure we can follow you.
A. I didn't test every one of them.
Q. Explain that.
A. Well, because I could probably have found it just from what I saw on at least half of them.
Q. Okay.
A. But how many times do I need to identify it? One time is enough to identify the explosive. But there's so much of it, I just identified it in a lot of them.
Q. So what you're saying is you didn't test everything that was submitted to you for TNT?
A. No.
Q. But the stuff that you're about to tell us about, you did find TNT --
A. Yes. Had I not found it on anything, I would have tested everything more than once trying to find it.

Q. Okay. You found it on Government's Exhibit 3, which is on the screen, correct?
A. That's correct.
Q. Government's Exhibit 8, how was that identified?
A. I think it was a bumper piece.
MR. GORDON: May I approach the witness?
THE COURT: Yes.
BY MR. GORDON:
Q. I'm showing you Government's Exhibit 8. Did you examine that?
A. Yes, I did. I identified TNT on that piece, too.
Q. Government's Exhibit 9 was pieces from the blast seat; is that correct?
A. Yes.
Q. Did you analyze Government's Exhibit 11?
A. Yes, I did.
Q. It has a tag here.
A. Yes. I identified that, my initials, and date and stuff. And I can also recognize it without a bit of problem.
Q. Did you find TNT on this?
A. Yes, I did.
Q. Did you examine Government's Exhibit 14?
A. Yes, I did.
Q. Did you find TNT on this?
A. I did.

Q. And did you find TNT on the fibrous materials that you said were consistent with the body of the MK3 --
A. The ones that were -- definitely I could tell from the grenade, yes. No. 18 and 21, I believe, were the numbers.
Q. Thank you.
MR. GORDON: May I approach, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. Did you examine Government's Exhibit 10?
A. Yes, I did. It's got my laboratory number and my initials and date.
Q. Did you take a picture of it?
A. I did.
Q. Let's look at Government's Exhibit -- I'm sorry -- yes, 68nn. Is that the picture?
A. Yes, it is.
Q. What did you find in this exhibit?
A. It was mostly remnants of duct tape, silver-gray duct tape, except for this string or cord, yarn.
Q. What can you tell us about that cord or yarn?
A. It's embedded in the duct tape. It's charred. It's melted on the ends. It's an acrylic fiber. It's -- the best way I can describe it is small-Size knitting yarn.
Q. Let's look at 68-OO.
A. That's just a magnified photograph of the same thing.

Q. 68 -- I'm sorry. Go ahead.
A. And it doesn't belong to any of the victim's clothes or the vehicle or the tire.
Q. Let's look at 68-PP. Is this the type of yarn or cord that would be easily consumed in a blast?
A. Yes.
Q. Is that --
A. You can see where the ends have melted, just probably the duct tape protected this piece of tape -- I mean piece of yarn.
Q. Did you find any other yarn similar to Government's Exhibit 10 in the rest of the evidence?
A. I found one small piece embedded in a sweater that the victim was wearing.
Q. Let's look at 68-QQ. Is that the yarn from the sweater?
A. No. 23, that -- that's from the sweater.
Q. Okay. And it was consistent with the yarn found with the tape?
A. Yes.
Q. Was there any part of the MK3A2 offensive hand grenade that would require or have yarn?
A. No.
Q. Government's Exhibit 14 here, the tire, did you examine that?
A. Yes, I did.
Q. Did you note any damage to it?

A. Yes. It's got extensive damage on the back side near the -- where the rim and tire come together.
Q. Okay. Let's look at Government's Exhibit 68-SS. Is that the tire?
A. That's it.
Q. And 68-TT?
A. That's the same one. That's the -- one was the back side and one is the front side.
Q. 68-UU.
A. That's it showing from the edge of the rim where it's indented in and it shows the tire blown in two.
Q. And did you find any evidence of duct tape on the tire?
A. Yes.
Q. Let's look at 68-WW. Does that depict some of the duct tape remnants?
A. Yes. This is duct tape right there. That's remnants of duct tape on the edge right here. Here's duct tape. Over here is duct tape.
Q. How about --
A. There's a little fragment of duct tape.
Q. 68xx. Do you see duct tape there as well?
A. Yes, right here. And there's some remnant duct tape right here and right here.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibit 47. Did you examine that?

A. Yes, I did. It's got my number and date and initials on it.

Q. Did you photograph it?

A. I did, yes.

Q. Let's look at 68-II. Do you know what we're looking at there?

A. Yes. We're looking at a layered fragment of the gray duct tape, it's got charring on it, but that's the outside surface of it.

Q. 68-JJ, please.

A. And that's the same piece of layered duct tape with the inside surface with the adhesive on it.

Q. When you examined this duct tape, did you find anything?

A. Yes. I found remnants of yellow paint markings on the adhesive side.

Q. Let's look --

A. You can't see it on that photograph.

Q. Let's look at 68-KK. Is that a closeup of the tape?

A. It is. And you can see the yellow marking. I'm going to put more yellow markings with this pen.

Q. Go ahead.

A. I'll just circle it from here -- here's remnants in

between those markings.
Q. How about 68-LL?
A. Again, that's a different shot at it, but you can see some of the yellow, just highlights of it, back in this area, and then you can see the bigger portions over here.
Q. And if you would, on Government's Exhibit 69, show us where the yellow paint is.
A. Okay. The yellow paint on these grenades is put in yellow to show that they do have high explosive in them. And this is -- I can't identify the markings because they are just too -- not intact, you know. They are just scattered pieces of it. So I can't tell you exactly where on the marking that it came from, but it's evidence that the device had duct tape on it taped to the tire, and I have duct tape with the remnants of yellow paint in the adhesive side. And this is supposed to have had yellow painting on it. All of them do have it. And that's an apparent source of it.

MR. GORDON: Your Honor, may the witness step down?

THE COURT: May the witness step down? Yes.

MR. GORDON: I'd like him to point something out to the jury. Your Honor, Government's Exhibit 14.

BY MR. GORDON:
Q. You can see the damage here --
A. Yes.
Q. -- where the rubber separates?

THE COURT: Do you have that other microphone that we were using yesterday?

MR. GORDON: I can turn this one on, Judge.

THE COURT: Okay.

BY MR. GORDON:

Q. All right. On Government's Exhibit 14, there's damage to the rim right below where the rubber separates; is that correct?

A. Yes.

Q. Is there anything significant about this damage to the rim that also makes you believe that an MK3A2 was used in the explosion?

A. Well, the damage -- the length of the damage where it's folded back matches fairly close to the body of the grenade. If you lay the grenade right there, it fits right where the --

Q. Mr. Erwin, if you would, step back so everyone can see. There's a few jurors behind you there. Thank you, sir.

MR. GORDON: May I approach the witness again, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Mr. Erwin, here just so we're clear, Government's Exhibit 10-A, is that the white yarn or cord that you examined?

A. Yes, it is.

Q. And that's what you were testifying about earlier?

A. Yes.

MR. GORDON: Your Honor, we would offer Government's Exhibit 10-A.

THE COURT: Any objection to 10-A?

MR. HENDRIX: No, Your Honor.

THE COURT: Okay. Received.

(Government's Exhibit 10-A received in evidence.)

MR. GORDON: May I approach again?

THE COURT: Yes.

BY MR. GORDON:

Q. Mr. Erwin, I'm going to hand you what's been marked as Government's Exhibit 18-A. Are those the fibrous fragments that you testified about earlier that were found?

A. Yes, it is. It's got all of the information in my handwriting, the lab number, date, and my initials, and, yes, that's it.

Q. Okay. Thank you.

MR. GORDON: We offer 18-A, Your Honor.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 18-A received in evidence.)

MR. GORDON: May I approach again, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. Mr. Erwin, I'm going to hand you what's been marked as

Exhibit 16-A. Are those the fragments that you removed from the bumper when you were testifying about Exhibit 16 earlier?
A. Yes, it is. It's all written on the envelope in my handwriting, my initials, date and laboratory number and description of what it is. That's it.
Q. Thank you.
MR. GORDON: Your Honor, we would offer 18-A -- I'm sorry -- 16-A.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 16-A received in evidence.)
MR. GORDON: May I approach again?
THE COURT: Yes.
BY MR. GORDON:
Q. Mr. Erwin, I'm going to show you -- hand you what has been marked as Government's Exhibit 21-A. Is that also the fibrous material that you separated out from Government's Exhibit 21?
A. Yes, it is. It's got the laboratory number and initials and date and my handwriting. And this has the curved pieces that I pointed out that went to the bottom and on the side of the grenade where the two different thicknesses were at the center part -- is in that exhibit.
MR. GORDON: Thank you.
Your Honor, we would offer Government's Exhibit 21-A.
THE COURT: It's received.

(Government's Exhibit 21-A received in evidence.)

MR. GORDON: Thank you, Mr. Erwin.

Pass the witness.

THE COURT: Okay. Cross?

MR. HENDRIX: Judge, what we would like to do is ask for a couple of minutes before we begin our cross in light of the testimony to be able to look at some of the physical evidence.

THE COURT: Okay. How much time do you need?

MR. HENDRIX: Ten minutes.

THE COURT: Let's do this. Let's take a ten-minute break and come back at 4:40. We'll be in recess until then.

(Recess at 4:32 p.m. until 4:45 p.m.; jury present.)

THE COURT: You may proceed.

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Mr. Erwin, do you have your report in front of you?

A. Yes, sir, I do.

Q. Let's go over just a little bit. Page 1, the date of your report is March 27 of '09; is that correct?

A. Let me get my glasses. Okay. What was your question?

Q. March 27, '09?

A. Yes, it is.

Q. Exhibits, you then list 1 through 49. And those are the

components that you analyzed to come up with an opinion, correct?

A. That's the materials that were submitted to me to look at.

Q. Results of the examination on page 2?

A. Yes, sir.

Q. The second paragraph, the one after TNT, begins, "The following exhibits were found to contain grenade fragments consistent with the MK3A2"?

A. Yes.

Q. The question is, what does "consistent with" mean?

A. Okay. "Consistent with" means that they are like the materials that would be expected to be from an MK3A2 grenade. And that included the TNT explosive plus the components. Now, the fuse -- the part that really identifies that particular fuse is written on the top of the fuse. That was either scraped off or blown off.

Q. And that's actually my question to you. Of these components, is there something unique about these components that specify them as part of an MK3A2 hand grenade?

A. The main part is the body.

Q. Say that again.

A. The body.

Q. The body?

A. The cylinder part.

Q. You're talking about the material --

A. The material of the body and the shape, and the shape.
Q. Well, from the components, are you able to come up with the shape?
A. I can tell it's straight up and down based on that center part. And then the bottom, I can tell it's round in the bottom and it comes out basically the same diameter. And the material is -- it's an asphalt -- they call it asphalt-impregnated fibrous material. It's really hard, but that's what it is.
Q. And are there other grenades that have been manufactured, I guess, since World War II, I guess we could go back before then, that have a similar size as the MK3A2?
A. Not with that material.
Q. And, second, of the same material?
A. No.
Q. All right. How many of the same size?
A. There's similar shape, but not the same size exactly.
Q. All right. So let's be a little bit more detailed.
A. You've got -- you've got -- what do you call -- the grenades that are smoke grenades. You have the ones that -- you have signals. And there's also -- I think there's a thermite grenade, but the body part -- the body material is different on all of those.
Q. Okay. And let's --
A. They do not have high explosives in them.
Q. Let's stick with dimensions. The dimensions of this hand

grenade are generally what? We can all see it, but can you give the specific --

A. That's probably -- from the top of the fuse down is probably close to 5 1/2 inches.

Q. Okay.

A. And then the diameter would be in inches -- it's usually in centimeters -- about five and a half centimeters, close.

Q. Okay. That itself is not unique to the MK3A2, correct?

A. I don't know of another one that measures that exact measurement.

Q. Second question is, from the components, and they all look very small, are you saying that you are able to have enough of these components to determine precisely the size of the weapon that was used from which the components emanated?

A. The damage on that rim, is that what you're talking about?

Q. No, sir. I'm talking about all of the components, the 49 components that you analyzed that were given to you, were you able to take all 49 and go, "This device, I can give my expert opinion, is exactly the same size as an MK3A2"?

A. Well, all of them are made the same size as far as I know. There might be a little slight difference in the original one when it was made way back, but they are basically the same size.

Q. Let me try that again. You didn't have enough components here to reconstruct the device?

A. Oh, no, no. I never said that.
Q. So in determining -- and, in fact, the majority of them were fairly small fragments that your report itself refers -- I'm referring to them as components, but the 49 things as fragments, right?
A. Yes. The body fragments are in 18 and 21. And you can see there wasn't even maybe a fourth of an amount needed.
Q. Yeah. And so, again, here's the question. The 49 fragments that you took, were you able to analyze them and come up with an opinion that they constituted a device that was, whatever you said, 5 1/2 inches tall, 2 1/2 inches in diameter?
A. No. What I'm saying there is, the parts that I found are like what I expect to come from one of those grenades. Now, from what I found, I couldn't tell you that somebody broke one of those things in half and scattered some of the parts around and some of them weren't even there because I didn't find all of them.
Q. Yeah. And what I'm hearing you say is -- take away the notion of this MK3A2 for a minute. What I'm hearing you say is, of the 49 fragments that you looked at, you were unable to determine the size of the device before it was blown up?
A. No, I didn't have enough to do that except for one thing. The handle -- the spoon handle up to where it -- where it had the bend, it's the same length.
Q. All right. Let's move on to that one. Next question is,

the composition of the exterior of the MK3A2, is that unique to the MK3A2?

A. Everything I've ever looked -- in all of the manuals, all in the military encyclopedias, that's the only one they make with that body.

Q. How much research have you done about that? You're suggesting that of all of the hand grenades --

A. No.

Q. -- manufactured, MK3 or 2s are the only one with this asphaltish exterior?

A. That has TNT in it.

Q. Keep them separate. The outside of this weapon, is it totally unique to the MK3A2? Has there ever been a grenade --

A. I don't know every grenade that's ever been built, okay, if that answers your question.

Q. So what we do know is consistent is that you found TNT residue, correct?

A. Yes.

Q. And that the MK3A2, it uses TNT, correct?

A. Yes.

Q. How many other grenades are there in the universe that use TNT?

A. Lots of grenades use TNT.

Q. Right. How many grenades -- are you familiar with -- different types of grenades have been manufactured?

A. I told you before I don't know every one that's ever been manufactured. A lot of countries around the world -- everybody manufactures them. And all I can go by is what I've -- the people I've worked with is ex-military, and I've worked -- I've got the manuals and I have the encyclopedia.

Q. Well, in your direct testimony, correct me if I'm wrong, but what I understood your experience to be specifically with the MK3A2 is you said -- and I think the exact quote was, "I've seen a couple of them." Is that about right?

A. I've seen more than a couple, but I've had a couple in explosions before.

Q. Okay. Well, is that the breadth of your experience with the MK3A2?

A. Yeah, exactly. As far as working cases, yes. I've not worked dozens and hundreds of cases with MK3A2s. I've actually worked about two or three cases, but I've seen a lot of them. I've seen people shoot them in schools and show people the effects of them. And I've been to a lot of schools including military schools and explosive ordnance -- called EOD, they're military bomb techs.

Q. Well, and let's talk about that just for a minute. Your report indicates that you are a forensic chemist?

A. Yes.

Q. Now, is that different than an explosives identification expert? Is there such an animal as an explosives

identification expert?
A. Well, first of all, to be able to identify the explosives, you need to be able to analyze it. And that usually requires somebody with a chemistry background.
Q. And do you have a degree in chemistry?
A. And I have a degree in chemistry.
Q. And postgraduate work in it?
A. No. Just various, you know, workshops of other explosive chemists -- I've been to three or four international conferences on identification of explosive residues and device components. And there's people all over the world that has a lot more explosives than we do. So we don't know the tip of the iceberg in this country.
Q. I understand. When I think of experts in my business, for instance, I'll deal with forensic pathologists, the doctors that do the autopsies. And they have, in conducting an autopsy, a national set of protocols that they follow when they conduct an autopsy. In your business, is there any sort of national standard of protocols on how to conduct this analysis?
A. Well, we have protocols, but when you have an explosive or an explosion, you don't have a standard -- there's no such thing as a standard explosion. I can make three or four bombs -- I can take three or four of those things and throw them out here at different places, and I'm going to find different size fragments and different types of damage

depending on how they went off and what materials they were next to. So the particular explosive material or devices you're going to examine for debris, it helps to have a little experience to -- when you first look at it, to see what you're going to do. I couldn't just say, well, I'm going to examine this first or I'm going to inspect it first or I'm going to do this first because, if I did that, I would ruin a lot of evidence. I'd do the wrong thing first. So you have to look at it and determine which is the best route to go. You never use all of your sample. That's one thing you never do.

Q. Well, and when you look at your report on the front page, it says -- it gives the date of the report, the lab number or reference number, and then says, "Type of exam." And it says, "Explosive." I just have never heard of a scientific examination called "Explosives." For instance, like fingerprint analysis even, there's a set of protocols in how to conduct that test. And it's unclear to me -- is there a way, a nationally standardized way, that you conduct this test?

A. No.

Q. It sounds like a bunch of eyeballing to me --

A. No, it's not eyeballing.

Q. -- it's consistent because it might have fit right here. Is it eyeballing?

A. Well, I can tell you, explosives have their own signature. And you can basically -- I can lay a stick of dynamite right

here or TNT or whatever, and it's going to leave a basic length of where it tears through this desk. If it's a foot long, it's not going to leave a 6-inch long hole. Or if it's a foot long, it's not going to leave a two-foot long hole. That's just the way it is. Explosives goes off what we call 360 -- 360 degrees. If it's round, stuff is flying in every direction imaginable. Some of it might be against something else and stop, maybe blow a little hole in the ground, but the rest of it is going to go flying off until it runs out of energy. That's just the way it works.

Q. So I gather there are no scientific protocols for conducting this sort of --

A. If you're just analyzing -- say, I was a quality control chemist analyzing TNT or dynamite or whatever, then you have a set of protocols that you follow the same thing over and over and over, the same test. But when you're dealing with post-blast, there's no -- you know, there's an approach how you go about looking to see where to start, but it's up to the individual examiner to determine what is the best place to start and where's the best place to get to the answer.

Q. Understood.

A. And as far as looking at trying to find the components, there's people that could look at the components and not recognize what they are.

Q. Uh-huh.

A. I'm not claiming to know everything, no way, because I learn something every day.
Q. Yeah. Well, and that's sort of what I'm getting at. When we're dealing with expert testimony that comes from scientists, first we assume scientists to be fair and neutral because they are scientists, right --
A. Yes.
Q. -- as opposed to somebody on one of the teams, right? And so when we're dealing with -- I'm just trying to get, are you trying to tell this jury that you are a scientist and have come up with a scientific opinion that what was used in this was, in fact, an MK3A2?
A. Yes, sir.
Q. And that did --
A. And if anybody could tell me -- bring in proof to show me that there's another one just like that, me and a lot of these other people would greatly appreciate that we would learn something that's out there that we don't know about.
Q. So it leads me to ask this question. Your opinion in your report is these fragments are, quote, consistent with an MK3A2. Generally scientists express the opinions in one of three ways: nonmatch, inconclusive, or match. And in order to determine a match, a scientist must, under the ethical standards of their profession and discipline, be able to state under oath, "I have a scientific degree of certainty that my opinion is correct."

And are you in a position to do that?
A. I don't have no degree of it, but to say that somebody could not come along and come up with a cylinder which they could have maybe got where they manufactured cylinders, and go somewhere and get TNT and put in it and find a grenade fuse somewhere and put in it and it's not a military manufactured grenade and put that -- is that possible? I guess it's possible.
Q. And that's what your opinion is is --
A. My opinion is based on what I found, that the only thing I can see that it could have come from -- and if I was writing that report for myself and nobody else in this world, that would still be my answer.
Q. Sure. And your answer is clear. It is consistent with, but what it leaves off is, "but not to the exclusion of any other possible" --
A. The only other thing that -- somebody could set out to manufacture on their own and get the same kind of materials.
Q. Okay. Again, it's not inconsistent with every other device?
A. Every other commercially made device or made for the military, it is consistent with it.
Q. And you deal obviously with --
A. I've seen a lot of them and I've seen all of the manuals, and I've done research trying to find if there's any other

thing, and I haven't found one.
Q. Right. But you're saying that is commercially manufactured?
A. For the military.
Q. With ATF?
A. And nobody -- we don't have commercially made for me and you to buy and use grenades. Only the military has got those.
Q. Okay.
A. Unless you stole them from the military.
Q. Right. And so, again, at ATF, I know that you deal with improvised devices almost every day --
A. More than this kind of stuff, yes.
Q. All right. Can you go back to your report, please, page -- page 2, the third paragraph, exhibit -- begins Exhibit 14, you're talking about the spare tire, right?
A. Yes.
Q. And, Mr. Erwin, I guess it's the one, two -- the third full sentence, I just want to go over and make sure this is accurate to simplify this information. It begins, "The rim." Are you with me?
A. I see where you're at.
Q. "The rim is stamped Nissan" and "16X4T"; is that correct?
A. That's correct.
Q. And do you know what 16X4T means?
A. I didn't bother to find out.

Q. And I don't either.
A. I sent that to an agent named Shannon McKittrick-Cruse. It was for investigative purposes. And since I did it, I went ahead and put it in the report. And it's supposedly to be so they could go probably to the manufacturer -- I don't know -- and see if they could find out anything about this rim, but that's not my job to go be an investigator, too.
Q. You're not a tire expert?
A. No. I know what tires are and I know certain brands of them and I know certain things about rims, but I'm not -- I won't say anything about the tire other than just saying what I saw on it.
Q. That's correct.
A. Anybody could have done that.
Q. The next sentence is, "The tire is labeled Firestone Radial Temp A Spare," and then has a series of numbers. And I would like to read these into the record, although it's boring, "T135/70R16 100M." And that accurately reflects what you saw on this?
A. That's in some photographs.
Q. Fourth, which would be the last paragraph, begins "Exhibit 10." You found pieces of gray duct tape, correct?
A. Yes.
Q. And white synthetic fiber cord that you had marked as yarn; is that correct?

A. I was telling the prosecutor earlier, the industry refers to this type of stuff as yarn. Some of the scientists have gone to calling it cord. So I had to put cord in there to be in compliance with the scientific end of it.
Q. Understood. And I assumed that you microscopically looked at this and were able to determine the origin -- you don't have to necessarily determine the origin of the fibers, but that it's a fiber-based product?
A. Yes. I just identified what it was. I didn't find anything to compare it to.
Q. But you concluded this cord did not originate from the spare tire or the victim's clothes; is that correct?
A. I didn't find anything in any of the clothes that was submitted to me that would match that material. The tire did not have any material in it like that. And, of course, the grenade doesn't have anything like that in it either.
Q. But you did find that the cord appeared to have been used to arm or assist the functioning of the grenade; is that right?
A. Well, it's embedded in the duct tape. And for this to be lead -- you can object if I'm getting out of line. Supposedly what was written in the report that I got, the victim finds a spare tire, he picks it up, and it blows up. Now, for a grenade to activate, something had to pull -- the pin was probably pulled. It had the safety clip. But something has to pull one of -- one or both of them out for it to activate.

Q. Uh-huh.
A. So we have a string. The string could have been -- it's embedded in the duct tape. Whether the duct tape was attached to the driveway, or whether it was -- I wasn't at the scene, so I don't know. I couldn't see. There could have been a nail in the driveway that it was attached to. But that's all the clues I have. It has no other purpose to be there. But something had to be there to pull that pin or that safety clip to cause that grenade to activate. Because if you just picked it up and you didn't have that, it's not going to do anything, it's just going to sit there.
Q. This is another "consistent with." You kind of looked at this thing and went, "Well, this yarn is consistent with something that could have been used"?
A. Yes. I don't know -- no, I don't know for a fact that's what it was used for. Okay?
Q. I understand. And the last thing you found, there were small wood bits; is that right?
A. Yes, I did. There were charred little tidbits of wood.
Q. And you were not able to find any origin of that wood, were you?
A. No, I wasn't. And the reason it was even reported, if you want to go back to the tire or the pictures, you see where the -- we set the grenade in there earlier and showed where it fit. But you've got duct tape way over past it and way over here.

What else was the duct tape? My own theory was that it was probably a stick or something that the grenade was to, and it was -- the stick, too, was taped to the tire. I don't know. But something else was taped to that tire besides that grenade.

Q. Okay.

A. And it's obvious because you can look at the tire right now and tell that.

Q. Right. Are there generally two different types of grenades? There's hand grenades and there are propelled grenades?

A. And there's rifle grenades.

Q. And rifle grenades. What we do know for certain is this was a hand grenade, right?

A. Well, the little fuse tells you it's a hand grenade.

Q. And it's got the spoon as opposed to a propel or a rifle that doesn't have the spoon and that sort of thing, right?

A. There's differences in them, yes.

Q. That's all I needed. Thank you.

Actually, I have one more thing.

MR. HENDRIX: That's all, Judge. Thank you.

THE COURT: Any redirect?

MR. GORDON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. GORDON:

Q. Mr. Erwin, in your 42 years of working with explosives,

have you ever been able to fully reconstruct a grenade or an explosive device that was detonated?

A. Not a grenade, no, because it's -- a high explosive gets rid of -- that's what they are designed for, to come apart and scatter stuff in all directions, where sometimes homemade stuff, depending on what's in it, you can find big pieces and little pieces and you can get enough to measure the exact length and exact diameter if it was a pipe, various things that you find.

Q. Some of the grenade is blowed to smithereens, correct?

A. Most of it, yes.

Q. And some is also consumed by the explosion?

A. Yes.

Q. And then it can be scattered like you testified about?

A. I guess there was -- something didn't work right because there was a lot of -- more TNT. It's usually hard to find because it's a very efficient explosive.

Q. But my point is this, though, is that why -- because you can't fully reconstruct the grenade, your findings are that what you found is consistent with it because --

A. That's correct.

Q. -- you can't fully rebuild --

A. No.

Q. -- the grenade?

A. No. I didn't have -- I didn't have more than a fourth of

the components, if I had that much.
Q. And based upon your 42 years of experience, what you saw in this evidence was evidence that an MK3A2 offensive hand grenade was used?
A. Yes.
Q. And how many -- how many grenades containing TNT have a fibrous body like what you found?
A. That's the only one that I know of.
Q. And you've been doing --
A. Now, to say there's not some foreign country that's got one, I don't know for sure on that.
Q. But here in the United States --
A. Here in the United States, all of the manuals they've ever put out has nothing but that one in it.

MR. GORDON: Thank you. No further questions.

THE COURT: Any followup?

MR. HENDRIX: Briefly.

RECROSS-EXAMINATION

BY MR. HENDRIX:
Q. So foreign countries and anything that somebody can make up, right?
A. They'd have to have the right materials and right paint. And, by the way, the yellow paint had lead chromate in it which was a pigment, and I don't know how long lead paints have been banned in this country, but it's been a long, long time.

Q. Since World War II?
A. I don't know the exact date.
Q. Thank you.
THE COURT: Anything else?
MR. GORDON: No, Your Honor.
THE COURT: Mr. Erwin, you can stand down.
THE WITNESS: Thank you.
THE COURT: This will be a good time for us to take our break. I know we just got another witness in from the airport, but I don't think we need to start up today. Let's recess and we'll start back up at 9 o'clock in the morning.
The same admonition that I've given you. I think you remember those. They're probably fully ingrained by now.
So we'll be in recess until 9 o'clock in the morning.
You needed to move the grenade into evidence?
Mr. Hendrix, you objected to -- you asked me to hold up on receiving it into evidence. Do you want to make a record on it?
MR. HENDRIX: No, Your Honor. We're fine with it.
THE COURT: Okay. Are you moving it again?
MR. GORDON: Your Honor, I would ask the Court to accept Government's Exhibit 69 into evidence.
THE COURT: Okay. It's received.
Anything else we need to make a record on?
(Government's Exhibit 69 received in evidence.)

(Overnight recess at 5:15 p.m.)

C E R T I F I C A T E

I, Judith A. Ammons, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 8, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and
SANGEETA MANN, a/k/a SUE MANN (2),

July 15, 2010
Little Rock, Arkansas
8:59 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 4
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

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[Continued]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
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Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - VOLUME 4 (July 15, 2010)

WITNESSES FOR THE GOVERNMENT:	Direct	Cross	Redirect	Recross
STEPHEN SHELLEY	544	567		
KATHERINE BARTON-SCANLON	573	580	588	598
LARRY HANKERSON	606	626	642	646
PEGGY PRYOR CRYER	688			

EXHIBITS: **RECEIVED**

Government's Exhibit 70..... 554

Government's Exhibit 47..... 580

Government's Exhibits 50A through 50-J..... 605

Government Exhibits 71-A, 71-B, 72 through 77, 78-A through 78-V, 79-A through 79-E, 80, 81-A, 81-B, 82, 82-C, 82-D, 82-E1, 82-E2, 82-E3, 82-F, 82-J1, 82-J2, 82-K, 83-A1 through 83-A4, 83-B1, 83-B2, 84-A, 84-B, 84-C,85-A, 85-B, 85-C, 86-A, 86-B, 86-C, 87-A1, 87-A2, 87-B 660

Government Exhibit 82-A..... 669

Government Exhibits 82-H, 82-I1, 82-I2..... 677

Government Exhibit 82-L..... 677

Government Exhibit 83-C..... 680

(Continuing at 8:59 a.m., jury not present.)

THE COURT: Good morning. We're about to bring the jury back in. I wanted to come in and say something because I was going to say it yesterday, but I thought it would probably be inappropriate to say. When I had my first jury trial, it was in Memphis, it was in front of Judge Swearingen, and I remember getting up trying to do the best I can do. And I know we had Mr. Robles, I believe, take his first witness yesterday. Now, am I right or am I wrong?

MR. ROBLES: Yes, sir.

THE COURT: And I remember my law partner getting up and making a big production out of it in front of the jury to try to get them to have mercy on me, and I didn't think that would be appropriate yesterday in such an important case. My case was a personal injury case and it was a car wreck, so it wasn't quite as important of a case. But I wanted to put it on the record that that was Mr. Robles's first witness, and it's always a big deal when a lawyer takes his first witness in a jury case. So I just wanted to make sure we made a record of that.

MR. HENDRIX: And did a great job with it.

THE COURT: He did a very good job.

MR. ROBLES: Thank you.

THE COURT: I didn't get a chance to actually try to lay a foundation for exhibits. I don't believe my law partner

trusted me to do all of that. It's get up and ask five questions and sit down.

Is there anything else we need to take up? Not that we necessarily needed to take that up, but I thought we should. Anything else we need to do before we bring the jury in?

MR. GORDON: No, your Honor.

MR. HENDRIX: No, sir.

THE COURT: All right. Let's bring them in.

Ms. Whatley, do you have your jury witnesses here, Shelley, Barton, and Hankerson? Do we have them here?

MR. GORDON: We do, your Honor.

THE COURT: Bring them on in.

MR. GORDON: Yes, sir.

(Jury entered the courtroom.)

THE COURT: We want to get you sworn in so we can just call you in. Raise your right hand.

(Witnesses present were sworn in.)

THE COURT: Which one are we going to call first?

MR. GORDON: Stephen Shelley, your Honor.

THE COURT: You two can go back to the back and we'll call you when we need you.

Now, before we seat Mr. Shelley, to the jurors, same thing I told you yesterday, during our breaks between witnesses, although that will move pretty quickly, you can get up and stretch out just to make sure we all stay lively during the

whole trial. Anything else you all want to bring to my attention?

Y'all are happy? Y'all energized? Ready to go?

All right. Mr. Shelley, you can have a seat.

STEPHEN SHELLEY, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good morning, sir. Please state your name for the record.

A. My name is Stephen Shelley.

Q. Is that with a p-h or a v?

A. It's p-h.

Q. Spell your last name for us, please.

A. S-h-e-l-l-e-y.

Q. How are you employed, Mr. Shelley?

A. I work for the Bureau of Alcohol, Tobacco, and Firearms.

Q. How long have you worked there?

A. Since September of 2005.

Q. And what office are you assigned to?

A. I'm assigned to the Explosives Technology Branch.

Q. Is that in Atlanta, Georgia?

A. Yes, sir.

Q. And what is the Explosives Technology Branch?

A. It's the branch of the ATF where we offer support involving anything to do with explosives with the ATF agents.

Q. And, Mr. Shelley, will you do me a favor and pull that

microphone up closer to you so we can all hear you.
A. Oh, yes.
Q. Thank you. And what is your duty title?
A. I'm an explosives enforcement officer.
Q. What did you do before you worked for ATF?
A. I was an explosives ordnance disposal technician in the United States Army. And then I was a police officer in Utah, in Salt Lake City.
Q. How long were you in the Army?
A. I was in the Army for about ten years.
Q. What did you do as an EOD technician?
A. As an EOD technician, my job was to identify, render safe, dispose of -- as an EOD technician in the Army, my job was to identify, render safe, basically disarm, dispose of, mitigate. We'd look at everything from hand grenades to missile systems, mines, rockets, general explosives, all to do with weapons systems, and that included homemade explosive devices as well.
Q. And you did that for six years, roughly?
A. Approximately six, eight years, yes.
Q. And after the Army, you worked for a police department?
A. I did.
Q. Where was that?
A. West Jordan, Utah.
Q. What did you do for the police department?
A. I did investigation, I did patrol, and I also served on a

SWAT team.
Q. And then were you also a bomb technician?
A. I was. That was for Salt Lake Fire Department, Salt Lake County Fire Department after the West Jordan Police Department, and I was hired solely as a bomb technician.
Q. And then after that, you joined ATF?
A. Yes, sir.
Q. And you are currently an EEO, explosives enforcement officer; correct?
A. Yes, sir.
Q. Tell us what that means, please.
A. Explosives enforcement officer is a sworn law enforcement officer. We provide technical support to special agents in the field. We also look at storage violations or questions from industry or from public entities and make recommendations on storage, disposal, render safe. We do training classes for federal agencies and state agencies. We do post-blast investigations. We also -- we classify destructive devices and other explosive devices as well.
Q. And what training and experience do you have that qualifies you to be an EEO?
A. To be an EEO, we have to either be a graduate of the Naval Explosive Ordnance Disposal School, which is the military EEO school which all four services go to. It's a ten-month school. It starts down in Florida, down near Fort Walton Beach, Eglin

Air Force Base. It moves up to Indian Head, Maryland, when I went through the school. And it encompasses everything, like I said before, of -- we learn about basic explosives, how they work, identifying them. We learn how to use explosives, all the way from setting off a basic cartridges of dynamite, all the way up to maybe a hundred-thousand-pound shot, to disposing of huge piles of munitions.

Once we learn the basics of how explosives work, the functioning, how to identify explosives and the safety precautions, then we move into our core part of the course, and that's where they'll break all the ordnance -- we'll do a few, such as hand grenades, and we'll just do nothing but learn about hand grenades, a few at a time. That's not just U. S. hand grenades, that's foreign hand grenades as well. U. S. and foreign missile systems are next, basically training. It will be rockets. We'll do a whole section on nothing but homemade explosives and explosive devices. And then we finish the school off with nuclear weapons systems. And once we finish the school, we graduate. That's a basic military school.

Once when that school is finished, you receive a basic explosives course disposal badge, and, like I said, it's just the basic. You're one of the guys, you've got your school behind you. And once you're out of school, you go to your unit, and then we start going to additional schools. We go to any kind of foreign, military explosive ordnance explosives school,

civilian disposal school, anything involving explosives that makes our job better in the field.

Q. So your training is not limited to purely explosives in the United States. It includes foreign explosives as well.

A. Yes, sir.

Q. All right. Does that wrap up all the training you've had in identifying explosives, or is there more?

A. There's also additional schooling. Since I've graduated from that school, I've been to the hazardous devices school and also a civilian bomb technician school. That's where all the police officers go to learn how to be bomb technicians in the United States. I graduated from that school as well. I've been to numerous ATF courses involving homemade explosives, chemical weapons systems, radiological weapons systems.

Q. Mr. Shelley, do me a favor. This microphone base, it will slide forward, so pull it closer to you.

A. How's that?

Q. Better. Speak up for us, too.

A. Okay.

Q. All right. Have you ever been an instructor in the field of explosives?

A. Yes, sir, I have.

Q. Tell us about that.

A. I've instructed probably well over 300 courses in my career since 1994. And I taught everyone from police officers,

firemen, federal agencies, foreign military, foreign police officers. It's one of the main things that we do for ATF is go around and teaching different explosive techniques, render safe techniques, like I said, disposal techniques and general explosive hazards and identification courses.

Q. How many classes would you say you've taught?

A. Roughly about 300.

Q. How many investigations involving explosives have you participated in?

A. Since I've been with ATF, I've probably been involved in about 150 explosive investigations.

Q. How many different hand grenades have you seen during your time with ATF and the Army?

A. Thousands, literally.

Q. Did you participate in the investigation of a bombing that occurred in West Memphis, Arkansas, on February 4 of 2009?

A. Yes, sir.

Q. When and how did you get involved, first get involved with that case?

A. After the initial incident, the evidence was sent to Atlanta, where I'm based out of, and that's where I performed my examination of the evidence.

Q. What were you asked to do?

A. I was asked to look at the evidence and make a -- form an opinion as to what it was and classify it as to whether or not

it was a destructive device.
Q. Where did you conduct that review?
A. At the ATF forensic laboratory in Atlanta, Georgia.
Q. Was anyone else present?
A. The ATF chemist, Lloyd Erwin.
Q. And how did you conduct your review?
A. After Mr. Erwin does his chemical analysis and looks at the components and puts it through his chemical machine that detects and finds out what kind of explosives were on it, instead of bringing it -- there's so much evidence, what usually occurs, he will ship the evidence to my office, which is about 30 miles north of his laboratory, and I usually conduct my examination there. Since there was so much, the evidence was so large, we decided it was best to leave it where his examination was. I just traveled to his office and performed my examination there.

He gave me access to his exam room, and what I would do is, I photograph the evidence how I see it initially, make notes, form an opinion as to what it looked like based on my experience and what I know about explosives and ordnance. I reviewed the report of investigations, photographs of the scene. And that's pretty much it.
Q. Okay. Now, did Mr. Erwin participate in your review of the evidence?
A. No, he was finished with his, and he just gave me access to his.

Q. So your review was separate and independent from Mr. Erwin's?
A. Yes, sir.
Q. After reviewing the evidence and the information provided to you, did you form an opinion about the device that was used in the bombing in West Memphis on February 4 of 2009?
A. Yes, sir.
Q. What was that opinion?
A. That it was an MK3A2 hand grenade that was used in a booby trap fashion, and the fact that it is an MK3A2 military hand grenade, it would be classified as a destructive device.
Q. Let's break that down a little bit.
A. Okay.
Q. Are you familiar with MK3A2 grenades?
A. Yes, sir.
Q. How so?
A. Different training.
Q. What was it from the evidence that you reviewed that made you believe that an MK3A2 was used?
A. There's a few identifying factors of these. The evidence that came, first of all, was the -- it's an asphalt-impregnated kind of a fiber body. That's very rare, especially for a hand grenade. Almost kind of like a shingle type of material. The binder, of course, showed that there was flake TNT involved. The safety lever or the spoon that's used on the hand grenade,

when you pull it up, there's a spoon you hold onto. The shape of it was consistent with a hand grenade in the shape of a cylinder. And the safety clip that's essentially the thumb clip, aside from the pin that you hold, that clip is very almost, I'd say, indigenous to that grenade by the shape. And it has a little tab that embeds itself in the asphalt body.

MR. GORDON: May I approach, your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Let me show you what's been admitted as Government Exhibit 69. Do you recognize that?

A. Yes, sir.

Q. What is it?

A. That's an MK3A2 hand grenade body and fuse assembly.

Q. It's inert?

A. It is.

Q. It will not explode?

A. No.

Q. And who made it safe?

A. I did.

Q. How did you do that?

A. Once I obtained the hand grenade -- this used to be a live hand grenade. Once I obtained it, I was able to extract the explosives out of it and then also function the fuse in a safe manner so there's no -- the blasting cap on the fuses has been

destroyed and then all the explosives have been removed from inside the container itself.

Q. You did all that?

A. Yes, sir.

Q. Where did you get that MK3A2 from?

A. From Shelby County Bomb Squad.

Q. Did you have a hard time finding an MK3A2 hand grenade for you to make safe?

A. I did. When I was initially asked to find one of these hand grenades, I called a bunch of buddies I still have that are still in EOD in the Army now. EOD is a very small community. There's very few soldiers compared to the Army. So I called these friends of mine around the country to see if they had one that we could obtain to do this very thing to inert it. Most of them had never even seen one before, let alone have one in their possession, for trainability or even in their magazine, their storage magazine, to make one available. It was very difficult to find.

MR. GORDON: May I approach the witness, your Honor?

BY MR. GORDON:

Q. Let me show you what's been marked as Government Exhibit 70. Do you recognize that?

A. Yes, sir.

Q. What is it?

A. It's a technical drawing of the MK3A2.

Q. Do you think it would help the jury in understanding your testimony for us to use this diagram?
A. Sure.
MR. GORDON: Your Honor, we would ask the Court to admit Government Exhibit 70.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 70 received in evidence.)
BY MR. GORDON:
Q. Agent Shelley, if you would, please tell the jury how an MK3A2 hand grenade is constructed.
A. Okay. If you see the body -- does this pen work if I touch it?
Q. Yes.
A. Okay. This is the body right here.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Let's do this like you're on American Idol. Put that right in your face.
A. All right. This is the fiber body I was telling you about that is asphalt impregnated. It's basically kind of like a shingle. Same kind of material. It's a little more brittle than a shingle, it's a little more hard, harder, not quite as flexible like a roofing shingle would be. Usually it's black,

it's brittle, it will flake apart. So if you smash it, it will break if you smash it. They'll press it into a machine press into that shape. What they do is, they fill it with flake TNT -- this is the TNT filler right here. And they use flake TNT in these hand grenades, whereas opposed to a regular hand grenade that you see on TV that's shaped like a baseball or a pineapple, they'll use cast explosives in those where they take the TNT or the composition B explosive and they'll melt it and they'll pour it into the grenade before they screw the fuse assembly right here. They'll thread, they'll screw that on.

Because it's got asphalt in it, if they were to pour hot molten explosives into it, it would degrade, I guess, degrade the body. So they use a flake TNT, which basically TNT is like a powder. They'll mix it with a solvent made with a little bit of adhesive for a binder, they'll pour it in the grenade and put a -- it's like a dowel or something, form this fuse well right here for this blasting cap to go into.

Once it's cured, they'll take this fuse assembly right here and then they'll thread it into the top of the grenade. We'll just see here, and this will be the final product right here.

Q. You mentioned TNT. What can you tell us about TNT?

A. TNT is the high explosive. It's an acronym for trinitrotoluene. It's a very common explosive. It's used for civilian use as well as military. A lot of military use as well.

Q. And if you would, tell us how this grenade functions. How does it operate?

A. Once the pin is pulled, this is a safety, this pull ring right here. On TV where you see guys pull the ring, throws the grenade, you actually hold this hand grenade, this is the safety lever that goes in the palm of the soldier's hand, he pulls the pin and then throws it. Once he releases the hand grenade, his hand releases the safety lever. It's spring released, with a striker, kind of like a top camera in a firearm. It will swing forward, if you look on the diagram here, you can see the top striker is right here.

And then it will swing forward and impact this primer inside the fuse assembly, this fuse assembly body. It will have, like, kind of like a delay element or a fuse, kind of like a firework. It burns slowly down through the grenade, about three to five seconds, and then it ignites this blasting cap right here. The blasting cap is what functions the TNT inside and causes the hand grenade to explode.

MR. GORDON: Your Honor, I'd ask the Court's permission for Agent Shelley to use Government Exhibit 69 and demonstrate actually how it works.

MR. HENDRIX: I don't have any objection to that.

THE COURT: He may.

BY MR. GORDON:

Q. Would you do that for us, Agent Shelley?

A. Yes, sir. May I stand?
Q. Please.
A. The soldier has got -- when he's got the hand grenade, he's going to hold it in his right -- it's basically for right-handed use. It can be used for left-handed soldiers. If he holds it and he's a left-handed soldier, he'll hold it upside down and pull the pin. That way the pin is oriented in the direction of his other finger, the support hand. Since I'm right-handed, I'll do it the way it's designed.

What he'll do is, there's a safety clip right here. This is the one I explained before that was indigenous to this grenade. It's a thumb clip, and you'll see on the diagram it's this little square thing right here that holds this safety spoon down or the safety lever, and that's to prevent, in case he's carrying it on his gear, if this pin were to be inadvertently pulled by accident, this is the secondary safety to keep the spoon from flying off. The spoon and safety lever is what keeps this grenade from going off.

So the first thing the soldier would do, he would thumb this pin to the side. That releases that safety. Now it's ready to go. So whenever he goes, he'll pull the pin. Moves the pin. As long as I'm holding it, I can hold it all day long and nothing will happen, but this grenade is now armed. But as soon as he throws it, he throws the grenade, the spoon is going to fly off, as it flies through the air. This is the cock

striker I showed you on the inside. It will impact that primer kind of like a cartridge with ammunition, like the 9 millimeter kind of bullet, you can see it in a regular firearm, and that's what ignites that delay column. Goes down inside and to that blasting cap, which would initiate the hand grenade.

Q. Thank you. Is the MK3A2 a military grenade?

A. Yes, sir, it is.

Q. What's its purpose?

A. This is an offensive hand grenade. It says right on it. It's written on this hand grenade as well. You can see on the diagram as well.

The difference between this grenade and a regular hand grenade, the baseball-type grenade, those are called M67s, but that's the standard grenade that the U. S. inventory uses. Most militaries use a fragmentation hand grenade. This hand grenade, on the other hand, is not a fragmentation grenade. It does not have a metal or steel body that's made to produce fragmentation. Most hand grenades are made to produce casualties through projection of those fragments, and that's what causes injuries.

Q. Will you slow down a little bit for us, please.

A. I'm sorry. I'm getting in my groove.

Where, opposed to the offensive hand grenades, because of the fiber bodies, it is not designed to cause fragmentation. It's designed to cause casualties through blast overpressure. Kind of like when you go to a fireworks show and you see the

fireworks go off and you feel like, gosh, if it hits you, know that that's thousands of feet away. This has half a pound of explosives in it, the TNT, and it's designed to be thrown into an enclosed room, and that blast core pressure is what's designed to cause the casualties, not the fragmentation.

Q. Does that mean that that grenade right there, the MK3A2, will it produce any fragmentation?

A. It is not designed to produce fragmentation, but it will produce fragmentation. This fuse will come off. This obviously will be a fragmentation if the spoon is nearby. Even pieces of the fiber, the fiber body could become fragmentation. And then you have the -- that's the primary fragmentation. It comes directly from the item itself.

Your secondary fragmentation would be if it were to land in, let's say, gravel or dirt or if it landed around some other kind of debris and then were to project that fragmentation as well. That would be secondary fragmentation.

Q. The fibrous body, when that fragments, is it going to rip huge holes in things, or how would that look?

A. For the most part, this is designed to basically to -- when the hand grenade functions, most of that body will be pulverized, mostly will be powder, but there will still be some chunks of the body.

Q. Okay. And you said that's a military grenade. Is that something that your general foot soldier would have?

A. No. They're actually -- they're pretty rare to find. For the most part, it's usually, in my experience, your special forces soldiers, rangers, SEAL teams, most of your special operation or special purpose soldiers will carry something like that. Your regular ground troop will carry the baseball-type fragmentation hand grenade.

Q. And do those grenades sometimes end up in the hands of civilians?

A. They do.

Q. How do you know that?

A. I've done numerous investigations with ATF where military ordnance such as hand grenades have been stolen from military installations or brought back from overseas from this war and put in civilian hands.

Q. Are you familiar with the United States weapons inventory?

A. I am.

Q. What is it?

A. Inventory basically is what we store in, say, a depot level. You have your unit level or your ammunition supply point level. That's where a military unit will draw ordnance from for training or for mission use. The inventory itself would span all the way up to the depot level, which is somewhere like, say, eight Army depots to 12 Army depots, some of these Army depots with huge ordnance igloos. Of course, there will be bombs -- these igloos are earthen covered, and they'll contain anything

from Air Force bombs that are dropped from aircraft, hand grenades, obviously, chemical weapons systems, everything that the U. S. inventory would have to the war -- to keep for our regular wars.

Q. How are you familiar with the inventory?

A. When I was an EOD, we were called -- what happens, ordnance has a shelf life. It doesn't last forever. And it's coated and then it's closed by letters, actually. If something were to be looked at by -- they have other weapons inspectors, ordnance inspectors. If an inspector were to look at this grenade, for instance, and to say this grenade is no longer serviceable, it's code H, no longer serviceable. They may send in EOD guys like myself, and we go in and inspect it and make sure it's safe to move and dispose of and actually do the disposal itself. So, like I said before, it would -- whatever the inspectors found, they would call us to look at. And we have to be familiar with that ordnance prior to even going in there.

Q. Is there any other grenade other than the MK3A2 in the United States inventory that is made of a fiber body filled with TNT?

A. Not that I've ever seen.

Q. Do you also have manuals on the United States weapons inventory?

A. We do.

Q. Is there anything else listed in that inventory?

A. No. In fact, all our manuals for ordnance -- in EOD, we have a publication system that's called the 60 series, and it's all on -- it used to be on microfiche, but now it's on DVD. And kind of like this diagram right here, and it has every piece of ordnance that's in the United States inventory that we own or have ever used, like going back to the Civil War ordnance. And when I researched this grenade particularly, this was the only one in the United States inventory.

Q. And are you familiar with foreign inventories?

A. I am. That 60 series also includes foreign ordnance. So if I put the parameters of this grenade in there, the type grenade it is, that it's offensive, what it's made out of, its dimensions, the construction of it, this is the only one that pops up that is consistent with this hand grenade.

Q. In the world?

A. In the world.

Q. Okay. Other than -- other than the fiber body and the TNT, what's the other component that is unique to the MK3A2?

A. This thumb clip right here.

Q. You can go ahead and pull that off.

A. It's right here.

MR. GORDON: May I approach, your Honor?

THE COURT: You may.

MR. GORDON: Thank you. Ms. Tyree, could you turn on the ELMO, please.

BY MR. GORDON:

Q. What's unique about this thumb clip?

A. There's a tab right here that digs into the fiber body, basically locks the safety clip in place. This part, this round part right here, is made to go on the grenade as the fuse is threaded onto it. So it doesn't actually separate from the grenade when you what we call thumb the clip. You know, it doesn't actually separate from the grenade when it's removed. It stays with the grenade as it's deployed.

We have other hand grenades in inventory that are shaped like this. Mostly they're smoke grenades or they're a flash bang or something like that. They don't have the same safety clip that this fuse system and grenade body have in common.

Q. Is the MK3A2 capable of causing property damage?

A. Yes, sir.

Q. Within what radius?

A. If it was in an outdoor arena, anywhere from three to five meters. Indoors, depending on the size of the room.

Q. Is it capable of causing serious bodily injury or death?

A. That's what it was designed to do, yes.

Q. Within what radius?

A. Again, it depends on what size of the room it's deployed it, but within three to five meters, it can cause casualties. In a closed room, a room like this, it would cause a few, but you throw it into a small room, say, like, a bedroom-sized room

or if it was a harder, like a concrete-type room or a vehicle, it would probably kill people, everyone in the vehicle.
Q. What if it's used outside?
A. It will -- it could kill somebody.
Q. You testified earlier that you believed that the MK3A2 was booby trapped?
A. Yes, sir.
Q. Explain to us what that means.
A. When you booby trap something, the whole purpose of booby trap is, you trap an unsuspecting person. What you want to do, whatever your booby trap, it doesn't have to be an explosive trap, it can be mechanical, say, like with a spike, you're going to poke somebody, bury nails in the ground sticking up so someone steps on it. The whole point of booby trap is, an unsuspecting person will inadvertently cause something to happen, either explosively or mechanically.
Q. Okay. How would it be possible to use an MK3A2 as a booby trap with a spare tire?
A. A spare tire would have two purposes with an MK3A2 hand grenade. If you were going to tape the hand grenade to the inside of the spare tire, on the other side of the rim, on one side of the rim, what's the -- let's use the Kleenex box as a tire, and we'll attach the hand grenade to the tire. The tire, first of all, is going to provide concealment because if you can see the booby trap, the person that you're targeting is

obviously not going to trigger, trigger it. First of all, it's going to conceal the device. So we have the tire. If we lay the tire down on the ground with the spoon, the safety lever, right here on the ground, the tire provides weight and holds that spoon in place. So if that tire would be lifted up with that hand grenade attached, that spoon is going to fly off again and function the hand grenade. What would have to happen first, when that tire is laid down, you put the spoon down, and then the pin would be removed, because obviously the pin is -- if this safety pin is still in the grenade, it's not going to function. So once it's laid down on the ground, that pin can be removed; therefore, that hand grenade would be armed. It's hidden. Whenever someone would pick that grenade with that tire up or move it or somehow cause that spoon to be released, it will function.

Q. What would be the effect of using the MK3A2 in conjunction with the tire?

A. The MK3A2 contains eight ounces of TNT, a half pound of explosives. A spare tire, usually they're smaller, they're just a little tire. They don't weigh that much. But still they're heavy enough that if that eight ounces of explosives was under a tire, number one, a tire is going to fly up, it's going to fling that tire a good distance. If it were to strike somebody, it has a good possibility to kill someone or cause serious bodily injury. Also, as we talked about earlier, the fragmentation

could come off and hurt you. And the primary use is the blast core pressure. So if you were standing right over this when it went off, you're going to be hurt very bad, if not killed.

Q. And you testified earlier that the MK3A2 is a destructive device?

A. Yes, sir.

Q. Explain that for us.

A. Destructive device is what we classify in the --

Q. Explain that for us slowly.

A. It's got to fit three parameters to be a destructive device. First of all, was it designed or is it to be used as a weapon? Well inherently as an offensive hand grenade, as a military hand grenade, it is designed as a weapon. Then is it filled with an explosive, an incendiary, or poison gas? This is filled with an explosive, TNT. We talked about that. And then does it fit the parameters, is it a mine, is it a missile, a grenade, a rocket? Well, this is designed as a grenade. So, first of all, it's designed as a weapon, it's filled with explosives, and it fits the definition of a hand grenade. So it fits all three of the criteria; therefore, it's a destructive device.

Q. As a destructive device, is it also by definition under the law a weapon of mass destruction?

A. Yes, sir.

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Mr. Shelley, before you leave, will you put that back together for us?

A. Yes.

MR. GORDON: I have no further questions for Agent Shelley. Pass the witness.

THE COURT: Cross?

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. And, Mr. Shelley, just a few areas. Can you give us a little bit more information about the MK203, its history, when it began to be manufactured, who manufactured it, when it went into service, that sort of thing?

A. I don't know exactly when it started to be manufactured or who manufactured it.

Q. Well, you have no idea? You don't know anything about the history of the MK203?

A. I know it was used in Vietnam, that era, that kind of era.

Q. And I didn't know that. I was going to ask. Does it go back to the World War II era, is it from the Vietnam era, Korean War?

A. The later Korean War, Vietnam era.

Q. So it -- if I'm hearing you -- are these guesses or do you

have some source --
A. It's more of just I know the era of what ordnance was made and used, but I don't know exact days.
Q. Okay. Do you know the different companies that manufactured? Is it still being manufactured, do you know?
A. Not that I know of. We have better hand grenades now.
Q. Not that you know of?
A. Not that I know of.
Q. It could still be manufactured?
A. It's possible.
Q. I mean, there are many, many types of -- there are many manufacturers of destructive devices; right?
A. Yes, sir.
Q. And there are private companies?
A. Yes, sir.
Q. And they sell ordnance to the military and so forth; right?
A. Yes, under contract.
Q. And if this one goes back to Korea, which was in the '50s, which we're talking 50 to 60 years ago, do you have any idea of the number of MK203s that have been manufactured by the various manufacturers?
A. I'd have to go back and talk to the AMC, Army Material Command.
Q. Give me -- we're not talking only ten, I assume.
A. No, no. They make them in lots.

Q. And a lot is generally how many?
A. It depends on what the order is for. Sometimes it could be a thousand. Sometimes it could be 10,000.
Q. And so it's very likely that in the past 50 years, particularly if we don't know if it's still in manufacture or not, that we're talking about tens and tens and tens of thousands of these; right?
A. It is possible.
Q. Are they individually marked with serial numbers?
A. No. They're lot numbers.
Q. Lot numbers. Like, for instance, is there a specific identifying number on that one?
A. No, just the lot number. It would just identify that lot.
Q. And the lot could be one of a thousand or one of thousands?
A. It could be, yes, sir.
Q. And I want to make this -- make sure we're all on the same page. You're familiar with the National Firearms Act?
A. Yes.
Q. And Title 26 of the United States Code?
A. The explosives part, yes, sir.
Q. And let's talk about that. The National Firearms Act defines a firearm in many ways. One is a destructive device?
A. Yes, sir.
Q. And then it defines a destructive device in many ways, to include a grenade?

A. Yes, sir.
Q. Okay. And just so that we're all on the same page, it is not per se illegal for civilians to possess destructive devices, i.e., grenades; right?
A. If they're registered with ATF.
Q. Right. Well, and you're familiar with the various types of federal firearms licenses; right?
A. To a point.
Q. And if I'm correct, I think that there are ten types of FFLs. Types 9, 10, and 11 involve civilians who would be dealers in destructive devices, and that could be grenades; right?
A. Sure.
Q. Manufacturers of them; correct?
A. Yes, sir.
Q. And importers of them; right?
A. Yes.
Q. And so those would be civilians?
A. They would be.
Q. Okay. And I just don't want to leave the jury with the impression that only a soldier can have one of these.
A. Right. If they're registered, they can possess one.
Q. And anybody, a non-FFL holder, I, can have a demilled grenade; right?
A. Yes, sir.

Q. And by demilled, I mean demilitarized?
A. It would be inert, nonexplosive.
Q. Have you ever gone to the gun shows?
A. I have.
Q. Okay. You can go, and you see demilled grenades all over the place, and people buy them and use them as paperweights and that sort of thing?
A. Right.
Q. Soldiers bring them home, get them demilled and maybe use them as mementos at their house; right?
A. Not legally.
Q. Oh, because it's the soldier. I can go down to the gun store and get one demilled right now.
A. Obviously, a soldier cannot bring home live ordnance to demill or reuse for any trophy at all.
Q. Got you. But I can go to the gun show, I can get the demilled hand grenade and take it home and use it as a paperweight?
A. Yes, sir.
Q. I just have one question that I just didn't understand you. You were talking about the half-life of grenades? Could you explain?
A. Not necessarily a half-life. They have a shelf life. All ordnance will have a shelf life, and it depends on the inspector and what he's -- what he -- what he specializes in. One guy who

may specialize in, say, dropped bombs dropped from aircraft, from an Air Force jet, may not be the same guy who inspects hand grenades per se, and vice versa. They go through all the training, they know what the specifications for the grenades are supposed to be. And by specifications, it goes -- when they're -- when the contract goes out, they produce what's called a DMWR. DMWR is an acronym for something about the defense, manufacturing -- I'm not really sure, but it's called a DMWR. The DMWR specifies the exact size, the exact weight, the exact performance that these ordnances are supposed to have. Every time they run a lot, produce a lot of the same hand grenades, the inspector will go out and they will actually test a random sample of that lot and make sure it measures the way it's supposed to according to the DMWR and it performs according to the DMWR. If any of those or a certain percentage were to fail, they reject the entire lot.

Once that lot is accepted and put into service and put into depot storage or put into inventory, they're periodically inspected by either the same or different inspectors. And they will go and look at -- they'll talk to the engineers about the design, they will tell them what -- the explosive maybe will have a shelf life, maybe it degrades over time, or maybe the entire body, if it were to sit in, say, a humid environment, might start to fail. So they'll inspect a random sampling of those, and then those, if it were degraded enough, it would

become a Code H, and then it will cause destruction or disposal of those items.

Q. I understand.

MR. HENDRIX: Judge, can I have just half a second?

THE COURT: You may.

MR. HENDRIX: That's all I've got. Thank you.

THE COURT: Any redirect?

MR. GORDON: No, your Honor.

THE COURT: Mr. Shelley, you can stand down.

Let's take two seconds, Mr. Gordon, and see if we can get this earphone situation fixed.

MR. GORDON: Yes, sir.

THE COURT: Ladies and gentlemen, you can stand and stretch out, if you want to.

(Brief recess in place for courtroom technology work.)

THE COURT: Call your next.

MR. ROBLES: United States calls Kathy Barton, your Honor.

KATHERINE BARTON-SCANLON, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. ROBLES:

Q. Hello.

A. Good morning.

Q. Can you please state and spell your name for the record.

A. Katherine Barton-Scanlon. K-a-t-h-e-r-i-n-e, B-a-r-t-o-n,

S-c-a-n-l-o-n.
Q. Tell us where you're currently employed.
A. I'm a special agent K-9 handler with the Bureau of Alcohol, Tobacco, and Firearms.
Q. What field division office are you currently assigned to?
A. I'm assigned to the New Orleans field division.
Q. What states are included within the New Orleans field division?
A. Louisiana, Mississippi, and Arkansas.
Q. What do you do for ATF, Special Agent Barton?
A. I am a K-9 handler. I handle an explosive detection K-9.
Q. How long have you been a K-9 handler?
A. For eight years.
Q. In all, how many years have you been a special agent with the ATF?
A. I've been with ATF for 22 years.
Q. What type of training have you yourself had to undergo to become a K-9 handler?
A. Initially, when you're first assigned your first K-9, you go through ten weeks of training at our K-9 academy in Virginia to learn how to deploy the dog, apply the dog in different scenarios, and then we train the dog.
Q. Can you tell us specifically what a K-9 handler does?
A. My mission is to deploy the dog in different scenarios as needed where we're looking for explosive odors.

Q. Can you give us a rough approximation of the amount of explosive evidentiary scenes that you yourself have assessed?
A. In my entire 22 years?
Q. Just as a K-9 handler.
A. As a K-9 handler? Maybe 15 to 20 different types of scenes.
Q. Other than K-9 training, do you have any other ATF training?
A. Yes, I'm also trained by ATF as a certified explosives specialist.
Q. How is this specific training instructive for your work as a ATF K-9 handler?
A. ATF trains and certifies you so that you have proper handling techniques of explosives to have knowledge of explosives as far as safety concerns, as well as to know how to apply the different explosives in training and maintaining the dog.
Q. Let's talk about your K-9. Is it a he or a she?
A. It's a she.
Q. What's her name?
A. Her name is Madison.
Q. What type of dog is Madison?
A. She's a labrador retriever.
Q. How old is she today?
A. She just turned four in May.

Q. How long has Madison worked as an ATF K-9?
A. Madison has been in service for two years now.
Q. And what is her official job title?
A. Her title is explosive detection K-9.
Q. Can you tell us a little bit about the scenes, the types of scenes that Madison is trained to assess or process.
A. Sure. Madison is trained to work evidentiary type scenes. We're looking for evidence of explosive odors as well as protective sweeps for special events where we're going in to make sure that there's nothing harmful in an environment.
Q. Just so we're clear, could you give us a general overview of the types of substances that Madison is trained to detect?
A. Sure. There are six families of odors that the dog is trained on. Those six families represent more than 19,000 different explosives that the dog can detect, because all of those explosives have at least one of those compounds or one of those families in them.
Q. With Madison's training, can she detect substances that have already been or that -- after an explosion has already occurred?
A. Yes. We incorporate what we call post-blast training of the dogs so that the dog can detect small quantities or trace quantities of explosives.
Q. Within the New Orleans field division alone, how many ATF K-9s are there?

A. I'm the only ATF special agent K-9 handler.
Q. Special Agent Barton, are you familiar with the ATF's investigation of the bombing of Dr. Trent Pierce?
A. Yes, I am.
Q. Have you and Madison assisted in that investigation?
A. Yes, we did.
Q. Specifically, have you and Madison ever assessed the scene of the bombing?
A. Yes, we did.
Q. Where is that scene located?
A. 411 Avalon in West Memphis.
Q. Do you recall what day you two assessed the scene?
A. February 8 of 2009.
Q. For purposes of K-9 explosives analysis, how would you classify that scene?
A. That was a post-blast deployment scene.
Q. Could you explain post blast to us?
A. Post blast is any type of scene where a device or an explosive of some nature has already detonated, causing post-blast effect in the area.
Q. Tell us the purpose of that February 8 assessment.
A. I was called there to help to look for any evidence that might have been maybe not collected visually or seen visually through their scan of the area. In particular, they were looking for a pull ring from a grenade. They were -- at that

point, they had learned that a grenade was involved in the device, and they were missing the pull ring on it. And it may or may not have been at the scene if the suspect had taken it or if it was still part of it. So we were searching for that and any other evidence that might not have been caught visually through a manual search.

Q. Could you walk us through the process that you took in assessing the scene.

A. Sure. At any scene, I always follow the same procedure. When I arrive at a scene, I'll talk with the detectives or whoever is in charge of the scene and try to get a view or an explanation of what happened at the scene or what they believe happened, and what direction the thrust of the blast went so that I can better apply the dog in searching for evidence.

I also do a walk through the scene to make sure there's nothing hazardous or dangerous for the dog or myself, and once I've done that, then I'll deploy the dog from the car and start my search.

Q. Where did you initially deploy Madison on February 8?

A. I started on the outer perimeter of it. Typically, when I do an assessment, I start from the blast seat and work out, and when I apply the dog, I start outwards and work in towards the blast seat.

Q. Did Madison alert to the presence of any explosive post-blast material?

A. Yes, she did.
Q. What did she find? Do you recall?
A. While searching a landscape area next to the driveway where the blast seat was, she alerted two times in that area where we found -- on one occasion, it was a small piece of what appeared to be gray duct tape, and the second item was a small piece of black cloth. Throughout the search, we also had some alerts on rubber from the tire because it had the residual odor on the tire.
Q. Did ATF collect these items?
A. Yes. They were collected by Grover Crossland.
MR. ROBLES: Approach the witness, your Honor?
THE COURT: Yes.
BY MR. ROBLES:
Q. Special Agent Barton, I'm handing you what has been marked for identification as Government's Exhibit 47.
A. Okay.
Q. Could you pull those items out of the bag for me.
A. Okay.
Q. In general terms, can you tell us what this exhibit consists of.
A. This is the gray duct tape and the small piece of black cloth that the dog had alerted to and collected by Grover Crossland.
Q. Are these the same items that Madison found at the Pierces'

residence on February 8, 2009?
A. Yes, that's correct.
Q. Are they in the same or substantially same condition that they were in when Madison found them?
A. Yes. I mean, the duct tape has been laid out, but it's the same material, yes.
MR. ROBLES: Your Honor, at this time, I move that Government's Exhibit 47 be admitted into evidence.
THE COURT: Any objection?
MS. WHATLEY: No objection.
THE COURT: It's received.
(Government's Exhibit 47 received in evidence.)
MR. ROBLES: May I approach the witness, your Honor?
THE COURT: Yes.
MR. ROBLES: Pass the witness, your Honor.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:
Q. Good morning.
A. Good morning.
Q. You were -- tell us what day, again, you were called in to bring the K-9 to do the search.
A. February 8 of 2009.
Q. Did you arrive in town that day?
A. Yes, ma'am.

Q. Okay. And did you go to West Memphis first?
A. No.
Q. Okay. Did you go to Russellville first?
A. I'm sorry?
Q. Where did you go first that day?
A. First, arriving into town, I met with some of our agents from our Little Rock office here, and then I did some other searches for them prior to that.
Q. And then did you go to the Pierces' house?
A. Yes, ma'am. I went there around four o'clock in the afternoon.
Q. Okay. And I believe that you said that your K-9 alerted on some small pieces of rubber from the tire.
A. Correct.
Q. Is that right?
A. That's correct.
Q. But you all didn't collect those?
A. Well, the pieces were so tiny and there was so much small debris, and they had collected a large portion of the tire, really, those small pieces weren't of evidentiary value.
Q. Were they microscopically small or just chunks?
A. Just tiny pieces.
Q. And was Agent Crossland there with you when you were conducting this search?
A. Yes, ma'am.

Q. And he ended up collecting the evidence, I believe the tape that you found; right?
A. Yes. As soon as my dog alerted and I saw what the object was, I called him and had him come over, and then he collected it.
Q. And do you know whether or not that was later submitted for analysis?
A. I believe it was. You'd have to check with Grover, though.
Q. You also located a small piece of cloth?
A. Yes, ma'am.
Q. Was that collected?
A. Yes, ma'am, it was.
Q. Did you -- I think you mentioned that you started sort of at the perimeter of what you all thought was the perimeter of the explosive scene?
A. Yes, ma'am.
Q. Is your search limited to that area?
A. Well, the reason that we do that is because any blast seat is grossly contaminated with the explosive that had detonated. So what we do is -- and a lot of times during the thrust of the blast, evidence is thrown out a distance. So what we normally do is look for the furthest piece of evidence that was collected, and we'll go one-half that distance out and then work in. It gives the K-9 the opportunity to detect the odor because it's not in such a grossly contaminated area. So you work in

towards that, or else they would be constantly going to the blast seat.

Q. So you have to sort of make a big circle around everything that's found, go a little bit further out, and search inward?

A. Yeah, and what we do, we look for the thrust of the blast and start in that area, because if it was thrust to the right, that's where the majority of the material is going to be. And what I like to do is deploy the dog when it's freshest and it's got a lot of strength in the highest probability of area where evidence is.

Q. Were you asked at all to search any other areas around the Pierces' house?

A. Well, they pretty much left it up to me to conduct it as I normally would a K-9 search, so whatever they thought that was applicable, they told me to apply to. I did what I considered to be a thorough search of the entire area that would have been part of blast area. I mean, I went across the street into, you know, other yards, into the roadway, around the house, the side of the house, you know, visually even looking up for stuff as well as application of the dog.

Q. And the information you were provided was mainly about where pieces of evidence had been found after the explosion? Is that correct?

A. I normally, typically, ask that because it gives me some information as to what way the blast went so I know how to

direct the dog. And I was given -- I was provided with information as far as what they thought the device was, because by that point, they had put together that it was a grenade that was used. And we knew that that little pull ring was missing, so we were also looking for that because that was important.

Q. Okay. You mentioned that your K-9 can detect trace odors; right? Pre blast or post blast?

A. That's correct.

Q. Okay. You -- I believe you later, maybe a month or so later, went to the Manns' house and took the K-9; is that correct?

A. That is correct.

Q. On Milky Way Lane?

A. That is correct.

Q. And at that time, do you know why you took the K-9 there?

A. They were executing a search warrant, and I was looking for explosives.

Q. And did they alert you that he was a suspect in this bombing?

A. He was a person of interest, yes.

Q. Do you have your report?

A. Do I have it with me?

Q. Yes, ma'am.

A. I don't.

MS. CASSINELLI COUCH: May I approach, your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. I'm just going to show you your report and ask you some questions.

A. Okay. Sure.

Q. In your report, do you note that they've called you because he's a suspect?

A. A possible suspect, person of interest. Same thing.

Q. Thank you. Is a person of interest and a suspect the same thing under ATF --

A. Well, I mean, everybody has their own way of terming things. Personally, a person of interest, a possible suspect are one and the same to me.

Q. Okay. And you searched, I believe, the interior and exterior of the Manns' residence; is that right?

A. That's correct.

Q. And there were no alerts?

A. Well, there were no alerts, but I wasn't able to do the entire interior of the home. The home was really large, and there were -- he had an area on a lower level where there was a big gym, almost like a gymnasium, and off to the side, he had a room with a lot of guns and ammunition. And the gym area, there was -- I believe it was a .50 caliber machine gun on a tripod.

The problem with that is, the area is grossly contaminated with the gun odor, with the powders from the gun, and if I

brought my dog into those areas, I know for a fact she would alert because I'm already aware that there's explosive odor present there. It's there. The guns are there. There's no way around that. So to bring the dog into that type of area would be useless or senseless because we know the dog is going to alert and now you have to differentiate, is it another explosive that was there and removed, or is it the guns that are present there? So, basically, when it comes to situations like that, it's really fruitless to bring the dog because we know they're going to alert and it's not going to tell us anything more than we visually can see. So the room that was there in that gym area, I did not apply the dog to because I knew it was grossly contaminated.

There was another area out in one of the garages that had a lot of ammunition in it, and that, again, is the same scenario. So that really has to be done visually, by eye, because, you know, the dog would then alert. Doesn't mean there's a grenade there, means there's guns there, now it has to be further investigated manually.

Q. Would the dog alert on a firearm that had never had ammunition fired through it?

A. Every firearm is test fired by the manufacturer. Yes.

Q. So even if it was long time ago, the dog would still alert on that?

A. Yeah. As long as there's available odor, that the dog can

detect. Now, our dogs are unique in that we focus on trace amounts. So I intentionally, through my daily training -- I train the dog every day. I take gun parts and I'll throw them out. I cut them up and I may leave it out in the woods for a month and then go look for it. You know, and it's just a piece of the metal. It's not the entire gun that would hurt someone if they found it. So I can challenge the dog and lower her threshold to trace amounts. I actually take smears of different explosives, be it C-4 or TNT or RDX, and I'll wipe it on a cabinet, and then I bring the dog in and have her alert on it so that she is proficient in the small amounts of explosives.

Q. So you didn't take her in there because she would have had sensory overload, probably?

A. She would alert, and it was going to tell us nothing more than we already knew, that there was explosives in there.

Q. Did you search every other area of the house?

A. I did. We went through the living room, the dining room, the bedrooms, you know, yeah.

Q. And around the house as well?

A. I did. It was late and it was dark, it was probably about 9:30 at night when I had gotten there, so to the best of my ability, I did some exterior areas by the garage area and then another lot down the street we had went down and scanned and did a search.

Q. Okay. So you went down, there's a street sort of right in

front of the house that goes onto a cul-de-sac?
A. Yes, ma'am.
Q. And you searched that area in the cul-de-sac?
A. We went down, did a visual search, brought a unit down to illuminate the area with the lights from the vehicle. Also, I always carry a flashlight on my gun belt, and we walked around looking for any kind of disturbances in the ground where it would be indicative of someone maybe digging or burning something, and then I brought the dog out and scanned her around there as well.
Q. And in the house and around the house, you didn't find any -- your dog didn't alert on any odors, explosive odors?
A. Not in the areas that I did. Again, I didn't do the entire house because of contamination.
Q. With the exception of that area that you couldn't do, there was no alert to any explosive odor?
A. No, ma'am.
Q. Okay. Thank you.
A. You're welcome.

THE COURT: Any redirect?

MR. ROBLES: Briefly, your Honor.

REDIRECT EXAMINATION

BY MR. ROBLES:
Q. Special Agent Barton, could you describe the area that you and Madison searched at the end of the cul-de-sac?

A. Yeah. At the end of the cul-de-sac, it was just a -- an open area with, you know, weeds and grass and maybe a few little trees there. It was, you know, an area that we typically see when a developer goes in and establishes the roads and hasn't yet built homes on it. So it was a vacant area.

Q. So were there any homes there?

A. There were -- I believe there was homes going down to it, but on the cul-de-sac, there were not, no.

Q. Do you remember approximately how far or approximately how far this area was from the defendants' residence?

A. In block lengths, I would say it was a block and a half from the house.

Q. Okay. Do you recall the reason that you searched that open area at the end of the cul-de-sac?

A. Yes, yes.

Q. What was that?

A. They had received information that someone had buried something there, I believe is how it began, or someone might have seen something. I think someone stopped there and they saw a little bit of the top of maybe a green ammo can.

MS. CASSINELLI COUCH: Your Honor, may we approach?

THE COURT: Yes.

[Bench conference reported as follows:]

MS. CASSINELLI COUCH: I'm just going to object. I think she's getting into hearsay, and she's established that she

went down there at the direction of other people and the ATF. I think there are other witnesses who will testify more to the things that happened before that, so I would object that it's hearsay.

MR. ROBLES: Your Honor, I would say that no statement has been made yet, no declarant has been identified, and we're not offering -- if the Court does find that there has been a statement that's been indicated, we're not offering that for the truth of the matters asserted, simply for the purpose that she went down to that area.

THE COURT: She can testify about what she did. Now, she can testify as to somebody told her to go down there if it's all part of the investigation. But I don't want to start getting into hearsay if we can stay away from it.

MR. ROBLES: Sure.

THE COURT: I haven't heard what her response is going to be, so I don't know whether it's hearsay.

MS. CASSINELLI COUCH: I guess I would ask to lay the foundation about whether or not she has -- she participated in that original search. I don't believe that she has personal knowledge of that. I think she testified earlier that she was called in and was notified by other ATF officers what to do and why.

THE COURT: Well, here's the deal. She can testify as to what she did.

MS. CASSINELLI COUCH: Sure.

THE COURT: I think she was just talking about she went down there, and I think she may be adding additional testimony about why she went down there.

MR. GORDON: May I be heard?

THE COURT: Yes.

MR. GORDON: First of all, I think it's important to note that the United States did not go here. We stopped short of talking about this part. The defense went there. Case law allows us to ask a witness why they did what they did even if it's hearsay because it's not offered for the truth of the matter asserted; it's offered to show why she did what she did.

THE COURT: Hold on. What's the relevance of that here? I think what the defense did was, they asked did you take the dog around and sniff, did the dogs -- I think the point of the questions were to show did the dog sniff all over the place and didn't smell anything and then came back in the house and was not able to really do a good analysis of that room because there was so much stuff there. I don't think that the door has been opened to go into much else. I think that was the only point of the examination. Now, is there some reason to get into something else? I think the question was just about did you go down there, and I went down to the cul-de-sac with my flashlight, looked around, the dog smelled around, didn't smell anything, we came back. Do you want to get into why she went

down there, why she was told to go down there?

MR. GORDON: Why she went down there, your Honor.

THE COURT: What would be the reason for that?

MR. GORDON: So the jury fully understands. We didn't want to go there because we're getting into another part of the case that we intended to explore later, but now that the defense went into this part of the case, we want the jury to understand why she was doing what she was doing. Because right now, they have no idea.

THE COURT: Will that change the fact that the dog didn't smell anything? I mean, is telling why she went down there --

MR. GORDON: Actually, yes.

THE COURT: -- going to explain why the dog didn't find anything?

MR. GORDON: It very well may, because the point is, we know there were grenades in the hole, and for her to say -- we want her to explain why the dog would not alert to the hole if we know grenades were in it.

THE COURT: I don't think -- until you just told me that, I wouldn't have known that. I mean, I wouldn't have even --

MR. GORDON: And that's kind of the point. The jury won't know that and I think they need to know that.

MS. CASSINELLI COUCH: But -- may I?

THE COURT: Yes.

MS. CASSINELLI COUCH: One, I think she's already established why she did what she did, and that was at the direction of other ATF officers who were investigating, who just said bring your dog and we need you to search these areas. So I don't think it's necessary for her to get into hearsay to explain why she was doing what she was doing.

Second, there's, I'm sure, going to be another witness who probably directed her who is going to testify as to why he directed her to do what he or she directed her to do.

Third, it seems to me that if there's a hole and you believe grenades were buried there, you could just as easily go straight to that and say would the dog alert based on this or this without going into the history and the hearsay of it.

THE COURT: Don't you have another witness who is going to say that --

MR. GORDON: That there were grenades in the hole, yes. But the problem -- but how can she explain how her dog -- why her dog didn't alert to grenades in a hole that we know grenades were in? Right now the jury has no idea, and we're not going to get to that part for a little while, and that -- I mean, when we know we're going to have several witnesses that are going to say there were grenades in that hole.

THE COURT: Let me go back to the original question. What is the harm? We know there are other witnesses that are

going to come in and say we found grenades. What's the harm in her saying I was alerted to that?

MS. CASSINELLI COUCH: I think it's difficult for me to cross-examine her based on something she doesn't have personal knowledge of. There were lots of people involved, and it seems to me the best witness would be the people who found and investigated the grenades.

MR. GORDON: And they're coming.

MS. CASSINELLI COUCH: Yeah, so I think it's permissible to say, were you directed to do this and even if you want to get into what the dog could identify and smell in certain situations, but I don't think you have to go back through the whole history that she wasn't present or involved in.

THE COURT: She can testify as to what -- in this case, I guess we need to tell that there were grenades there, but she didn't know there were grenades there until she was told at some other point because she didn't find them.

MR. GORDON: She was told before she ran the dog down there that that's why they were going down there.

THE COURT: Were the grenades found before she went down there or were they found later?

MR. GORDON: Before, your Honor.

THE COURT: And so the grenades had been removed already.

MR. GORDON: Yes, your Honor.

THE COURT: I don't understand what the relevance of that would be. I mean, we found the grenades, the grenades had been removed, she went down with the dog, the dog didn't smell anything. What does that add to the story?

MR. GORDON: I can just see there's a whole lot of room there for the defense to play with unless it is fully explained.

MS. CASSINELLI COUCH: You think that I can actually say the grenades weren't there?

MR. GORDON: No. But there's stuff that you can work with there.

MS. CASSINELLI COUCH: I think you're giving me too much credit.

THE COURT: You think the response would be, well, where did they actually find those grenades? They found them somewhere else. And do you think they're going there?

MR. GORDON: No, sir.

THE COURT: Okay. Here, I will overrule the objection. I'll wait to hear -- you can continue to make it, I mean, and I'll stay on -- I'll listen intently, and if she starts getting into too much hearsay, then we can shut it down. But if the -- if there are witnesses who are going to come and say they found the grenades and all of that, I don't know that necessarily -- it may be this witness is out of order.

MS. CASSINELLI COUCH: Right.

THE COURT: Might probably should have been called later. But I don't think it really matters. That's fine. Overruled. She can explain why under what circumstances a dog might not smell it, but I think she's already testified to that, with the room having overload from the dogs and all of that. Not from the dogs, but from the other ammunition and all of that. Overruled. Let's go back on the record, let's hear what she has to say.

MS. CASSINELLI COUCH: Judge, can we limit it to, grenades were found, that's why I was down there? I just don't want her getting into what everybody told her about and where to go and how to do it.

THE COURT: Overruled.

MS. CASSINELLI COUCH: Thank you.

[Continuing in open court:]

MR. ROBLES: May I have a moment, your Honor?

THE COURT: Yes.

BY MR. ROBLES:

Q. Special Agent Barton, could you remind us again how far this open area, this exterior area that you and Madison assessed, how far that area was from the defendants' residence?

A. I'm going to estimate that it was about a block and a half in length, because as soon as you cross the yard from the street, you cross the street in front of Mr. Mann's house, and

then it was just one solid block to the end of that. So I would say about a block and a half, it seemed.
Q. Had an explosion occurred in that area?
A. No.
Q. Did you know whether or not when you assessed that area, there was the presence of explosive materials?
A. There were explosive materials there. The reason I was going there was to look and see if there were any more buried there, to see if -- to make sure that the area was safe. There was an ammo can with explosives in it buried there.
Q. Did Madison alert in any area within that open area?
A. She did not alert. She worked very actively in the area that was disturbed, but she did not make any alerts.
Q. If there was -- you had mentioned that, previously mentioned, that Madison can detect trace amounts of post-blast material and explosive materials that have not gone through the explosion process.
A. That is correct.
Q. Can you tell or explain to us why Madison may not necessarily have detected or alerted to materials within that region that had not gone through the explosion process?
A. Well, it's really based on the availability of odor. If odor is there and a dog has availability to it, she'll be able to detect it. In that circumstance there, the explosives were wrapped up, so the odor was contained in something else. Now,

when the explosives were removed from the ground, they put the dirt back over the hole. The hole was filled up. So if there was odor that was in the hole that had been covered up, it was not available to come out to the surface for the dog to locate.

MR. ROBLES: Thank you. No further questions, your Honor.

THE COURT: Recross?

RECROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Just to be certain, when you took the K-9 to that area, the grenades were no longer buried in the ground?

A. They had already been removed from the area. But they wanted to make certain that there wasn't any more that would cause harm if someone would find them.

Q. Sure. And you were not present when the grenades were removed?

A. No, I was not.

MS. CASSINELLI COUCH: Thank you.

THE WITNESS: You're welcome.

THE COURT: Is there anything else?

MR. ROBLES: No further questions, your Honor.

THE COURT: You can stand down.

THE WITNESS: Thank you.

THE COURT: Call your next.

MR. HENDRIX: Do you think we're semi close to a

break, your Honor?

THE COURT: It depends on how long this witness is.

MR. GORDON: We have a couple of stipulations we'd like to present to the jury, and then we'll have a witness following these two stipulations.

THE COURT: Okay. You can. Mr. Hendrix, do you need a break? Do you think you might need one?

MR. HENDRIX: I need to run down the hall.

THE COURT: That's fine. Let's take a break now then. Let's take 15 minutes. Let's come back at 10:35. We'll be in recess until 10:35.

(Recess from 10:22 a.m. until 10:37 a.m.; jury not present.)

MR. GORDON: Your Honor, may I ask a question?

THE COURT: Yes.

MR. GORDON: We have two stipulations, then one witness, and then a third stipulation. Does the Court intend to instruct the jury now about stipulations or just later or both?

THE COURT: I hadn't really thought about it, to tell you the honest-to-God's truth. I don't have an instruction here with me on stipulations. I'd rather read one than make one up.

MS. WHATLEY: Your Honor, I possibly have one.

THE COURT: And I'll do it however the lawyers feel appropriate. I guess I should have grabbed an instruction while I was in the back, but I didn't think about it.

MR. HENDRIX: I'll see if I've got one. May I approach?

THE COURT: Yes. Mr. Gordon, come up here and let's take a look at this.

MR. HENDRIX: I'm showing the judge 202 on stipulated testimony.

MR. GORDON: That works for me.

THE COURT: Are you going to have a stipulation as to both?

MR. GORDON: Stipulation as to facts, not testimony.

THE COURT: Okay. Mr. Gordon, were you going to -- you're just going to read two stipulations first, and then you'll come back before your next witness and do the third one?

MR. GORDON: Two stipulations, witness, then the third.

THE COURT: Okay.

(Jury entered the courtroom.)

THE COURT: Ladies and gentlemen, I think I told you before we got started there would be times when we would have to take up issues outside of your hearing, outside of your presence. We just took up something for about two seconds, and considering I was grossly underprepared, the lawyers provided me with information I needed to provide to you.

So I have an instruction for you. The government and the defendants have stipulated, that is, they have agreed, that

certain facts are as counsel have just stated or are about to state. Mr. Gordon is going to read some information into the record that is going to be considered facts that should be accepted. You must, therefore, treat those facts as having been provided by a witness.

Do you remember I told you that certain testimony would come in only through witnesses unless the parties stipulated to those facts? Well, the information that Mr. Gordon is about to read to you is information that the parties have stipulated to.

You may begin.

MR. GORDON: Thank you, your Honor.

Stipulation: The United States Attorney for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person through undersigned counsel hereby agree and stipulate as follows:

Paragraph 1. All evidence collected at 411 North Avalon in the area surrounding that residence on February 4, 2009, by ATF Special Agent John Norris, Government Exhibits 2 through 4, 6 through 18, and 20 through 21, was given to ATF Special Agent Shannon McKittrick-Cruse, who loaded it for transportation to the Little Rock ATF office. After the evidence arrived at the ATF office in Little Rock, Special Agent Ed Starr packaged the evidence and shipped it to Lloyd Erwin at the ATF lab in Atlanta, Georgia.

Paragraph 2. On February 5, 2009, Detective Jimmy Turnbow

of the West Memphis Police Department turned over the items he had obtained from Crittenden Regional Hospital, Government Exhibits 22 through 24, 26 through 39, and 42 to the ATF. Those items were transported to the Little Rock ATF office. After the evidence arrived at the ATF office in Little Rock, Special Agent Ed Starr packaged the evidence and shipped it to Lloyd Erwin at the ATF lab in Atlanta, Georgia.

Paragraph 3. On February 7, 2009, ATF Special Agent Tommy Estevan turned over items he had obtained from the Regional Medical Center, Government's Exhibits 42-A, 43-B 45-A, 45-B, and 45-C. Those items were transported to the Little Rock ATF office. After the evidence arrived at the ATF office in Little Rock, Special Agent Ed Starr packaged the evidence and shipped it to Lloyd Erwin at the ATF lab in Atlanta, Georgia.

Paragraph 4. On February 8, 2009, ATF Special Agent Kathy Barton-Scanlon located Government Exhibit 47 at 411 Avalon, West Memphis, Arkansas. That evidence was transported to the ATF office in Little Rock, Arkansas, and was then shipped to Lloyd Erwin at the ATF laboratory in Atlanta, Georgia.

Paragraph 5. On February 20, 2009, ATF Special Agent Mary Downey collected Government Exhibit 49 from Dr. Phillip Langsdon. That exhibit was transported to the Little Rock ATF office and was then shipped to Lloyd Erwin at the ATF laboratory in Atlanta, Georgia.

Paragraph 6. On March 5, 2009, Lieutenant Ken Mitchell of

the West Memphis Police Department collected DNA from Trent Pierce. Those DNA swabs were provided to ATF Special Agent John Norris and were submitted to the ATF lab in Virginia.

Signed by myself, Dr. Mann, Mr. Jack Lassiter, attorney for Randeep Mann, Mrs. Sangeeta Mann, and Tim Dudley.

Stipulation of facts: United States Attorney for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person and through undersigned counsel, hereby agree and stipulate as follows:

Paragraph 1. Government Exhibit 50-A is the fingerprint card for the defendant Randeep Mann. Dr. Mann's fingerprints were placed on this fingerprint card under the supervision and direction of Jermaine Vaughn, a deputy with the United States Marshals Service.

Paragraph 2. Government Exhibit 50-B is the fingerprint card for Mark Rinke. Mr. Rinke's fingerprints were placed on this fingerprint card under the supervision and direction of Special Agent David Oliver, an agent with the Bureau of Alcohol, Tobacco, and Firearms, ATF.

Paragraph 3. Government Exhibit 50-C is the fingerprint card for Ryan Kimbell. Mr. Kimbell's fingerprints were placed on this fingerprint card under the supervision and direction of Special Agent David Oliver, an agent with ATF.

Paragraph 4. Government Exhibit 50-D is the fingerprint card for Gerald Riley. Mr. Riley's fingerprints were placed on

this fingerprint card under the supervision and direction of Special Agent David Oliver, an agent with ATF.

Paragraph 5. Government Exhibit 50-C is the fingerprint card for Timothy "Tim" Harrell. Mr. Harrell's fingerprints were placed on this fingerprint card under the supervision and direction of Special Agent David Oliver, an agent with ATF.

Government Exhibit 50-F is the fingerprint card for Agent William "Bill" Buford of the Arkansas State Police. Agent Buford's fingerprints were placed on this fingerprint card under the direction and supervision of Special Agent David Oliver, an agent with ATF.

Paragraph 7. Government Exhibit 50-G is the fingerprint card for Special Agent Warren Newman, with ATF. Agent Newman's fingerprints were placed on this fingerprint card under the direction and supervision of Special Agent David Oliver, an agent with ATF.

Paragraph 8. Government Exhibit 50-H is the fingerprint card for Thakor J. Patel. Mr. Patel's fingerprints were placed on this fingerprint card under the supervision and direction of Special Agent Tony McCutcheon, an agent with ATF.

Government Exhibit 50-I is the fingerprint card for Jason Haycraft. Mr. Haycraft's fingerprints were placed on this fingerprint card under the supervision and direction of Officer Hardy of the West Memphis Police Department.

Paragraph 10. Government Exhibit 50-J is a second

fingerprint card for Special Agent Warren Newman with ATF. Agent Newman's fingerprints were placed on this fingerprint card under the supervision and direction of Special Agent Grover Crossland, an agent with ATF.

Government Exhibits 50-A through 50-J were submitted to ATF's forensic science laboratory in Atlanta, Georgia, for fingerprint comparison testing. The stipulation is then signed by myself, Dr. Mann, Mr. Lassiter, Mrs. Mann, and Mr. Dudley.

THE COURT: Ladies and gentlemen, as I told you earlier, the government, the government and defendants have stipulated, that is, they have agreed that certain facts as just presented by Mr. Gordon, they have agreed to those facts. You must, therefore, treat those facts as having been proved.

Mr. Gordon, call your next.

MR. GORDON: May I have just a moment, your Honor?

THE COURT: Yes, sir.

MR. GORDON: Your Honor, based on that second stipulation, I would like to offer into evidence the fingerprint cards that were referred to in the stipulation.

THE COURT: Okay.

MR. GORDON: Government's Exhibits 50-A through 50-J.

THE COURT: Those are received.

MR. GORDON: Thank you, your Honor.

(Government's Exhibits 50-A through 50-J received in evidence.)

MR. GORDON: The United States calls Larry Hankerson. I believe Mr. Hankerson has already been sworn.

THE COURT: He has.

LARRY HANKERSON, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good morning, sir.

A. Good morning.

Q. Please state your name for the record.

A. Larry Hankerson.

Q. Spell your last name for us, please.

A. H-a-n-k-e-r-s-o-n.

Q. And how are you employed, sir?

A. I'm employed by the Bureau of Alcohol, Tobacco, and Firearms Atlanta forensic science laboratory.

Q. What do you do for the laboratory?

A. I'm a fingerprint specialist.

Q. How long have you worked there?

A. I've been employed by the bureau since May of 1996, a little over 14 years.

Q. Who did you work for before joining ATF?

A. Before joining ATF, I was employed by the Georgia Bureau of Investigation crime laboratory in Atlanta, Georgia.

Q. What did you do for the GBI?

A. I was a latent print examiner.

Q. How long did you work there?
A. Approximately 23 years.
Q. What did you do before that?
A. Before that, I was employed by the Federal Bureau of Investigation in Washington, D. C., as a fingerprint technician.
Q. So have you been doing fingerprints for about 35 years now?
A. Approximately 37 years, all told.
Q. You've been doing the same thing for those 35 years?
A. Yes, sir.
Q. Tell us what it is that you do as a fingerprint specialist.
A. As a fingerprint specialist with the Bureau of Alcohol, Tobacco, and Firearms, we receive and process physical evidence for the determination if there are any latent prints present on the evidence that we process. I'll process guns, bomb component parts, fire debris parts. Anything that the agents submit to the laboratory, we try to obtain what we call latent fingerprints.
Q. And in all your time working with fingerprints, how many would you say you've examined?
A. I've examined hundreds of thousands of fingerprint cards and hundreds of thousands of pieces of evidence for the presence of latent prints.
Q. Quite frankly, I feel dumb asking you this next question, but tell us how you're qualified to do this.
A. Yes, sir. I received my initial training in fingerprint

identification in Washington, D. C., at the FBI identification section. That training consisted of three months of classroom training where we were taught to classify and recognize the different fingerprint patterns. Once we completed that part of the training, we were then put into the FBI files where we actually classified and searched fingerprint cards submitted to the FBI by the different state agencies to see if there was a prior record of that individual within the FBI files.

I worked in that capacity for about three and a half years before coming to Georgia. Once employed by the Georgia Bureau of Investigation as a latent print examiner, I received other forms of training. I attended the Georgia Police Academy latent print course, advanced latent print course, and post instructor's course where I was certified as a post instructor to teach fingerprints at the various police academies throughout the state of Georgia.

I did that there, and other training I received while at the GBI was to the National Police Academy in Quantico, Virginia, sponsored by the FBI. It's a training facility where all law enforcement agencies go to receive training in their various disciplines. At the FBI Academy, I took the advanced course in latent print identification. I took the photography course in latent print identification, plus I attended other schools throughout the United States. I attended the Southern Police Institute in Louisville, Kentucky, crime scene course

where I was taught to process crime scenes as part of my job at GBI.

Plus, throughout the years, as a member of the Georgia state division of the IAI, we have summer conferences. There I taught various classes in crime scene processing and fingerprint identification, and each year I've kept abreast of the various techniques in fingerprint identification through the journals that we receive from the International Association For Identification.

Q. And do you hold any certifications?

A. Yes, sir. I'm a Certified Latent Print Examiner.

Q. How long have you been certified?

A. I was certified in 1979, and I just recently retook the certification test, and I am still a Certified Latent Print Examiner.

Q. Have you ever testified before about fingerprint identification?

A. Yes, sir. I've testified many times.

Q. State court?

A. State court.

Q. Federal court?

A. Federal court.

Q. About how many times?

A. In excess of 400 or more times, I would imagine.

Q. Ever testified in Arkansas before?

A. No, sir. This is the first time testifying here in Arkansas.
Q. Welcome.
A. Thank you.
Q. Explain for us, please, what are the basic factors that you use when dealing with fingerprints as a means of identification.
A. Yes. Fingerprints as a form of identification is unique in that because fingerprints are unique and permanent, fingerprints are formed in about the third month of pregnancy, and they remain the same throughout life. They do not change. The only difference is the actual size of the fingerprint will increase, but the individual ridge characteristics which are present within the fingerprint patterns are -- stay the same. They do not change.

Each finger is unique unto itself. The ridge patterns may be the same, but individual characteristics within that fingerprint pattern is unique to each finger, and no other finger will have the same arrangement within the patterns. So they are unique. And they are permanent.

Q. What about from person to person?
A. Fingerprints are unique. No two people ever have the same fingerprints.
Q. And tell us, please, what an inked fingerprint is.
A. An inked fingerprint is a fingerprint card which is normally taken at the booking-in process. The agencies will

apply what we call printer's ink onto the finger, and that printer's ink is rolled onto a card using the right amount of pressure and the right amount of ink to obtain what we call an inked fingerprint. It's a print which is taken using the right amount of pressure, right amount of ink to obtain a nice, clear, rolled impression of a fingerprint. It's a known fingerprint.

Q. What is a latent fingerprint?

A. Yes, a latent print. A latent print is a reproduction of the fingerprint ridges of the hands, palms, and also the feet, which is -- when used with processing with powders and chemicals can be obtained. A latent print is a reproduction of fingerprint ridges of the hands. It's formed in grease, oil, perspiration, or any foreign matter which may be present on the hands and palms. And when your hands and palms touch an object, you sometimes get a reproduction of the fingerprint ridges. We call that a latent print.

Some latent prints are visible to the naked eye. Mostly they're invisible. The ones that you can see with your naked eye we call the patent print, p-a-t-e-n-t. Example of that would be the prints that you see on a mirror or glass or makeup compact mirror. Those are what we call patent prints because you can actually see those. But the majority of the prints that we process for what we call latent prints, the invisible, unseen, and the only way you can make them seen, apply some type of chemical or powders.

Q. Tell us how you do that. How do you process latent prints?
A. As I stated earlier, we process evidence that the laboratory submits, that the agents submit to the laboratory for fingerprints. Our initial step once the evidence is received into the laboratory, we do a visual examination to see if there's any prints visible or a patent print would be visible. If there's no prints visible, we would then subject the item to a series of chemical processes. The first thing we would do, we'd put a -- in this example here, I'll say a firearm. We had a firearm, I did a visualization of it. I see no fingerprints present. I would then put it into what we call -- we have a cabinet that we call a fuming cabinet. What this fuming cabinet does, one of the techniques we use to develop fingerprints is from the vapors of -- the common name for it is super glue, but it's cyanoacrylate, cyanoacrylate. The vapors from the glue when heated will actually attach to the moisture in the fingerprint and give a reproduction of the fingerprint ridges. So the gun is then placed into a fuming cabinet, the glue is applied, the vapors are released for about 30 minutes. We take it out, we do a visual examination to see if there's any type of prints present.

If there's no prints present that cannot be seen with the naked eye, we would then subject it to what we call the chemical process where we put a dye stain. What the dye stain does, it stains the print which was formed with the super glue or the

vapors, make it a laser light, you can actually see the presence of a fingerprint. So we subject it to laser light. If there's any fingerprints present, we take a photograph of it and it's maintained as a record.

Q. Explain for us how you -- how you would compare fingerprints in order to make an identification.

A. Yes. Once we have obtained an unknown latent print, unknown latent print, we will request a fingerprint card of an individual or suspect for elimination or whatever, and we will compare the two prints. What we do, when we make a comparison, we take the latent print and the ink print, and our initial procedure is to use, like, a three-power magnifying glass. We put them side by side and we go back and forth looking for the individual ridge characteristics in both prints.

Once we have effected -- sometimes we effect identification, that print is then blown up and put on a larger screen and we can go back and forth between the ink print and the latent print looking for points of identity, and we will form a conclusion that the prints are made by one and the same individual.

Q. Now, when you started to explain that to us, you mentioned if you find a latent print on a piece of evidence, you'll ask for fingerprint cards on suspects or elimination cards?

A. Yes, sir.

Q. Okay. Explain those. What's an elimination card?

A. Elimination prints that we request, that we request are -- is a set of prints of any individual who may have actually touched evidence at some point in time, if you knew an individual had handled the glass prior to being sent to laboratory, being sent in, you'd request elimination prints of that particular victim. It's victim's prints; in other words, elimination prints majority of the time are actually victim's prints for elimination.

Q. What about law enforcement?

A. If individuals have touched an item or object, you never know, so we request elimination prints of the victim, officers, anybody who may have came in contact with the evidence.

Q. Did you examine any evidence in this case for fingerprints?

A. Yes, sir, I did.

Q. Do you recall how many pieces you examined?

A. Yes, sir. There were a number of pieces submitted to the laboratory at various times. I examined a Lexus bumper, small section and a larger section. I examined a Nissan spare tire with attached piece of duct tape, and I also examined two small sections of duct tape.

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been admitted as Government Exhibit 8. Did you examine this?

A. Yes, sir, I did.
Q. I'll show you what's been marked as Government Exhibit --
A. It's here, sir.
Q. Thank you. What's been marked and admitted as Government Exhibit 11. Did you examine this?
A. Yes, sir, I did. There's an ATF evidence tag attached here. It bears my name and date.
Q. Thank you. I'm going to show you what's been marked and admitted as Government Exhibit 14. Did you examine this?
A. Yes, sir. Government's Exhibit No. 17?
Q. 14.
A. 14. I'm sorry. Is a black Nissan spare tire. It has the ATF evidence tag attached. That tag contains my initials, name, and date.
Q. Let me show you Government Exhibit 47. Did you examine that as well?
A. Yes, sir. Here again, it bears the ATF evidence identification tag. That tag bears my name and a date. Yes, sir, I did.
Q. Thank you. When you examined these four items, were you able to find any fingerprints?
A. Yes, sir. As I stated earlier, in the initial process for fingerprint examination, we do a visual examination of the evidence. Upon doing my initial visualization of the evidence, I observed, saw two, no, three prints present on the outer edge

of the bumper for the -- of the bumper, the larger bumper.
Q. Did you do anything to preserve those fingerprints?
A. Yes, sir. At that point, photographs were taken of the actual prints on the bumper prior to any other processing.
Q. Did you mark those fingerprints on the bumper as well?
A. Yes, sir, I did.
Q. I'm going to show you Government Exhibit 11 again. Right above the government exhibit sticker there's --
A. Yes, sir. Right above the government exhibit sticker, there's three outlines of where I actually marked fingerprint impressions. The impressions on the bumper are in this position, which is -- was deemed to be fingers two, three, and four, simultaneous impression. They were made at the same time, in other words.
Q. Did you locate any other fingerprints on the bumper?
A. No, sir, I did not.
Q. How about Government Exhibit 8, the smaller section of bumper? Were there any fingerprints on there?
A. No, sir.
Q. The tape, Government Exhibit 47?
A. No, sir, no prints.
Q. How about on the tire?
A. No, sir. I examined visual, in the process, there were no identifiable latent prints available on that particular item of evidence.

Q. Let's talk about that for a second. You stated no identifiable prints.
A. Yes, sir.
Q. What does that mean?
A. There were indications that that tire had been handled. You could see from the chemical reaction of the glue fumes, vapors, on certain areas of the tire that it actually had adhered to which is indication that there were prints there, but the prints or partials which actually developed did not contain enough identifying features to make an identification.
Q. Okay. So when there's a fingerprint, it has to be of a certain clarity. That's part of what you have to have so you can identify it to something else?
A. Yes, sir. You have to have clarity and a quantity of actual identifying features present to make an identification.
Q. So there were fingerprints on the tire, but just none that you could work with.
A. Yes, sir.
Q. And attached to Government Exhibit 14, the tire, is a plastic bag here.

MR. GORDON: May I approach, your Honor?

THE COURT: You may.

BY MR. GORDON:
Q. Did you attach this plastic bag?
A. Yes, sir, I did. On the -- upon the examination of the

actual tire itself, visualized it, on the back side of the tire was a piece of tape which was attached -- let me turn it to the other side. If I may, in this area here, you can see where the tape was removed. I removed the tape. First it was physically processed with normal processing. There was no prints present, so at the next point, I actually removed the tape to individually process it, and that's where it was removed from, and I attached it to the tire for the return.

Q. On the front of the tire here, there's some white residue on the rim?

A. Yes, sir.

Q. Can you tell us what that is?

A. That white residue is the actual chemical reaction between the cyanoacrylate, the super glue vapors, and the fingerprints which was present in that particular area.

Q. So that white residue is from you processing the evidence?

A. Yes, sir.

Q. And I guess, just so we're clear, there were fingerprints on the tire, but they weren't suitable for identification?

A. Yes, sir.

Q. And you found three fingerprints on the large bumper, Government 11, those were suitable for identification?

A. Yes, sir.

Q. Were there any other fingerprints on the bumper?

A. No, sir.

Q. Any fingerprints at all on the small bumper?
A. No, sir.
Q. Any fingerprints at all on the tape?
A. No, sir.
Q. Were some fingerprint cards submitted to the laboratory for you to compare to the fingerprints on the bumper?
A. Yes, sir, they were.
MR. GORDON: May I approach the witness, your Honor.
THE COURT: You may.
BY MR. GORDON:
Q. These have already been admitted as Government's Exhibits 50-A through 50-J. Are those the fingerprint cards you received?
A. Yes, sir, they are. Each one of the cards which were submitted bears the laboratory case number, exhibit number, and my initials.
Q. Okay. And are those the fingerprint cards for Randeep Singh Mann?
A. Yes, sir.
Q. Ryan Kimbell?
A. Ryan Kimbell?
Q. Do they have the names written on them? Tell you what, why don't you read them off. It will be easier that way.
A. Government Exhibit No. 50-B is Andrew Rinke. Government's Exhibit 50-C, fingerprint card bearing the name Ryan Kimbell.

Government Exhibit 50-D, fingerprint card bearing the name Gerald D. Riley. Government Exhibit 50-E, fingerprint card bearing the name Timothy Harrell. Government's Exhibit 50-F is a fingerprint card bearing the name John William Buford. Government's Exhibit 50-G is a fingerprint card bearing the name of Warren Newman. Government Exhibit 50-H is a fingerprint card bearing the name Thakor Patel. Government Exhibit No. 50-I is a fingerprint card bearing the name Jason Haycraft. And Government Exhibit 50-J is a fingerprint card bearing the name Warren Newman.

Q. Mr. Hankerson, can you tell us the date that you received the fingerprint cards for Randeep Singh Mann?

A. Yes, sir. If I may refer to my notes, please.

The fingerprint card of Randeep Singh Mann was received in the laboratory on July 6, 2009, via Federal Express.

Q. And how about the other fingerprint cards?

A. The other fingerprint cards were received in the laboratory on August 12, 2009, by Federal Express, and they were the cards of, like, Ryan Kimball, John William Buford, Timothy Harrell, Mark Andrew Rinke, Gerald D. Riley, Thakor Patel, Jason Haycraft. And that was on August 12, 2009.

Additionally -- additionally, their fingerprint card was submitted to the laboratory on Warren Newman. An additional fingerprint card was received in the laboratory of Warren H. Newman on June 4, 2010.

Q. So you were given two print cards on Warren Newman?
A. Yes, sir.
Q. And we'll explain that in just a moment.
The fingerprints of Randeep Mann that were submitted to you in July of '09, were they submitted as suspect fingerprint cards?
A. Yes, sir.
Q. And then all of the other fingerprint card were elimination fingerprint cards?
A. Yes, sir.
Q. When you compared the fingerprints that you found on the Lexus bumper, Government Exhibit 11, when you compared it to the fingerprint cards, did you find a match?
A. Yes, sir, I did.
Q. Whose fingerprints matched the bumper?
A. The initial comparison in this case, one of the fingerprints was identified as the fingerprints of Warren Newman.
Q. Okay. Do you know who Warren Newman is?
A. Yes, sir.
Q. Who does he work for?
A. He works for the Bureau of Alcohol, Tobacco, and Firearms.
Q. Is he assigned to the Little Rock office here?
A. Yes, sir.
Q. Okay. Now, you can identify one, but not the other two;

correct?
A. Yes, sir.
Q. And then did you ask for a clearer fingerprint card on Agent Newman?
A. Yes, sir. In the initial report which went out after the comparison, initial comparison, I requested a better set of fingerprints of Agent Newman's.
Q. The first one wasn't clear enough?
A. Certain areas of the fingers needed were not sufficient to make comparisons from. Yes.
Q. So that's why you got a second fingerprint card?
A. Yes, sir.
Q. And when you used that second fingerprint card on Agent Newman, what did you find?
A. Upon comparison of the second submitted card of Agent Newman's, I was able to identify the other two latents, which were placed on the bumper.
Q. So all three are Agent Newman's fingerprints?
A. Yes, sir, they are.
Q. Was there a black residue on the bumper when you examined it?
A. Yes, sir. As I stated, we do a visual examination of the evidence prior to any type of processing, and upon my observation of the bumper, you could see a black residue which covered the surface of the bumper. Yes.

Q. And that's where Agent Newman's fingerprints were found, in the black residue?
A. Yes, sir.
Q. Based on your training and experience, can you say, can you look at evidence and tell which came first, the residue or the fingerprint?
A. In some cases, you can.
Q. Could you in this case?
A. Yes, sir.
Q. And what was your opinion?
A. In my opinion, the prints on the bumper were placed after the residue had -- after the residue was placed on the bumper. So, in other words, the fingerprints were pushed into the residue and taken away, which leaves the outline of his fingerprints in the bumper.
Q. Is it unheard of for an agent's fingerprints to end up on evidence?
A. No, sir, it's not. It's not uncommon.
Q. How does that happen?
A. Sometimes they may get careless and actually touch the evidence, or they will handle the evidence without gloves, which, in fact, then they will leave that fingerprint on evidence being handled.
Q. And you've seen that before?
A. Yes, sir, I have identified officers' prints before on

evidence.
Q. Is that one of the reasons you request what we were talking about earlier, elimination cards?
A. We request elimination cards, just the fact that we want to eliminate any fingerprints that we can in terms of being victim's prints and not being suspect's prints.
Q. Generally speaking, when a person touches something, will they always leave a fingerprint behind?
A. No, sir.
Q. And because there's not a fingerprint left behind, does that mean that the person didn't touch the item?
A. It doesn't mean they did not touch the item.
Q. Okay. Explain to us how you can touch something but not leave a fingerprint.
A. Yes, sir. In order to leave a latent fingerprint on any item, gun, firearm, gasoline can, an item of evidence, something must be transferred. If the fingerprints are clear -- if the fingerprints are free of any type of medium, being blood, grease, or perspiration, and you touch an object, this moisture, grease, perspiration, will not be transferred. So there has to be something present on the hands in order for something to be transferred. So if the hand is clean, clear, dry, you would not leave a latent fingerprint.
Q. And let's assume something is on the hand and you do leave a fingerprint behind. Will that fingerprint always be there?

A. No, sir. It depends on how the evidence was actually handled. If the surface is rough, dirty, or it's -- many factors that go into it. If it's a heavily coated, dirty type surface, the fingers would not make good contact and you would not leave a latent print. It has to have a relatively smooth type surface. And sometimes latent prints are by chance. Sometimes you will find a latent print. Sometimes you will not. If a hand continually touches stuff, each time you touch an area, you remove the moisture from your fingers, and sometimes it's at the point where you would not leave a print.

Q. But even if one is left behind, will it be there always and forever?

A. No, sir. It depends on the actual makeup. If it's moisture, if it's a moisture-type print, over a period of time, that moisture will evaporate and that print will not be able to obtain the chemicals that we put upon it to develop a print.

Q. And it can be wiped off?

A. Yes, sir.

Q. Either intentionally or not?

A. Yes, sir. The analogy I give for a latent print is like a drop of water. If you apply heat or temperature over a period of time, that moisture will actually dry out and a print cannot be brought through chemical process, cannot be developed. It's a very fragile piece of evidence.

Q. Say the heat from an explosion, could that destroy a

fingerprint?
A. Possibly.
MR. GORDON: Okay. Thank you. No further questions.
THE COURT: Cross-examination?
MR. HENDRIX: Thank you.

CROSS-EXAMINATION

BY MR. HENDRIX:
Q. Agent Hankerson, you're not suggesting that it's always going to evaporate and, therefore, leave no evidence of a fingerprint; right?
A. Yes. Let me clarify. I'm not an agent. I'm a fingerprint specialist.
Q. Beg your pardon?
A. I'm a fingerprint specialist. I'm not an agent. You called me an agent.
Q. Oh, I'm so sorry. Mr. Hankerson. Sorry about that.
A. That's all right.
Q. So let's talk about fingerprints real quick. The human body is made up, the majority of our body is made up of fluids; correct?
A. Yes, sir.
Q. And those fluids get secreted throughout our epidermis, throughout our skin; right?
A. Yes.
Q. And so if I touch something like wood or plastic and I see

my fingerprint or palm print right there, that's what we're talking about and that would be a latent print; correct?
A. Yes. That is a latent print, yes.
Q. Okay. And you can deposit -- very rarely is our skin so dry and brittle that there is not some moisture in our -- on our epidermis. Is that fair enough?
A. It's -- it's not always there. It can be there, but it's not always there. The only way that you can actually say that it's there is to actually process it and then see if something comes up. But most times, there is moisture present, and sometimes you will leave a fingerprint.
Q. Well, and we excrete through our hands a lot; right?
A. Yes, through the pores.
Q. And that's why it's not -- the discipline is not thigh printing.
A. Right.
Q. Or top of foot printing. It's finger and palm printing.
A. Yes, sir.
Q. Because we excrete fluids predominantly through these areas of the body; right?
A. Yes, sir.
Q. And the proposition for fingerprint analysis is actually fairly simple; right? It's here is a known fingerprint. Clip mine, you can identify this as Blake Hendrix. That's the known print. And the simple proposition is taking an unknown

fingerprint to see if they're the same, and, therefore, you can conclude that unknown is Blake Hendrix. And I'm sorry. I'm Blake Hendrix. I didn't mean to confuse you on that.

A. Yes, sir.

Q. Okay. And so in your analysis, you arrive at one of three conclusions, and those conclusions are going to be either nonmatch or exclusion, in other words, in your opinion it would be I cannot -- I can say that fingerprint does not match the known fingerprint?

A. Correct.

Q. And, therefore, must be somebody else's.

A. Yes.

Q. The second level of opinion is inconclusive, I just can't tell.

A. Yes, sir.

Q. And the third is a match.

A. Yes, sir.

Q. Correct? And let's talk about matches. What are ridge characteristics?

A. Ridge characteristics are the identifying features of the fingerprint. You may have what we call a bifurcation, ridge ending, dot. These are characteristics that we actually look for when we make comparisons between the two prints, the latent print and the ink print.

Q. So when we look at our fingerprints and we see all of those

lines, they're like hills and valleys; right?
A. Yes, sir.
Q. And the hills are the ridges?
A. Yes, sir. You have valleys and grooves inside. You have ebb and flow, ridges and flow. It's like a valley, as you said. And these ridges, they form the outline of the ridge characteristics to be used to make the identification.
Q. And so if we were to take the index finger, this fingerprint of mine, how many ridge characteristics would be on my print?
A. The actual finger itself or just a portion that --
Q. Yeah, let's just say the tip.
A. The tip, you could find anywhere from 75 to 150, if not more.
Q. And that's the point is, we have come to the conclusion in this business that everybody's fingerprints are unique; right?
A. Correct.
Q. We assume that there are not two people on the planet who share the exact same fingerprint; right?
A. Yes, sir.
Q. And it's because there are so many ridge characteristics that they can't duplicate themselves?
A. Each fingerprint is -- characteristics are lined so that they're unique to the individual finger.
Q. Right. And so what you're doing in trying to compare a

known to an unknown is to look at those ridge characteristics and to see if there are enough similar ridge characteristics that you can see this is a match?

A. In the same relative position between the two prints, the ink print and the latent print, yes, sir.

Q. And if we're dealing with, let's say got to have a minimum of 75, 150, numerous ridge characteristics on one print, how many ridge characteristics in common are required for you to find a match?

A. Here in the United States in the comparison there is no set number that we need to effect a positive identification. It's -- it goes to the quality and the quantity of the latent print that we examine.

Q. What's the ATF protocol?

A. Protocol, we do not have a set number of points.

Q. FBI's protocol is, if seven characteristics match, they declare a match. Is that ATF's?

A. No, sir, it is not.

Q. Do you need more or less?

A. We do not have a set protocol to make a match, sir.

Q. So it's individual to you?

A. It's individual opinion as to when it's deemed identification, yes, sir.

Q. If you find seven ridge characteristics in common between a known and an unknown, will you declare a match?

A. If there's no other discrepancies present in that particular print in the overall print, yes. It is same type, pattern type, same spaces between the ridges, and everything is unique to that print, I would call it identification.
Q. Seven out of --
A. Here again, I would have to actually see that print before I would say it's identification. I can't say I look at seven and would call it identification. I would have to actually see the latent print before I would deem it a positive identification.
Q. I understand. Now, we went a little bit over this. A fingerprint because of the oils and the secretions in our skin can be deposited on virtually any substance, can it not?
A. Yes, sir.
Q. It can be deposited on metals?
A. Yes.
Q. Plastics?
A. Yes.
Q. And essentially anything? I'm trying to think of something that you couldn't deposit.
A. In perspiration, any rough, gritty type surfaces, it would not actually be positive, but if it's in grease, oil -- oil, grease, blood. You could deposit on a rock and you could actually see it.
Q. Can you deposit on duct tape?

A. Yes, sir.
Q. On -- well, we already covered metals; right? Did you have, Mr. Hankerson, your various reports in front of you?
A. Yes, sir.
Q. And, if you can, I just want to make sure that -- I've got March 12 of '09. Is that your first one?
A. Lab number, sir?
Q. Oh, let's see. Lab number 09A0048, 1 in parentheses?
A. Yes, sir.
Q. Next one I've got June 1 of '09, same lab number, except ending -- no, I'm so sorry. 09A0115, two in parentheses.
A. Two in parentheses?
Q. Yes, sir.
A. Yes, sir.
Q. That's the next one chronologically that you got?
A. Yes.
Q. The next one I've got then is a date of July 10 of '09, lab number 09A0115, 3 in parentheses.
A. Yes, sir.
Q. September 10 is the next one I've got, same lab number.
A. Yes.
Q. I think you had two on September 10; is that right?
A. Yes, sir, I did.
Q. And is that all of your reports that you did?
A. Yes, sir.

Q. Okay. Let's go back to the first one, March 12 of '09. What you were -- now, in this stage of the process, the first process for the fingerprint examiner is to take a physical item and to determine whether there is a suitable print that you can use for identification later; right?
A. Can you repeat the question? I'm not sure what you're stating there.
Q. The first part of the process is trying to find an unknown print?
A. Yes, sir.
Q. And so in your March 12 report, you were submitted the Lexus bumper, this Nissan spare tire with attached duct tape, and then two small sections of the same duct tape; right?
A. Yes, sir.
Q. You found three prints, unknown prints; is that right?
A. Yes, sir.
Q. And they were all on the bumper; is that right?
A. Correct.
Q. But you analyzed the tire; correct?
A. Yes, sir.
Q. And the duct tape?
A. Yes, sir.
Q. And were there simply -- did you find any possible fingerprints? And it might be a good time to explain to the jury what are partial prints and so forth.

A. A partial print is a print if you have ridges, ridge areas showing, but that ridge area does not contain identifying features to make an identification. We call that a partial.
Q. And so a partial print may be just the side of my finger.
A. Yes, sir, just the tip edge, possibly.
Q. Got you.
A. It could be a tip, could be a side, it could be a portion of the center of your hand. Unless it contains enough identifying features for identification, it's partial.
Q. But there are some things that might contain prints, but they're just not suitable because, for instance, they may be smudged or something like that; right?
A. Yes, sir.
Q. Did you find any evidence of possible prints on either the tire or the duct tape?
A. The tire. The duct tape was negative. The only other --
Q. I'm so sorry. Pardon me.
A. The tire was the only other item of evidence that found any evidence of a latent print.
Q. Was it a partial?
A. Ridges, partial. A partial print, partial ridges.
Q. You did have some ridge characteristics?
A. No, just -- not individual ridges, just small tiny bits of the actual fingerprint was present.
Q. Okay. Okay. The next report, June 1 of '09, do you have

that with you?
A. Yes, sir.
Q. Now, in this report you were submitted the following exhibits: One green ammunition can containing 17 green cloth ammunition pouches, containing white plastic grenade holders; was that correct?
A. Yes, sir.
Q. Black plastic with duct tape that was wrapped around that green ammo can?
A. Yes, sir.
Q. A piece of duct tape, woods near suspect's house. Next to Exhibit 36, which would have been the green ammo can?
A. Yes, sir.
Q. The next exhibit is a torn piece of black plastic that was next to the green ammo can?
A. Yes, sir.
Q. And the next is a piece of duct tape, also next to the green ammo can.
A. Yes, sir.
Q. And the final one was a torn piece of black plastic which was next to the green ammo can?
A. Yes.
Q. Was it your understanding these were items that were seized either from in the suspect, Dr. Mann's, home or in the area of his neighborhood?

A. Upon the -- I did not know where they actually came from. The request was to process the evidence. The location of where it was obtained from was not an issue in terms of my processing.
Q. I understand. And let me try to be a little bit more artful in my question. You understood these items of evidence as to be suspect related?
A. Yes, sir.
Q. Okay. As opposed to the first things on your first report. That was crime scene related.
A. Yes, sir.
Q. So on these suspect-related items, you found also, I think, three latent prints that were suitable for comparison?
A. Yes, sir.
Q. And what were they found on?
A. The green ammo can, a latent print was developed. I can read my report if it would be -- for the jury, the results of the examination. The examination of Exhibit No. 36, which is the green ammunition can, with lot C07B6061250, containing 17 green cloth grenade ammo pouches containing white plastic grenade holders labeled 36-A through 36-Q, it was processed and there was one identifiable latent print found on that item.

Then the white plastic from the grenade holders was processed, and I found latent prints on two of those particular items that were suitable for identification.
Q. Okay. And so it's clear that what's happening --

MR. GORDON: Your Honor, I'm sorry. I think I need to object at this point because he's testifying about things that are not in evidence, and the jury has no idea what he's talking about. What I would ask the Court to do is maybe -- I don't mind bringing the evidence in now, but I'd like them to see what he's talking about rather than just have no idea what he's talking about. The problem is, we can't get into them all between 11 and one. So I guess I'd ask for a recess so we can bring the evidence in.

THE COURT: What's the response?

MR. HENDRIX: It's really however the Court wants me to do this. I see what Mr. Gordon is talking about is, they have not introduced what I'm for Mr. Hankerson's purposes calling suspect-related evidence.

MR. GORDON: Because really we're getting -- we're moving on to a separate part of the case the evidence hasn't been presented on yet, and our intent was to call Mr. Hankerson back to cover that.

MR. HENDRIX: If Mr. Hankerson's --

MR. GORDON: If you want to stipulate to it, but, I mean, if you all want to go there now, that's fine. But I would just prefer to have the evidence here so the jury can see what we're talking about.

MR. HENDRIX: And that's fine with me. If Mr. Hankerson is staying, and that was my main point. If

Mr. Hankerson is getting back to Atlanta, I need you to stick around to get through the second part of this thing.

THE COURT: I'll overrule the objection. You can ask him the questions. You know, he's on the stand. If you think it's relevant, you can ask him the questions. Overruled.

MR. HENDRIX: And I'll try to make it where it's understandable enough.

BY MR. HENDRIX:

Q. Your March 12, '09, your very first report, it's clear what's going on is, here is evidence from crime scene; correct?

A. Yes, sir.

Q. Part of that was duct tape; correct?

A. Yes, sir.

Q. In the second report, June 1 of '09, you're being submitted evidence that may be related to a suspect; right?

A. Yes, sir. It's being submitted for laboratory examination, whether it's suspect or victim, I'm -- in my instance, I'm neutral. I'm just processing.

Q. Understood. Understood. And part of the thing, suspect-related evidence that you've been submitted is duct tape; correct?

A. Yes, sir.

Q. So it's obvious that what's happening here, there is some relation between the duct tape from the crime scene and duct tape found in or around the suspect.

MR. GORDON: Your Honor, I'm going to object to his characterization of this as suspect evidence. It's two separate cases. In the lab, two separate cases, submitted to the lab as two separate cases. It's a mischaracterization of the evidence.

THE COURT: I don't know, Mr. Gordon, whether we've heard testimony either way about that issue.

MR. GORDON: And that's why my previous objection was, we're now confusing and mixing issues that have not been fully presented to the jury yet.

THE COURT: Overruled.

BY MR. HENDRIX:

Q. And so final question is, you've been submitted duct tape from a crime scene, duct tape from another source, did you find a fingerprint on anything that matches to make -- to say that's the same duct tape?

A. No, sir.

Q. Okay. And that's your report of July 10 of '09; is that right?

A. Yes, sir.

Q. All right. In that report at this point in time, now, you have actually been submitted or it has been submitted to you the known fingerprint of Dr. Randeep Mann; correct?

A. Yes, sir.

Q. So now you have some unknown fingerprints, now you have a known one, and you're wanting to compare to see if they're the

same.
A. Yes, sir.
Q. All right. And in that July 10 report, you have a -- the unknown fingerprints from the lid of an ammo can, from a white plastic grenade holder, and a second one from a white plastic grenade holder? These are three unknown fingerprints; correct?
A. Yes, sir.
Q. Did you compare Dr. Mann's fingerprints to those three unknowns?
A. I did.
Q. Did they match?
A. No, sir, they did not.
Q. And then the remainder of them, what you were talking about, are elimination prints? I'm sorry. To be more specific, look at your September 10, '09, reports.
A. Yes, sir.
Q. That's where you're submitted the known prints of various people, a Ryan Kimbell, a Warren Newman that you talked about.
A. Yes.
Q. And you're considering those elimination prints; right?
A. Yes, sir.
Q. And what you did find is, you did find in your comparison -- for instance, you were submitted the known prints of Warren Newman, an ATF agent?
A. Yes, sir.

Q. You compared those to the unknown and they matched.
A. Yes, sir.
Q. And that's the Lexus bumper; right?
A. Yes.
Q. The conclusion is, either the ATF agent is involved or you're doing this for elimination. More likely is, as you testified on direct, that was careless police work; correct?
A. I wouldn't characterize it as careless. I would say that it happens. It does happen. Normally when you process evidence or you handle evidence, you wear gloves so as not to leave your fingerprints on the evidence.
Q. And I specifically wanted to ask you about the word "careless" because that's what I wrote down you said in your direct examination, was that that's careless. If it's careless, why?
A. Standard procedures, you always wear gloves when you handle evidence.
Q. And particularly when you're looking for small amounts of evidence, right? Is there any plausible reason you can think of why a normally prudent agent would not have his gloves on at the site of the crime scene?
A. No, sir. If it was -- if it was placed -- I can't say at what point the fingerprints are actually placed on the bumper at the crime scene or at the point where it's being transferred or placed into the box. I don't know. I can only say at some

point in time, he did touch the bumper and it was identified.

MR. HENDRIX: I understand. Thank you, Mr. Hankerson.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. GORDON: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. GORDON:

Q. All right. Mr. Hankerson, I want to clarify a few things here. When the evidence that you testified about with me earlier, the bumper, the tire, the tape, that evidence was submitted to you on February 10 of 2009?

A. Yes, sir.

Q. And you assigned a lab number?

A. Yes, sir. Lab number was assigned to the evidence submitted to the laboratory.

Q. What was that lab number?

A. 09A0048, submission No. 1.

Q. And then on March 23 of 2009, you got a submission on a different case; correct?

A. Yes, sir. Evidence came into the laboratory, it was assigned the laboratory case No. 09A0115, and it was the second submission to the laboratory on that evidence.

Q. So it was not lumped in with this case; correct?

A. Correct.

Q. They were kept separate.

A. Separate.
Q. And when Mr. Hendrix was asking you about suspect evidence, do you know what that means?
A. No, sir. In my mind, the word "suspect" is what suspect is, a suspicion. I can't deem that suspect, I can't deem the other evidence suspect. It's all evidence submitted to the laboratory.
Q. And when the evidence came in on this separate case a few months later, tell us what evidence was submitted to you, please.
A. On what date, sir?
Q. I'm sorry, on -- I'm looking at your June 1 report, the exhibits you received on March 23, 2009.
A. Yes, the evidence that came to the laboratory on March 23, 2009, was the green ammunition can with lot No. LC07B6061, 250, containing 17 green cloth ammunition pouches, containing white plastic grenade holders labeled 36-A through 36-Q.

Exhibit No. 37 was a black plastic with duct tape which wrapped around Exhibit No. 36, being the ammunition can. It was a piece of duct tape/wood near suspect's house next to Exhibit 36, which is the green ammunition can.

Exhibit No. 41, lab No. -- Exhibit No. 41 was a torn piece of black plastic, and it says, slash, next to Exhibit 36, which is the green ammunition can.

Exhibit No. 42, lab No. Exhibit No. 42, was a piece of duct

tape, dash, next to Exhibit No. 36, which is the green ammunition can.

And Exhibit No. 43, on the lab report, is a torn piece of black plastic, dash, next to Exhibit No. 36, which was a green ammunition can.

Q. And to kind of simplify that for us, you've got an ammunition can with some grenade holders in it, and then you've got a bunch of plastic and tape.

A. Yes, sir.

Q. Were there any fingerprints, any latent prints found on the plastic and tape?

A. No, sir.

Q. On the ammunition can, were there any?

A. Yes, sir.

Q. What did you find on the ammunition can?

A. On the lead of the ammunition can, there was a latent print present, which was photographed and labeled Exhibit No. LP 36-1.

Q. Okay. And then earlier when I was asking you questions, I gave you all those fingerprint cards. You can compare the fingerprint cards on all those people to the fingerprints that you found on the ammo can.

A. Yes, I did.

Q. And there were no matches?

A. No matches found.

Q. Okay. And then on the grenade holders, what did you find?

A. On the grenade holders, there were two -- there were two latent prints developed, which was labeled LP36A-1 and LP36B-1. Two latent prints.
Q. And did you compare those prints to the fingerprint cards that you testified about earlier?
A. Yes, sir, I did.
Q. And there were no matches?
A. No matches found.
Q. Okay. Does that mean that none of the people whose prints were on the finger cards never touched the items that you reviewed?
A. That means that the fingerprint cards which were submitted that I compared did not match those prints. The prints that were developed did not belong to those individuals. Here again, as we stated earlier in my testimony, because you can touch an item and not always leave a fingerprint. I can't say other than it had been processed for fingerprints and I did not find any individual's fingerprints.
Q. Okay. And along the same lines, even if you find some fingerprints on some evidence, from those fingerprints, even if you have a match, you can't determine the intent of the person who touched it. Does that make sense? You can't tell if it's the good guy or the bad guy; right?
A. No, sir. I can only identify who the print belongs to.
Q. Okay. And they may be handling the evidence for an

innocent reason.
A. Yes, sir.
Q. And it may be for a criminal reason.
A. Correct.
Q. You just don't know.
A. I don't know.
Q. And from a fingerprint, can you tell when it was placed there?
A. No, sir. You cannot put a time determination. The example that we always give, we normally give, to put a time frame on a fingerprint would be, say, if it was a bank robbery and the night before the bank robbery, the cleanup crew came in and actually cleaned the counter, and the next morning, afternoon, or whenever, the suspects came in and touched the counter, you can only approximate at that time when the criminals left, but to put a latent print in line with evidence, you cannot do.

MR. GORDON: Thank you.

RECROSS-EXAMINATION

BY MR. HENDRIX:
Q. Let's clear up any confusion about the term "suspect." And it sounds like some of us are trying to make it an adjective and some of us are trying to make it a noun. As an adjective, is the evidence suspect, is what I heard you say on that redirect examination. For instance, I consider all of the evidence in this case suspect. I consider the government's case suspect.

MR. GORDON: Your Honor, we're beyond being ridiculous at this point.

THE COURT: That's sustained. That's sustained.

BY MR. HENDRIX:

Q. If you will look now at your report --

MR. GORDON: Your Honor, objection to sidebar comments.

THE COURT: That's sustained.

MR. GORDON: Okay. Sorry. I didn't hear you. Thank you.

BY MR. HENDRIX:

Q. If you will look at your report of June 1 of 2009.

A. Case number, sir?

Q. 09A0115.

A. Yes.

Q. Item 40, piece of duct tape, and you wrote down "woods near suspect's home."

A. Yes, sir.

Q. Understand the difference that I'm trying to make?

A. Yes, sir. This was -- yes, sir. This is how the evidence was submitted to the laboratory, and the laboratory transmittal is listed as "piece of tape," dash, "woods near suspect's house," dash, "Exhibit No. 36."

Q. Yeah, evidence relating to a suspect, as I'd said before, right?

A. That's how it was submitted to the laboratory.
Q. Understood. Now, you were asked about are these -- there are different cases, and if I understand what you and Mr. Gordon were talking about, your March 12, '09, report that involves this bumper, this tire, that sort of stuff, that's one case.
A. Yes, sir.
Q. And you're saying that that second report that you and I were just talking about that involves evidence relating to a suspect, that's a different case?
A. That's a different case number.
Q. But you're here to testify about both of them, and this is one case.
A. Yes, sir.
Q. Okay. Finally, Mr. Gordon asked you, if you can't find a fingerprint, does that mean that the person didn't touch it?
A. That is correct. You can touch an item and not leave a fingerprint. I cannot say -- only way I can say an individual touched an item is to actually identify his prints on the evidence.
Q. Isn't it more accurate to say that the absence of that print simply means you can't prove the person touched it?
A. Could you rephrase that? Because I don't want to -- I want to answer in a very correct way.
Q. Sure. I understood Mr. Gordon to try to say that to you, that just because you don't find --

MR. GORDON: Your Honor, again, I'm going to object to the sidebar.

THE COURT: I'll sustain the objection. Rephrase the question.

MR. HENDRIX: Sure.

BY MR. HENDRIX:

Q. The question that I heard that was asked of you on redirect examination was, just because you can't find a fingerprint on an item of evidence, does that mean that person or a person didn't touch it?

A. That is correct.

Q. Okay. Does that -- is another way to say that exact same thing is, the absence of that fingerprint means you cannot prove that the person did or did not touch it?

A. Correct. Yes, sir.

MR. HENDRIX: Okay. That's all I've got, Judge.

THE COURT: Anything final, Mr. Gordon?

MR. GORDON: No, your Honor.

THE COURT: All right. You can stand down, Mr. Hankerson.

THE WITNESS: Thank you.

THE COURT: Do we have another witness that we can get started with before lunch?

MR. GORDON: We have.

MS. CASSINELLI COUCH: Your Honor, may we approach?

THE COURT: Yes.

[Bench conference reported as follows:]

MS. CASSINELLI COUCH: I bet y'all are expecting this. We need to renew our motion for severance based on the comments of Mr. Gordon and Mr. Hendrix with that witness, the confusion of the evidence in the two cases. I think we just need to renew our motion.

MS. WHATLEY: In answer to your question, do we have another witness present, number one, we have another stipulation to be read to the jury. Number two, we do have another witness in the witness room, and we are ready to bring her in. However, I think the defense has some objections.

MS. CASSINELLI COUCH: Yes, your Honor. We've just been provided Ms. Whatley's -- let me finish. Ms. Whatley's set of exhibits that she intends to have this witness identify. I think she wants to get into some of them but wasn't going to introduce them through this witness. It's Medical Board information and it's large. I've just flipped through it during this witness and we have numerous objections to hearsay, I mean all kinds of things, and we'd like some time to work through it.

THE COURT: Generally hearsay objections, what would they be?

MR. HENDRIX: You mind if I take this one over?

MS. CASSINELLI COUCH: I just made a list of everything. Do you want it?

THE COURT: We don't have to go through every one. I just want to get my mind around what we're talking about.

MR. HENDRIX: All of the information that's contained in this binder, I've not looked at it yet, but I know she's given that to us. It's now coming in as this is what the government intends to introduce -- now, correct me if I'm wrong -- part of a larger volume of information that we've been given access to. This has to do with the Medical Board stuff, Judge, and my view is, I think that given the time, us and the government can maybe sit down and we can express our views of is this admissible or not admissible, see if we can come to some agreement or at least identify what we're going to have to bring to you as the dispute. It's a bunch of material. It's just going to take some time.

THE COURT: Here's what I would suggest. It's almost 12 o'clock. I would rather you present the objections to me before the witness gets on the stand so that every time --

MR. HENDRIX: Right.

THE COURT: -- that the government attempts to have something entered into the record, that there's an objection, if we can work through as much of that as possible, that would be great. Or if I let the parties make a record on it, I'll rule on whether I'm going to admit it or not, and then that way when the witness is sitting on the stand and the evidence is coming in, we'll at least know whether I'm going to let it in.

MR. HENDRIX: Judge, on the time frame of that, here are my thoughts: I think that this is going to be a bit of a time-consuming process for us, and, again, you know what I'm talking about, it's all this Medical Board stuff. We have questions of are we dealing with just the admissibility of orders of discipline, are you able to get in the actual allegations, most of which he was found not guilty of, I guess, is one way to say it. Are we going to get into the underlying allegations, all that. It's sort of a complicated issue, and my view of it is for us to be able to work through it and be able to present it to you in a form for you to rule is going to -- it's going to take some time.

THE COURT: So plow on until early afternoon and hold that witness until either tomorrow morning or later? Do you have anybody else available?

MS. WHATLEY: The other witnesses I have available are Medical Board witnesses. I have -- and just so everybody knows where we're going, the next witness that we have available is Peggy Cryer. Peggy Cryer is the executive secretary of the Arkansas State Medical Board. She is for all intents and purposes the custodian of records for all of these records and can authenticate all of them as having been kept by the Medical Board. I have Nell Smith, who is a reporter for the *Arkansas Democrat-Gazette* who attended these Medical Board meetings, and I have the two court reporters who transcribed the two large

hearings which took place before the Medical Board one in 2003, one in 2004. I'm sorry. 2006. Those are my next four witnesses, and I'm not sure who else is here.

MR. HENDRIX: Judge, let me try to give you a flavor of this. Let me say two things --

THE COURT: Are you asking for an early day?

MR. HENDRIX: I'm saying let's knock off for the rest of the afternoon. Let me give you a reason why, and I'll put it in context. For instance, on the reporter from the *Democrat-Gazette* these two issues come in my mind: In discovery we were given the newspaper clippings, which is obviously hearsay. It's also a witness who is going to testify about what Dr. Pierce said, which sounds like hearsay. So my point is, it creates so many evidentiary issues for us to wade through.

MS. CASSINELLI COUCH: Separately, but both of those witnesses could create major issues.

MS. WHATLEY: Your Honor, we are a half a day ahead. The other thing is, I was handed a note or told at the last break that one witness that I was not anticipating to put on the stand until Monday has to go on tomorrow because he's going to be out of town, and it's the officer that went to the scene to find the ammo cans. So if we push all of this behind a half a day, I'm not going to be able to get that witness on the stand before he's going to be out of town, and we all need that evidence in.

THE COURT: He's from West Memphis?

MS. WHATLEY: He's in Russellville.

THE COURT: Is he somebody who we can have come over this afternoon? And maybe --

MS. WHATLEY: Maybe. But part of my problem is, I need to be with -- arguing with them at the same time as putting a witness on.

THE COURT: What I was thinking was, if we could call him over, have him come over after lunch for one witness, then we could knock off, at least we'd have him out of the way.

MS. WHATLEY: Your Honor, may I speak with Mr. Gordon for a minute just to kind of see where -- because since we are so far ahead, we're also pulling witnesses in. I'm just trying to make sure --

THE COURT: What I'm saying is, I understand Mr. Hendrix says we're a half a day ahead, but that's not how this works.

MS. WHATLEY: I understand. I'm just trying to see which witnesses --

THE COURT: We never really get ahead. There's always going to be something that's going to push us back. So we're not really a half a day ahead.

MS. WHATLEY: Let me phrase it like this: With witnesses coming in at certain times, what we were expecting, we had called a whole lot of witnesses and told them go ahead and

get here. I just need to go talk to Mr. Gordon and find out of all who we said go ahead and get here who is here that we could put on this afternoon if necessary.

THE COURT: That's fine.

MS. WHATLEY: So if I may have a moment.

(Counsel conferring.)

MS. WHATLEY: Your Honor, the first thing I'd like to say is the pieces of evidence that they are objecting, that they anticipate objecting to and want this recess for, they have had since February of this year, if not earlier than that, but when we issued the second superseding indictment, I started discovery all over again to make sure that we all were on the same page. So they've had it for a while.

Number two, we set up our case in such a way so it made sense when the evidence was coming in. The Medical Board stuff is what has to come in next.

THE COURT: Okay. That's fine.

MR. HENDRIX: And let me just make this observation: It's the traditional federal case, you get 50,000 documents knowing that the government is going to introduce 50 and you have to wade through all of them. I assumed that most everything that's in that file is not admissible and wouldn't even try to be introduced.

THE COURT: Let's do this: Let's take -- I'm going to give you a lunch break and then two hours to go through and make

your objections. We'll come back in at three o'clock. I'll tell the jury to be back here at 3:15, or 3:30, and we can get another two hours in this afternoon. And that way your witnesses who are here, if we can get them on and get them off, we can. But I'll give you a chance to go through the documents and see which ones you're going to object to and make a record on them.

MR. HENDRIX: Okay.

THE COURT: Okay.

MR. GORDON: Are we going to do the stipulation before we break?

THE COURT: We can.

[Continuing in open court:]

THE COURT: Mr. Gordon?

MR. GORDON: Your Honor, at this time we'd like to present another stipulation to the jury.

Stipulation of facts: The United States Attorney for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person and through undersigned counsel, hereby agree and stipulate as follows:

Paragraph 1. The following pieces of evidence collected from 411 North Avalon in West Memphis, Arkansas, were submitted to the Bureau of Alcohol, Tobacco, Firearms, and Explosives forensics science laboratory for DNA testing. A, a band-aid, Government Exhibit 7. B, a gauze pad, Government Exhibit 17.

C, swabs from a Nissan spare tire, Government Exhibit 14. Swabs from duct tape pieces, Government Exhibit 47.

Swab taken from the mouth of Dr. Trent Pierce was also submitted to the laboratory for DNA testing.

Paragraph 3. Using standard DNA testing methods, the laboratory obtained DNA profiles from the band-aid, Government Exhibit 7, the gauze pad, Government Exhibit 17, and the swabs from the duct tape pieces, Government Exhibit 47. These DNA profiles were all found to be consistent with the DNA profile of Dr. Trent Pierce.

Paragraph 4. No DNA profile was obtained from the swabs of the Nissan spare tire, Government Exhibit 14.

Signed by myself, Dr. Mann, Mr. Lassiter, Mrs. Mann, and Mr. Dudley.

THE COURT: Ladies and gentlemen, the government and the defendants have stipulated, that is, they have agreed, that certain facts are as counsel has just stated. You must, therefore, treat those facts as having been proved.

Now, we're going to take an extended recess. I'm not going to let you go for the day, but I am going to let you go until 3:30. I know for those who live here in Little Rock and in the immediate vicinity, that's great because you can go home, but for those who live in Russellville and other places, Lonoke or whatnot, it just makes you have to hang around a little longer. But we have some business we need to take up dealing with

exhibits and witnesses and everything else. Instead of leaving you sitting over there and having us up here talking about it, I'd rather let you go and have you just come back. So we are going to recess until 3:30. I'll give you the same admonition. We're not going to stay late. We're going to come back at 3:30, stay until five, 5:30 as we've been doing.

Same admonition. Don't talk about the case. Don't start talking about the case with your fellow jurors or with anybody else. Don't read anything about the case. If somebody is standing around you talking about it, please leave.

Final thing, if you see any of the lawyers, parties, witnesses, in the hallway, don't talk to them. We want this process to not only be fair, we want it to appear to be fair.

We will be in recess, at least as far as the jury is concerned, until three-thirty. For the lawyers, we'll come back and meet at the time we discussed at the bench.

All right.

(Recess at 12:07 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: March 9, 2011

/s/ Christa R. Newburg, RDR, CRR, CCR
United States Court Reporter

(Continuing at 3:03 p.m.; jury not present.)

THE COURT: Y'all ready?

MR. HENDRIX: The spotlight's on me now?

THE COURT: Yes. I believe you had some objections you wanted to make.

MR. HENDRIX: We do, Your Honor, but I'm going to need some assistance. Judge, by way of introduction, here's what we're doing. We've sat down and looked at all these documents. Many we agree to, and Ms. Whatley will go over that with you, and then we'll get to the ones that are subject to dispute.

THE COURT: The ones you say you agree to, are those ones we can receive now or are they ones that you're going to want to make a record on but you believe I will probably receive --

MR. HENDRIX: I think the vast majority can be introduced now.

MS. WHATLEY: We have agreed to 71-A and 71-B, Government's Exhibits 72, 73, 74, 75, 76, 77, 78-A through -V, as in Victor, 79-A through -E, 80, 81-A, 81-B, and 82. On page 7 of the exhibit list, we have agreed to 82-C, 82-D, 82-E1, -E2, and -E3; 82-F, 82-J1, J2, 82-K, 83-A1 through -A4, 83-B1 and -B2. On page 8, we have agreed to 84-A, -B, and -C, 85-A, -B, and -C, 86-A, -B, and -C, 87-A1, 87-A2, and 87-B. And on 87-B, Your Honor, there's a typo on the exhibit list. 87-B should read 12-11-2008 letter from ASMB. Those are the exhibits which

we intend to introduce through Peggy Cryer, which the United States and the defense agree to their introduction. The remaining exhibits the defendant has an objection.

THE COURT: Okay.

(Government Exhibits 71-A, 71-B, 72, 73, 74, 75, 76, 77, 78-A through 78-V, 79-A through 79-E, 80, 81-A, 81-B, 82, 82-C, 82-D, 82-E1, 82-E2, 82-E3, 82-F, 82-J1, 82-J2, 82-K, 83-A1 through 83-A4, 83-B1, 83-B2, 84-A, 84-B, 84-C, 85-A, 85-B, 85-C, 86-A, 86-B, 86-C, 87-A1, 87-A2, 87-B received in evidence.)

MR. HENDRIX: And let me try to figure out what's the most effective way to do this.

MS. WHATLEY: The first exhibit that the defense objects to is Government's Exhibit 82-A.

MR. HENDRIX: Thank you.

Judge, that exhibit -- again, it's a little bit awkward because we don't all have enough copies of this.

If you don't mind me taking your binder and I can sort of take an individual out and show it to the Judge. Is that okay with you?

MS. WHATLEY: The Judge has a copy.

MR. HENDRIX: Only we don't. Okay.

82-A, do you have that one, Your Honor?

MS. WHATLEY: We can present another copy. I was just letting him know --

THE COURT: No, that's fine. 82-A.

MR. HENDRIX: And let me back up, because a little explanation will help, I think. A lot, if not the majority of these documents, the government's purpose -- and the ones we didn't object to go to the government's theory of motive in this case, and it's the history of Dr. Mann before the board. When we get to 82-A, that's the emergency order of suspension where they suspend his license. In that, Judge, it contains the allegations that were leveled against Dr. Mann -- is that right? Yeah. Yeah. These are simply the allegations that were made against Dr. Mann. Our ultimate view and the ultimate argument is going to be that that does not go to his motive under the government's theory. What is relevant to the government's theory of motive is the act, the disciplinary action itself. So we would object then to, for instance, this emergency order of suspension, which says we're suspending you right now because, and we list all these allegations.

THE COURT: What is the response on that?

MS. WHATLEY: First, Your Honor, we're not just alleging motive dealing with the fact that he was disciplined. It's the entire action that takes place before the board. The first action that takes place before the board is what is contained in Government's Exhibit 82-A, the emergency order of suspension that was issued in 2003, if I am remembering correctly. I forget the exact date.

MR. HENDRIX: That's right.

MS. WHATLEY: In that emergency order of suspension, he loses his license for a period of time. We are not offering the emergency order of suspension for the truth of the matter asserted. We're offering it to show that there was an action that took place before the board. Then the next few items are the investigative reports that go with that emergency order of suspension. We're not offering those to show these are all the horrible, evil, bad things that happened. It's to show this is what came before the board, this is what the board had, and then the board took action based on this, and that action was the emergency order of suspension.

THE COURT: If you have the emergency order of suspension that outlines what the basis for the order was, why do you need the investigative report that supports the conclusion or the facts as set forth in the emergency order?

MS. WHATLEY: What I was planning to highlight with the witness was the fact that the board is the one that requested the investigative report, because the Department of Health cannot do an investigation without being authorized to do so by the board.

THE COURT: Okay. And so it's in proving motive, showing that Dr. Mann was upset at the fact that they ordered the investigation, and so you have to show --

MS. WHATLEY: That they ordered the investigation, that they took action based on the investigation, that he was

brought before the board and disciplined because of the investigation.

MR. HENDRIX: And, Judge, we're trying to put our hands on this, and Ms. Whatley may be able to help us. I think that there was an original letter from maybe '01. It's not contained in here. I think it's from Ms. Cryer that begins the whole investigative process. I want to say it says something like, you know, based on complaints we've gotten from Russellville P.D., Pope County sheriff, all this, we're starting an investigation. And we're fine with that.

THE COURT: Let me ask the lawyers this. And I haven't looked at every exhibit that's been given to me. But how do we assure that the jury gets the information necessary to be able to make a determination as to whether there was motive while at the same time trying to assure they're not getting information that will make them say I believe he did, he overprescribed or did this, and, therefore, I believe he could do that? You understand what I'm saying? And if all that information is found in the same documents, how do we deal with it? See, I think the jury has to be able to look at all of the information and decide whether there was motive.

MR. HENDRIX: Right.

THE COURT: At the same time, I wouldn't want them to get information that the only purpose it serves is to make them think that Dr. Mann was a bad doctor and a bad man, as far as

his legal practice -- I mean medical practice is concerned.

MS. WHATLEY: And, Your Honor, based on the 2003 investigative report, the United States is not going to allege that Dr. Mann is a bad person or anything like that. And I think that the jury could be instructed that they can't consider that as to whether or not he's guilty of the offenses for which he is charged currently.

THE COURT: Isn't then the appropriate way to handle that is to give them an instruction, when we instruct them at the end, that you cannot consider these documents for the proposition that Dr. Mann may have overprescribed or done whatever he's accused of doing?

MR. HENDRIX: On, for instance, the emergency order of suspension that lists in a formal manner the allegations, I would think so. And Your Honor has hit the nail on the head. The more important stuff for us are the underlying investigative files that are contained here, that they contain alleged witness statements, some, I believe I'm accurately stating, are incomplete, they're partially transcribed, just weirdness going on in there that's just -- it's an investigator's notes is what it is. The result is that many of those allegations were ultimately unfounded by the board, but we're putting in front of that jury all of these allegations of patient death and sex with patients and all these things that end up being unfounded, but they're getting put in front of the jury. And in our view it is

simply too prejudicial when a more efficient manner is, in order to let the government prove motive, yeah, okay, here was an investigation, his motive to do this was he was being investigated early on, he got disciplined for this, later on he got disciplined for that.

MS. WHATLEY: But, Your Honor, at the same time I think it is important for the jury to understand that there were many allegations against Dr. Mann, and that Dr. Mann was fighting many allegations pretty much consistently from 2003 through 2006.

THE COURT: Let me ask you this, Ms. Whatley. Say I'm a judge and I have people come into the courtroom who are angry at me because they feel they're not getting justice, and Mr. Hendrix has a problem and they want to link it back to me. And it's shown that Mr. Hendrix filed a complaint against me and was coming after me, or something. What do all the other people who came to Mr. Hendrix with a problem, why would those people have to come before the jury? I mean, why do the underlying complaints from the individuals who are writing up these complaints, why does that have to go before the jury to show that Dr. Mann may have had a motive to blow up Dr. Pierce? I don't think the fact that you have -- if you had a thousand patients who were filing complaints with the medical board, I don't think that would necessarily create a motive for Dr. Mann to then go after Dr. Pierce. So why do we need that

information? And my analogy is totally off. I probably should have used the ethics board and all that. But why do we need all that information?

MS. WHATLEY: But, Your Honor, in these documents themselves we have not included all of the attachments to show the patient files and patient complaints. It's just the investigative -- it's just -- it's the report -- this is the report itself that goes to the medical board, that the medical board then looks at it and says, based on this report, we're issuing an emergency order of suspension against this doctor and we're calling him before the medical board because we have to have a full-blown hearing on this.

MR. HENDRIX: In other words, what would be analogous in our business is it's the cop's notes, right, which he's the investigator for the board. He's doing this, again, not as a neutral decision-maker, a neutral fact-finder, but as an advocate and an investigator, so naturally that report is certainly going to be skewed, one would assume, and, therefore, inherently unreliable. For instance, it is why a police report is never admissible under the business records exception, because unlike other business records, it's not neutral, it doesn't have reliability because the officer is an advocate in that game. And so, again, it puts these investigator's allegations out there for the jury to believe or disbelieve.

THE COURT: Let me take a look at it.

MR. HENDRIX: It adds that additional layer. If it's out there in front of the jury, you don't know whether a jury is going to go, you know, the board didn't find him guilty of such and such that was alleged, but, you know, was the board wrong? Particularly when the orders are generally settlements.

THE COURT: You mentioned something earlier, Mr. Hendrix. You said that some of the allegations were unfounded. Now, were they unfounded in the investigative report or were they unfounded at some point later?

MR. HENDRIX: Only through the hearing process. And so you have, for instance, a list of we allege the medical board, we allege, based on our investigator's investigation, the following things that you did wrong. Then they go to hearings in '03 and '04, in an adversarial testing process, and the majority of them are weeded out and go, we're not finding you guilty of this allegation or this one or this one, but we do think you violated this one or these two.

THE COURT: Isn't that something you can bring out on cross-examination, though?

MR. HENDRIX: Well, therein lies the problem.

THE COURT: There are all these allegations, but isn't it true that there were only one or two allegations that were unsubstantiated?

MR. HENDRIX: And that's interesting, because then it becomes how persuasive is that to the jury, particularly when

they see that the formal disciplinary orders are actually settlements. Then in order to convince the jury that, in fact, the board got it right, do we need to sit here and then retry these accusations? See what I'm saying? In which case then we're into two, three, four-month long -- I mean, we're trying a medical malpractice case.

THE COURT: Essentially what we're doing here is the prejudicial effect outweighs the probative value. That's where we are. These are admissible as business records. They can only be something that would come in normally. But your position, Mr. Hendrix, I know you're saying that they wouldn't come in, hearsay, but they're probably -- you can probably lay a foundation for these and show they're kept in the normal course of business and that type of thing, and that they were not created for the purpose of this trial because they could not have foreseen that this type of trial would take place. The question is, if I let it in, is the prejudice so heavy that it outweighs the probative value of the investigative report?

MR. HENDRIX: Yes.

THE COURT: And that's what I mean.

Ms. Whatley?

MS. WHATLEY: Actually, they brought it out in opening that there were these allegations, they were fought out, they were battled, and ultimately ended up in 2003 there was an order, and then in 2004 there was an agreement between the

parties that it was just regulation No. 7. And I have those records as well that we're going to bring out, and I think that is a proper basis of cross-examination. And --

THE COURT: Here's what I'll do. I think we have to deal -- if I let this in, this is just background information for how we got here. I think we have to deal with it in a jury instruction, and I think we have to tell the jury that they can't base their opinion in any way on the substance of what's contained in these reports, because that's not the reason you're introducing it anyway, the substance of the report. You're introducing it to show there's motive.

MS. WHATLEY: Correct, that he was being brought before the board on a regular basis and having to fight allegations.

THE COURT: Yeah. I think that's the way we'll have to deal with it. I'll let you make more of a record on it, but I'm going to admit it otherwise.

(Government Exhibit 82-A received in evidence.)

MR. HENDRIX: Somebody wanted to have a word with me, I think.

THE COURT: Yes. Mr. Gordon was coming up and saying something to you, and I see there are others that want to get involved, on the defense side. I don't mind you making a record, I don't mind you participating, Mr. Gordon. Now, when the jury's here and we are trying to work through it

efficiently, yes. But if Ms. Couch needs to make a point, or if Mr. Dudley needs to make a point, we can make a record on that.

MR. HENDRIX: I think Tim does.

MR. DUDLEY: Your Honor, the records are hearsay. And I think the government argued that they're business records, but there is a specific rule that applies to governmental records, and that's exception No. (8) to Rule 803, and it specifically excludes investigative reports of a governmental agency, made by or for a governmental agency. So I don't know how they get around the hearsay rule.

MS. WHATLEY: Your Honor, I didn't argue they were business records. I argued they were not hearsay because they're not offered for the truth of the matter asserted. I think we're mixing apples and oranges at that point in time.

THE COURT: I think I said business records.

MR. HENDRIX: Judge, where we're going with this -- I don't mean to make it a free-for-all. But when we met with the government, the very first question I asked was, "As the proponent of this evidence, what is your theory of admissibility?", and the government's position was "I'm not offering this for the truth of the matter asserted. I am, rather, offering it as part of motive."

Right?

MS. WHATLEY: Yes.

MR. HENDRIX: And that's a tangled, tangled legal

analysis. And, I mean, we all know that. I call my brother in London, he says it's raining. Well, if that hearsay statement is being offered to prove that it was raining in London, it's hearsay. If it's being offered to prove that, you know, for some other reason, that he pulled off, got his umbrella, then it's not being offered for the truth. And that's where it gets sort of complicated in this case. I mean, again, I can see the orders of discipline not being offered for the truth of the matter asserted. But when we get to the investigative files of a partisan, an investigator, which contained layer after layer of hearsay -- right? The investigative report is one piece of hearsay. Okay? But then it contains sublevels of hearsay; investigators saying I heard this, I heard that, I heard this. And that's where it gets really conceptually difficult to wrap your mind around of what's being offered for the truth and what's really being offered, to go back to the fundamental proposition, just for prejudicial effect to sway a jury to convict the man on emotion and not on objective facts when these are not, in fact, objective facts.

MS. WHATLEY: Your Honor, the investigative reports are offered to explain why the board then took action that it took. Another thing is, especially the 2003, they do, they fall by the wayside, and by June of 2004, we only have one thing that's standing, and it's you didn't go get a second opinion before you prescribed ADHD medicine to a patient, as required by

regulation 7. Then soon thereafter, more investigative reports start, more emergency orders of suspension issue, and it kind of goes to his motive of the board's picking on me, and we ultimately -- the government's argument is, we ultimately get to where we are today.

MR. HENDRIX: And I think through that analogy of "I'm mad -- I'm mad at you, Judge, for what you've done to me," right, "not for what you didn't do to me." And that's essentially what we're saying here, those allegations for which he was disciplined can make a person mad and vindictive, but allegations that he was found not guilty of, you go, whoo-hoo, I'm happy. Did I say "whoo-hoo" for the record? We can strike that. You see what I'm saying? That doesn't make me mad. I'm happy because I got acquitted. I'm only mad for the conviction, and that's what makes me mad.

THE COURT: I think this is probably something that makes it more difficult, but I think it's a little more nuance than what we're saying. I think the point is that the motive would be being mad because I'm being investigated, being mad because I'm sanctioned. I don't think you necessarily have to go that next step and show all the details leading to why he was investigated to prove that point for motive purposes. I think once you start going beyond the emergency order of suspension, we can end up having another trial on what was filed against him and what happened to it, when all you need to show is he was

being investigated and he was very upset by it. I guess we can then go and say -- because I don't think we're going to hear -- well, I'm not going to get into what the defense's theory would end up being. But I don't think you're going to get into a whole lot of evidence about the underlying facts that caused the investigation. Just the investigation itself. And doesn't the emergency order of suspension cover the waterfront on that? Do you really need the information in the record that goes behind it to show why it was issued in the first place?

Mr. Gordon, I see you looking. If you want to participate, you can.

MR. GORDON: Karen's doing fine, Judge.

THE COURT: Every time I think I'm going down one road, I start thinking about it again and get pulled back. My initial thought was the emergency order of suspension was admissible and I would overrule the objection on the admissibility of the emergency order. But then the investigator's notes that led to the emergency order, I don't know that we necessarily need that. I don't know if that advances the case.

MS. WHATLEY: Would the United States be allowed to bring up that there was an investigation that was begun at the board's request?

THE COURT: Yes. I mean, because you would have to be able to show why did they issue the emergency order, because the

investigation showed it. But I think all the notes and everything by the investigator who went out and did the work, I don't know that that's relevant. As a matter of fact, I think it's irrelevant.

MS. WHATLEY: May I have a moment, Your Honor?

THE COURT: Yes. While you're powwowing, I'm going to call my clerks over here and we're going to powwow.

(Court confers with law clerks.)

MS. WHATLEY: Mr. Gordon, did you have something you wanted to say?

MR. GORDON: Sometimes it's best to remain silent. The one thing I just wanted to add to the conversation -- and I don't think it's going to matter about the decision that I think the parties are going to reach here. But just to clarify for the record, the motive is not simply what happened, what the board did to him, but it's broader than that. It's a perceived harassment by the board for bringing up all these frivolous, ticky-tacky allegations. So it's not just what they did, but it's for the harassment.

THE COURT: I understand. The issue I was asking about earlier is, you can have testimony that they were investigating him, and the emergency order is based on an investigation, so it's implicit in the order. To then go behind the order and go to the investigator's files to show the leads that they followed and all that, I just don't think in good

conscience I can find that that's relevant, and so --

MR. GORDON: I don't know enough about what they're fighting about, so that's why I tried to stay out of it.

THE COURT: I understand.

MS. WHATLEY: I left him in the dark, Your Honor.

So, just to make sure I know, because I'm pulling stuff as we're doing this so it doesn't get with the witness, 82-A, the emergency order of suspension, will be admitted; 82-B, -B1, and -B2 are not admitted.

THE COURT: That's right.

MS. WHATLEY: Okay. But I am allowed to say the emergency order of suspension was based on an investigative report which began based on the board requesting it?

THE COURT: Yes.

MS. WHATLEY: Okay.

THE COURT: Does not the emergency order of suspension have any language in it that deals with the fact that there was an investigation? I'm sure it does.

MS. WHATLEY: It sets forth the violations.

THE COURT: Okay.

MS. WHATLEY: So that takes us, I believe, Your Honor, to 82-G1, -G2, and -G3, which I will also remove.

Then that brings us to the pain committee review -- let me explain what happened at this one, just to make the record, Your Honor. After the investigative report, that is 82-G1, that was

referred to the pain committee, which is a subcommittee of the medical board, and then they reviewed that, in addition to 82-G2 -- I think they reviewed that and then came up with this doctor needs to be brought back before the board. Then there was an emergency order of suspension, an amendment to that based on -G3 -- and I know this is backwards, but this is how it was explained to me. 82-I1 is based on 82-G3. 82-I2 is based on 82-G2. I understand that -G1, -G2, and -G3 would not be admitted.

The question takes us to 82-H and whether or not the committee's determination that he needed to be brought before the medical board as expeditiously as possible --

THE COURT: Let me hear from the defense counsel on that.

MR. HENDRIX: That's the way I understand it, that then it goes to a subcommittee, pain management committee, and then they go, we're kicking it to the full board. And that's part of the history, and I really don't have a problem with it. What I do, Your Honor, if you look at 82-H, that sentence in the second paragraph, the last clause is, I guess, "The pain committee feels Dr. Mann creates a significant risk to the community," and then it has these supporting documents from the pain management committee, mainly going, we just can't read the guy's records, but at least -- a couple of them saying a little bit more volatile sort of thing. I guess my position would be,

those would be accusations also unfounded because they didn't make any determination. They just kicked the determination up to the board.

THE COURT: I'll overrule you on that one. We'll receive those.

MS. WHATLEY: So then based on the previous -- so that 82-H is admitted, and 82-I1 and -I2 would also be admitted?

THE COURT: Yes.

(Government Exhibits 82-H, 82-I1, and 82-I2 received in evidence.)

MS. WHATLEY: Which takes us to 82-L. This is the consent order which was entered into by agreement of the parties after the July 2006 disciplinary hearing before the Arkansas State Medical Board. It's signed off on by all parties, including Dr. Mann. Dr. Mann does sign this, Your Honor.

MR. HENDRIX: And, Judge, here's the objection, but it's a fait accompli. The only objection is because it contains the list of allegations in it. Your Honor has already let the emergency orders in, so I understand.

THE COURT: Just for the record, I'll overrule you on that.

(Government Exhibit 82-L received in evidence.)

MS. WHATLEY: I know 82-M is next. That was not coming in through this witness anyway, so we're not dealing with that exhibit at the moment.

THE COURT: Let's deal with that when -- no, no, not now. Let's deal with it -- when do you believe that witness is coming? Tomorrow morning?

MS. WHATLEY: No, Your Honor, that would be next week.

THE COURT: Let's just deal with it as we get closer to it.

MS. WHATLEY: All right. That brings us to 83-C, which is a complaint of R. S. Mann versus a whole lot of people associated with the medical board.

THE COURT: Is there an objection to the complaint?

MR. HENDRIX: Not the complaint, Judge. Our objection, the attachments have all of that information in there, but if Ms. Whatley and I can look through it real quick in light of the Court's previous ruling, I think it's going to have the emergency order of suspension and all that.

MS. WHATLEY: I don't see any investigative -- but why don't you glance through it. I haven't in a while.

(Counsel confer.)

MS. WHATLEY: 83-C, all of the attachments to 83-C, with the exception of one that's attached to the back of another attachment, are things already introduced, so it's the government's position that the whole thing should stay in because it's not going to make sense if five pages are missing.

MR. HENDRIX: Oh, okay. I was -- I thought you were going to say just let the complaint in since the attachments are

already in.

THE COURT: I have no objection to letting them in as attached to the complaint, but what is the other document? Is there anything -- is there an objection to the document that's attached to the complaint that has not already been ruled on?

MR. HENDRIX: I'm sorry?

THE COURT: Is there an objection to the document that's attached to the complaint that has not already been ruled on?

MR. HENDRIX: There's one investigative report that's listed as an attachment.

MS. CASSINELLI COUCH: In the complaint, it's really long. All of the other stuff is already in there.

MS. WHATLEY: Everything else is already in and it's kind of buried in the middle. And trust me, I'm not highlighting it.

THE COURT: If there's an objection to it -- is there an objection to it? You say it's an investigative report?

MR. HENDRIX: Other than our previous -- well, no.

THE COURT: Where is it attached?

MS. WHATLEY: In 83-C, page 30 of 51 --

THE COURT: Let me take a look at it.

MS. WHATLEY: -- through 35 of 51, I believe, Your Honor. Through 34 of 51. I'm sorry.

THE COURT: Here's what I'm going to do. From -- just

take out pages 30, 31, 32, 33, 34.

MS. WHATLEY: Okay.

THE COURT: That is the investigation of the state trooper.

MS. WHATLEY: Okay.

THE COURT: That way it is the same documents that have already been introduced and it will be consistent.

MS. WHATLEY: Okay.

MR. HENDRIX: That's just an exercise in trying to find out why civil lawyers do what civil lawyers do. So much of it doesn't make sense.

MS. WHATLEY: Okay. I have removed those pages from the exhibit that will go to the jury, Your Honor. That brings us to 88-A through 90-C2.

THE COURT: Okay.

(Government Exhibit 83-C received in evidence.)

MR. HENDRIX: And, Judge, our position -- we've talked to the government about this and understand that the government sees this relevant to the interstate commerce clause element, I guess it is both Counts 1 and 2. That does not seem readily apparent to us. And I guess it's for a later determination of whether that information actually is relevant to the interstate commerce element. However Your Honor feels best to deal with it. Conditionally admit it, but subject to pulling it back if it ends up not being relevant to the commerce clause. I can

tell you, I'm not in a position right this minute to argue to you the intricacies of the commerce clause.

THE COURT: Just looking at the documents, I can't make a ruling on this right now. I'd have to hear from the witness and see where we're going and see why it would be admissible. Just looking at it on its face, I can't see what the admissibility would be or whether it wouldn't be admissible. So let's just wait.

Is the next witness going to deal with these issues?

MS. WHATLEY: Yes, Your Honor.

THE COURT: Let's wait until we hear from her.

MS. WHATLEY: Okay. That takes us to Government's Exhibit 91, which is an investigative report, and Mr. Gordon's going to have to speak to part of this.

Please come here.

MR. HENDRIX: I can start, Judge. This is what would be the investigation begun in January of '09 that would be relevant to the government's theory of motive being he knew he was investigated and was going to lose his license and so forth.

I guess the first issue is, Judge, these documents don't show that Dr. Mann had notice of that, which would render this irrelevant. It's only important if he knew he was being investigated and these documents -- so that seems to me to be a condition precedent to the admissibility of these documents. If they become relevant to show that, then our position is, again,

just like all the other investigative reports, it contains levels of hearsay. I think the big one is, it contains a letter -- and, Mike, or Karen, don't let me misspeak. Does it contain a letter from a relative of a patient of Dr. Mann's? Which again would be, did he know of the existence of that letter?

To try to be a little more succinct about it, I suppose the objection is, number one, it only seems conditionally relevant. There needs to be a fact introduced first before this even becomes relevant. So, I mean, now may not be the best time. And then second, it's the same proposition, as it contains prejudicial information.

THE COURT: Are we going to have a witness who is going to testify that Dr. Mann was aware of this investigation?

MS. WHATLEY: Yes, Your Honor.

THE COURT: Okay. Let me say this. Because this was an active investigation -- and wasn't this the final investigation?

MR. HENDRIX: Right.

THE COURT: Okay. I am more prone to admit this than I would those previous investigations due to the timing. If there's a witness who is going to testify that Dr. Mann had knowledge of the investigation, I'll probably receive this.

MR. HENDRIX: Understood. And then the second question then would be, is the witness that the government's calling next, is that the witness who's going to supply that

information, or should this be reserved for the --

MS. WHATLEY: It is not -- the next witness sets up the foundation for witnesses that will follow in the coming couple of days to set forth --

THE COURT: Are you going to bring this in with this witness, or are you going to lay a foundation and then ask it be received through another witness?

MS. WHATLEY: I was going to ask it be received through this witness to show this was an investigation that she initiated, and then another witness later will say Dr. Mann knew about this investigation.

THE COURT: Let's handle it this way. And I'm not telling you about how to handle the case. But have this witness identify these as the documents from the investigation, hold it, and once you have the other witness testify that he was aware of it, then I'll receive it.

MS. WHATLEY: Okay.

MR. HENDRIX: Understood.

THE COURT: Ms. Cassinelli?

MS. CASSINELLI COUCH: Your Honor, I would just like to point out that this one is a little bit different than the other investigative reports that you've addressed, mostly because it not only includes the direction to the investigator to begin the investigation and his notes, but then it includes two attachments, which are redacted letters of complaint, which

weren't attached to the other investigative notes. They're redacted, and they're replete with hearsay. It's all somebody in my family told me this, somebody in my family told me this. So, one, we don't know who the people are who allegedly are speaking and who they're speaking about in certain instances, so we can't gather any information to rebut the allegations. Also, I believe that the government is going to call a witness -- I know that I have at least one of these letters unredacted, and I believe they're going to call a witness who authored one of these letters to testify, and we would have separate hearsay issues with that. So I would ask the Court to consider these attachments separate from the investigative report because they are separate hearsay within hearsay and are complaints written in by other people.

Additionally attached are medical records of several people. I believe the government's going to call one of those people as a witness who could potentially identify her own medical records and allow them into evidence. Otherwise, we're admitting some hearsay upon hearsay upon hearsay letters and medical records. And there's two attachments missing. I don't suggest that Ms. Whatley has them and didn't give them to me, but it's not a complete report if you include the attachments.

THE COURT: I understand. I'm going to overrule you on that. I understand the concern about the hearsay. I think we can deal with that through a jury instruction at the end with

regard to hearsay. Also, they're not being offered for the truth of the matter asserted. They're just being offered for the fact that there was an ongoing investigation.

MS. WHATLEY: Your Honor, Mr. Gordon has corrected me, and just so the record is clear, the witness is going to testify that she notified Dr. Mann that she had made a complaint to the board. Based on Dr. Mann's history with the board, the next step was obviously --

THE COURT: I understand.

MS. WHATLEY: -- an investigation.

MS. CASSINELLI COUCH: May I clear one thing up?

THE COURT: Yes, ma'am.

MS. CASSINELLI COUCH: I believe one of those witnesses she spoke about is also one of the witnesses that the government, in a motion or response, alleges that there were some drugs given to, and that's what those letters address. So I'm not sure that they -- I mean, I understand the government's position is they're not being offered for the truth of the matter asserted but instead to demonstrate that there was a complaint. But, again, the actual initiation of the investigation shows the investigation. The letters are saying he gave this person drugs, which is something they are trying to prove and they are bringing in a witness to say that.

THE COURT: Okay. The witness is going to testify that he was given drugs. What's the purpose of that witness,

other than to show that some bad stuff was going on?

MS. WHATLEY: Your Honor, the consent order, 82-L, which we will talk about, states that if there's any violation of that consent order, that the only option available to the board is to take away Dr. Mann's license.

THE COURT: And this occurred --

MS. WHATLEY: This is well after that.

THE COURT: All right.

MS. CASSINELLI COUCH: I think my point in saying that is that these attachments and these letters are offered for the truth of the matter because they're trying to prove that matter, and there's going to be a witness here, both the one, I believe, who is alleged to have received the drugs and the family member who wrote the letter. So I would say that they're offered for the truth, not hearsay.

THE COURT: Okay.

MS. WHATLEY: That's all, Your Honor.

THE COURT: Okay. Now, are we ready to bring the jury back in? I know Mr. Hendrix had to run down the hallway. Does anybody else want to take a two-minute break or do you want to call them in to finish up?

MS. WHATLEY: If I can take two minutes, because I need to find something.

THE COURT: Okay.

MR. GORDON: Do you know how long you intend to go

this evening?

THE COURT: Is there a preference?

MR. GORDON: It just may determine whether or not I go down the hallway or not.

THE COURT: I would say run down the hallway. And anybody else, if you need to run down the hallway for a second, let's do it. And in fact, since everybody is running down the hallway, I'll run down the hallway.

(Recess from 3:58 p.m. until 4:03 p.m.; jury not present.)

THE COURT: You can bring the jury in.

Now, you'll figure out my routine at some point. We open up formally the first time of the day, and then I don't like all the pomp and circumstance from that point forward, so we just remain seated and comfortable.

So you can bring in the jury.

MS. WHATLEY: Your Honor, just so I'm not walking back and forth, I'm just going to give her the whole stack.

THE COURT: That's fine. Has the next witness been sworn in?

MS. WHATLEY: She has not.

(Whereupon, the jury entered the courtroom and proceedings continued in open court as follows:)

THE COURT: Ladies and gentlemen, thank you so much for being patient with us. I know you've been back for an hour -- what is it, an hour or 30 minutes? You came back at 3:30 or

3? Okay. We have been out here dealing with a bunch of issues that we couldn't deal with with you in the courtroom. Like I said, we could have let you sit over there while we came up to the bench and discussed it, but I thought it would be better just to have you have a long lunch. Are you ready to go this afternoon? You didn't go and get all full and get sleepy and feel like you're going to take a nap, did you? Okay.

Call your next witness.

MS. WHATLEY: Peggy Cryer. Peggy Cryer.

PEGGY PRYOR CRYER, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Would you, please, state your name.

A. My name is Peggy Pryor Cryer.

Q. And where are you employed?

A. With the Arkansas State Medical Board.

Q. And what is the Arkansas State Medical Board?

A. It is a licensing and regulatory board for physicians and some other allied health officials.

Q. What is your position with the board?

A. I'm the executive secretary of the state medical board.

Q. How long have you been the executive secretary?

A. Since 1991; July the 1st, 1991.

Q. As the executive secretary, what are your duties?

A. Actually, it's the overseeing of the day-to-day operations

of the board. I facilitate the board's requirements and orders. I am not a board member. I do not vote. I strictly provide the information that they need on a daily basis.

Q. So the Arkansas State Medical Board is a board, but does it also have an office with a full staff?

A. Yes.

Q. And are you over the office staff?

A. I am over the office staff on a daily basis, right. That's my main responsibility, other than carrying out the board's wishes.

Q. So as it comes to the office staff, you're the highest ranking official --

A. Yes, yes.

Q. You said you help the board with what it needs. Do you go to board meetings?

A. I attend every board meeting.

Q. What does the office side of the house do?

A. We actually have several different areas with the board. It has three different groups. We have a group or a section that licenses physicians and other allied health professionals, like respiratory care, occupational therapists, and some different others.

We also have a section of the board that regulates, in other words, they carry out the regulatory responsibility. The board's mission is to protect the citizens of the state, and the

regulatory portion of the board is the portion that tries to adhere that physicians and other allied professionals are actually living up to the standards that have been set out for them to live up to.

We have a third division of the board, and that is the Centralized Credentials Verification Service. In that particular section, the board collects at the time of licensure all of the credentials of physicians as they become licensed, and then they sell those credentials when a physician provides a release. They sell those credentials to hospitals and HMOs and other insurance companies.

Q. So the Arkansas State Medical Board sells the credentials?

A. Yes.

Q. And what are the -- you said hospitals and insurance companies?

A. Hospitals, insurance companies, HMOs, both in state and actually throughout the United States.

Q. So it's not just a hospital in Arkansas, it could be a hospital in Massachusetts?

A. Correct. I'd like to make a correction to that. It is an insurance company outside the state. We probably wouldn't sell to a hospital outside the state, but we would sell through insurance companies who place physicians in those facilities.

Q. So you're dealing with the insurance companies who may be from outside the state?

A. Yes.
Q. Let's go to -- we talked about the office side of the house. Let's go to the medical board side of the house.
A. Okay.
Q. How many members are on the medical board?
A. There are 14.
Q. And how does one get on the medical board?
A. The member -- well, they're all appointed by the governor. Most of the representatives are nominated by the Arkansas Medical Society. There is another organization that nominates osteopathic physicians, and then there is a physician dental group that nominates a physician from their association, and then there are two laypeople, or consumer representatives. Those names are submitted from the medical society to the governor. The governor then at that point will appoint physicians to the bored for six-year terms.
Q. You said a word that I want to make sure we all understand. What do you mean by "osteopathic"?
A. Osteopathic -- you have medical doctors, or M.D.s, or you have osteopathic physicians. They function, basically, pretty much the same. I think probably years ago there was a distinction, or they tried to make a distinction. But they basically function the same way.
Q. What is the length of a member's appointment to the board?
A. Six years. At one point it was eight years, but it's now,

recently, within the last five years or so, six years.
Q. Can a board member be appointed more than once?
A. Yes.
Q. Is there a term limit?
A. Yes.
Q. What is the term limit?
A. Thirteen years. They cannot be reappointed to serve more than 13 years.
Q. Do you know Dr. Trent Pierce?
A. Yes.
Q. And how do you know him?
A. I work with Dr. Pierce pretty much on a daily basis. He is the chairman of the state medical board right now.
Q. How long has Dr. Pierce been on the medical board?
A. He came, I believe -- his first appointment was in December -- in 1996.
Q. So it's now 2010.
A. Correct.
Q. He's still on the board?
A. Correct.
Q. And you're making me do math late in the day, but I think that's more than 13.
A. Right.
Q. Did he come after the term limits went into effect?
A. He came in before the term limits went into effect. So he

is able to complete his term.
Q. How long -- did you say he's chairman of the board?
A. He's chairman of the board.
Q. And how long has he been chairman?
A. He was elected chairman in October of 2006.
Q. You said he's been on the medical board since 1997?
A. Yes.
Q. You have before you what has been introduced as Government's Exhibit 71-A. Can we look at that?
A. Correct.
Q. And that will also pop up on the screen in front of you. Is this a certified document from the state of Arkansas regarding the oath of office that Dr. Pierce took?
A. Yes, for his first term.
Q. When was he appointed to the Arkansas State Medical Board?
A. December 30, 1996.
Q. Going to page 2 of that document, did Dr. Pierce actually have to sign an oath?
A. Yes, he did.
Q. And going to the middle of that page, is that where he signed it?
A. Yes.
Q. Is there an oath that he actually -- I mean, it is a real oath. Correct?
A. Yes, yes.

Q. And going to page 3 of that document, what is toward the bottom, what is the term of his appointment?
A. His original appointment was through December -- was January the 1st, 1997, through December 31st, 2004.
Q. And he has since been reappointed?
A. Yes.
Q. Let's look at Government's Exhibit 71-B. What is the date of this reappointment?
A. It was January the 25th, 2005.
Q. And going to page 2 of that document, has he once again taken an oath?
A. Yes, he did.
Q. Is he agreeing to faithfully discharge the duties of the Arkansas State Medical Board?
A. Yes.
Q. And going to page 3 of that document, when is his term to expire?
A. December 31, 2012.
Q. You stated he's been chairman since 2006. When was he -- how does one become chairman of the Arkansas State Medical Board?
A. They are elected among the members. The members themselves elect the chairman.
Q. And when was Dr. Pierce elected as the chairman?
A. October 2006.

Q. Let's look at Government's Exhibit 72. What is this?
A. This is a copy of the minutes for the meeting of October 5-6, 2006.
Q. Who creates this document?
A. The staff.
Q. And what is the purpose of creating the minutes?
A. It's an historical booklet, book, I guess you might say, of the transactions that occur during a board meeting.
Q. You've stated that this meeting occurred on October 5 and 6 of 2006?
A. Yes.
Q. Does it show which members were present?
A. Yes, it does.
Q. Who was the chairman at the time?
A. Dr. Ray Jouett.
Q. And was Dr. Pierce present at this meeting?
A. Yes, he was.
Q. And let's go to page 24 of this document.
A. Okay.
Q. A little over halfway down the page --
A. Right.
Q. -- that third full paragraph, can you, please, read that?
A. "As a result of a ballot vote, the Arkansas State Medical Board elected Trent P. Pierce, M.D., as their new chairman. Dr. Pierce will begin his position as chairman at the

December 7-8, 2006 meeting."
Q. Who was -- you said Dr. Jouett was the chairman at the time?
A. Uh-huh.
Q. How long had Dr. Jouett been the chairman?
A. Dr. Jouett was chairman from the -- somewhere in the 1980s through this meeting of 2000 -- of October 2006. Some 20 years.
Q. Did Dr. Pierce actually take over the position as chairman in December of 2006?
A. Yes, he did.
Q. Let's look at Government's Exhibit 73. And what is this?
A. This is a copy of the minutes for the December 7-8, 2006 meeting, where it shows Dr. Pierce serving as chairman, calling the meeting to order.
Q. Was the fact that Dr. Pierce was elected chairman announced to persons that are licensed by the medical board?
A. Yes. It is published in our newsletters.
Q. And let's look at Government's Exhibit 74. Is this a copy of that newsletter?
A. Yes.
Q. When was this newsletter sent out?
A. I know it's the spring issue of 2007, but I'm not sure of the exact date that it was mailed.
Q. Let's look at the picture that's on page 1.
A. Okay.

Q. Who is in this picture?
A. Dr. Pierce and Dr. Jouett.
Q. And is Dr. Pierce the one on the left?
A. Yes.
Q. Dr. Jouett's on the right?
A. Yes.
Q. Let's look at page 2 of this document. Going up to the top, the blue area, what is this announcing?
A. This is just giving a little bit of information about Dr. Pierce and the fact that he is the newly elected chairman.
Q. Who receives this newsletter?
A. Every licensee of the board, whether they're in state or out of state, even the occupational therapists, respiratory care therapists.
Q. So just anybody the board licenses?
A. Yes. Some other state boards -- well, some other state boards, some other organizations that have requested to be on the mailing list.
Q. And how is the newsletter sent out?
A. Bulk mailing.
Q. And as the executive secretary, I believe you stated that you attend all board meetings?
A. Yes.
Q. How often does the board meet?
A. They're scheduled to meet every two months. There have

been times when they have had a called meeting and the board would meet at that point too.

Q. You said every two months. Is it usually pretty set which months it is?

A. It is. The meetings are set a year in advance. They're usually February, April, June, August, October, December.

Q. Very good.

A. Yes.

Q. And what is the purpose of these meetings?

A. They're twofold. Actually, all of the physicians that have gone through the licensure process, their applications are approved or disapproved at that meeting. Sometimes physicians are required to appear, and other allied health -- I generally just call it physicians, but it's other allied health too. If there's anything irregular about their application, if there's anything amiss, maybe if they have a malpractice or that type thing, they're required to make an appearance before the board and answer any questions that the board members might have.

Q. Was the December 7 and 8, 2006 board meeting a typical board meeting?

A. Yes.

Q. Let's use those minutes, Government's Exhibit 73, and kind of -- I want you to run us through a typical board meeting.

A. Okay.

Q. I think you first said that Dr. Pierce called the meeting

to order.
A. Correct.
Q. Then the next thing is the minutes were approved from the previous meeting.
A. Correct.
Q. And down here it states that the board unanimously voted to grant permanent licensure to the following applicants not required to make a board appearance?
A. Correct.
Q. Could you, please, explain to the jury what that means?
A. There are physicians that as they go through the licensure process, all of the data that is required for licensure has been checked, it has been received. Then the application is sent to the chairman for him to review to see if he believes that that particular physician needs to make a board appearance for any reason. If they don't, if he feels they do not need to make an appearance, then they would be listed. The vice chairman sometimes works within this same guideline.
Q. Is there a reason that somebody would not have to make an appearance?
A. They would not make an appearance, let's say if you have a resident that has just come out of med school, his grades were good, his transcript was good, he's passed all of his exams without repeating them, he has no work history, so there's nothing -- there's rarely anything as far as malpractice in his

history, so he would not, or she would not have to make an appearance. All physicians who have malpractice insurance -- have malpractice claims filed against them have had to make an appearance before the board. All graduates of international medical schools have all made an appearance before the board.

Q. What about people who have been licensed for a long time?

A. People who have been licensed for a long time who have a long work history, again, if they have malpractice, they have to appear. If they've worked a long time and they have no malpractice or they have -- or maybe they were not discharged during one of their programs at school, if their history is what you call very clean, then the chairman or vice chairman might at that point say they do not need to make an appearance.

Q. They might not make that ruling and someone would have to come before the board?

A. That is correct.

Q. Does the board only license doctors who are from or reside in the state of Arkansas?

A. No, not at all.

Q. Do you currently have doctors licensed from outside the state?

A. We have physicians licensed from outside the state. We have physicians that are licensed from outside the country.

Q. Does the board only license doctors who went to medical school in Arkansas?

A. No.
Q. I believe you stated that sometimes physicians who graduated from international schools also come before the board?
A. Yes.
Q. And from all 50 states as well?
A. Yes.
Q. If there are medical schools in all 50 states?
A. Yes, yes.
Q. Let's go through the licensing process real quick.
A. Okay.
Q. How does one get licensed in the state?
A. He, I say, maybe a she, they download the application off of the website. They fill or complete the top portion of the application. There's several pages to it. But they complete the top portion of each individual form. One of the forms, for instance, has -- well, they fill it out, then they send it to everyplace that we require, as a board for licensure, for verification of their license or verification of their history. For instance, a physician applying for a license has to send a letter or form to a school where he or she graduated. They have to send it to every hospital that they were employed, or have been employed, all the residency programs, any kind of clerkships. These verifications are sent direct from the applicant to these individual facilities. Arkansas requires direct-source verification. So after these forms are completed,

they have to be mailed back to the board office. They cannot come back via the physician. We're very strict on what we take as far as fax copies. We do not take fax copies for verification proof because they can be altered. We do sometimes take corrections on a form that we've already received. But the verification is filled out, or the forms are filled out by the applicant. They're sent wherever they need to go. They know their history. It all comes back to the medical board. The board's staff then verifies that it actually came back from that facility and that he meets the standard. In other words, has he passed the specific exams that are required for licensure. Maybe about his military, you know, we document his military history. All of that comes back, it's documented. Once all of that information is gathered together and is complete, then it is ready to go before the board, or prior to that it goes to the chairman and vice chairman to look at to see if it is complete and if they would think they need to make an appearance.

Q. Other than the application and all those documents that go with the application, is there anything else that the board requires before they're going to allow someone to be licensed in the state of Arkansas?

A. They have to pass the exams. Is that what --

Q. And do they have to pay any money?

A. Oh, that's right, the economy. Yes, they pay an application fee. All of that comes back to the board. Then

they -- it's also now required by law that physicians have to have a criminal background check. That criminal background check is conducted through the FBI, and that has to come back, and that's part of the packet that's presented to the board.

Q. Kind of on a side note here, let's say there's a doctor who is licensed in the state of Arkansas that is applying elsewhere and needs a verification, can they then come to you to get those verifications that you were talking about?

A. Yes, yes.

Q. Is it going to cost them?

A. It does cost them. It costs them $15.

Q. Let's go back to the board meetings, page 2 of the December 2006 minutes.

A. Okay.

Q. The motion that was made regarding a temporary permit. Do you see that kind of in the middle of your screen?

A. Uh-huh.

Q. What is a temporary permit?

A. A temporary permit is given to a physician if their application is -- they may be missing one element, or they may be missing one pertinent bit of information of whoever the facility that they are going to work need them, and so they will issue a temporary permit. There is a fee for that also. It's $50. And the temporary -- every temporary permit expires at the next board meeting. So if there was a temporary permit issued

to a physician who all his documents were not there, but it's just a minute piece of information, then he would -- his temporary permit would expire at that board meeting. So they have to be renewed if he continues to need a temporary permit.

Q. Let's go to the next part where they're talking about approving licenses for respiratory therapists.

A. Right.

Q. Is this one of those allied health groups you were talking about?

A. It is.

Q. Are there any other groups, other than respiratory therapists, that the Arkansas State Medical Board oversees?

A. They oversee occupational therapists. They oversee physician assistants, or PAs. The board oversees, it's a new group called radiologist assistants. And also the board issues medical corporation licenses.

Q. Like the physician assistants, occupational therapists, respiratory therapists, do those groups have subcommittees?

A. They do.

Q. So subcommittees within the board?

A. That is correct.

Q. And does Dr. Pierce have anything to do with any of those committees?

A. He's actually an ad hoc member of all of the committees. However, he was chairman, served as chairman of the physician

assistant committee.
Q. Is he still the chairman?
A. Of the physician assistant committee? No. Dr. Bill Dudding, D-u-d-d-i-n-g.
Q. Is Dr. Pierce still on that committee?
A. Yes, he serves on the committee, but he stepped down as chairman.
Q. Does the PA committee have meetings?
A. Yes.
Q. Does Dr. Pierce attend those?
A. Yes.
Q. After license issues are dealt with at the board meetings -- and going to page 3, it looks like the next step of this was the occupational therapists that we had just talked about.
A. Okay.
Q. Let's go to page 4 of these minutes. After the board gets everybody licensed that needs to be licensed, what's the next step the board starts doing at these board meetings?
A. Ask me that again. I'm not sure I heard your exact question. I've got crickets in my ears.
Q. The board meeting starts, it gets called to order.
A. Okay.
Q. The minutes get approved.
A. Okay.

Q. People start getting licensed.
A. Uh-huh.
Q. Physicians get licensed, temporary permits are issued, and then the other allied health people get licensed.
A. Uh-huh.
Q. What is the next step that the board takes in their meetings?
A. Okay. It may vary, because it may be that there's a public hearing, maybe the board is looking at redoing a regulation of some sort. It may be -- and usually the public hearings are held early in the morning. If they have some pertinent business that they themselves want to talk about, as a board, they discuss it then, or they begin on the issues and what we call issues and discussions.
Q. What are issues and discussions?
A. Okay. Issues are things that are brought before the board that the board needs to be aware of or know about. Oftentimes, it does not involve a physician, but it may be an issue that the board as a whole needs to address. It may involve a physician, but usually it doesn't. Discussions are -- the way that discussions are developed is that any time a patient or anyone has a complaint against a physician, they send a letter to the board, telling about the letter -- telling about whatever it is they're complaining about. After we receive that letter, we will then turn around and send it to the physician. And we tell

him or her that they have to respond as to the allegations that are made. When that letter comes back, we take the original complaint and the physician's response, we put them together, and then we make that, quote, a discussion before the board. Discussions deal with individual physicians.

Q. And do those individual physicians have to appear before the board?

A. Not always, no. Sometimes a discussion is taken for information only, because the board has to address issues even -- every complaint that comes in the office, the board addresses. Even if it's the lady at the front desk was rude to me, we have to address it. The staff makes no decisions. So that individual and that physician, when he responds back, that physician normally would not need to appear. He would probably explain to the board exactly what had happened and that type thing. So he would not necessarily need to appear.

Q. Does the Arkansas State Medical Board discipline physicians?

A. Yes.

Q. And let's explain that process. Explain how the disciplinary process works, how it begins, and take us through those steps.

A. Okay. It usually starts with a discussion, or it will start with an investigation of some sort. Maybe there have been some things brought to the board's attention that an

investigation has been generated. At that point it comes before the board. The board at that point would then vote. There would be a possible violation of the Medical Practice Act. An order of show cause, or an emergency order of suspension, depending on the depth of the act or the allegation. Then the board's attorney will draw up an order. It is served, subpoenaed on to the physician, and a date for the disciplinary hearing is set at that point.

Do you want me to go further with that?

Q. Actually, go backwards. How about that?

A. Okay.

Q. So it may start with a discussion that may lead to an investigation?

A. Correct. Or it may be a -- it may be the investigation itself may be generated from -- if there's an allegation, let's say, of alcohol or drugs or it was sex with a patient, that's not necessarily one of those things that you would write the doctor back and say, "Are you having sex with your patient?" So that would automatically go to an investigative type thing, and the investigators from the health department would go through that.

Q. Let's talk about that part of it.

A. Okay.

Q. You say the health department.

A. Correct.

Q. The health department does the investigations for the board?
A. Correct. The health department -- by law, the medical board and several other state agencies have to utilize the Arkansas Department of Health investigative services and pharmacy services to conduct investigations. The board itself would just indicate what they understand, or tell them what the allegation is, and then they go there and probably interview the physician or collect medical records and that type thing.
Q. You say the board gets this information to the Department of Health.
A. Correct.
Q. Are you actually the one that writes the letter?
A. I'm the one that writes the letter.
Q. So you're the face of what initiates it?
A. Yes.
Q. And who is your point of contact at the Department of Health?
A. Jerry Jones is the department manager, or leader, I guess you'd call him.
Q. After the investigation is completed, is the investigative report then submitted to the board?
A. Yes.
Q. Does the board review that investigative report?
A. Yes, yes.

Q. Do they make determinations based on that investigative report?
A. Yes.
Q. And are those determinations whether to have a hearing or not have a hearing?
A. Yes.
Q. I believe you stated that if there is a hearing or emergency order of suspension, that the board's attorney drafts the documentation?
A. Yes.
Q. Who is the board's attorney?
A. William Trice.
Q. How long has Mr. Trice been the board's attorney?
A. I think he's been there a couple of years more than I have, and I was there -- I've been there 19 years. So, 20, 21, 22, 23 years.
Q. Let's say the board makes a determination based on the investigation that the physician needs to be brought before the board. Is there a discussion or is it a different thing that happens at that point?
A. That is a discussion -- an investigation can be made into a discussion. At that point during the board meeting is when they talk about all of the discussions. And at that point, if they felt there was a possible violation, then they would say show cause or emergency order of suspension. You know, they would

tell the attorney at that point what the vote is.
Q. And at that point in time, is the physician then called before the board?
A. No.
Q. I guess I'm getting to, when do we get to -- the discussion is just when the board's talking about it.
A. Okay.
Q. When do we get to the point that there's an actual hearing?
A. After the order has been drafted and after the physician has been subpoenaed, then the next step would be for -- and then the hearing date is set at that point. Then the next appearance would be, that's when there's a disciplinary hearing and the physician would be there, would come.
Q. What happens at the end of the disciplinary hearing? Does the board take action at that time?
A. Yes.
Q. So explain -- are you allowed to be in the room while the board --
A. Yes.
Q. So explain what happens.
A. All the board meetings are open. They're open to the public. Everything is -- all of the discussion, all of the questions, everything is open, in front of everyone. After all of the testimony has been taken, not only from the board's side, but from the physician's side, then they call for the record to

be closed. And when the record is closed, that means that the -- from our standpoint means that the court reporter no longer takes -- does her thing. Then the board members will sit, just like we're sitting here, and they will talk back and forth about what they think happened, or what they feel needs to happen, or what part they believe or what part maybe they didn't believe.

Q. Okay. The record's closed.

A. Uh-huh.

Q. The court reporter is done.

A. Correct.

Q. Is everybody else out of the room?

A. No, it's still an open setting.

Q. Do all members of the Arkansas State Medical Board vote at the hearings?

A. The chairman usually does not vote unless there is a tie. So -- and then also some people can recuse, you know, they may recuse because maybe they know the person or they know of the situation. I recognize that some just don't vote.

Q. And do sometimes people recuse because they live in the same vicinity as --

A. Yes.

Q. How long do board meetings usually last?

A. They start -- we start usually around 8 o'clock on Thursday morning and scheduled to end probably at 5 o'clock on Friday.

Q. How many issues are usually addressed in that two-day

period?
A. Issues and discussions, or just issues?
Q. The whole, from licensing to hearings, and everything in between, including issues and discussions.
A. Well, we license about 500 physicians a year, and we probably have a good 75 to 80 discussions and issues that we address, maybe even a hundred. I can't -- I can't really tally that. But maybe close to a hundred.
Q. Let me ask it a little differently.
A. Okay.
Q. Are the board members busy at those hearings and meetings?
A. Oh, yes.
Q. Do you have any contact with the board members between meetings?
A. Yes.
Q. Why?
A. Different things. Different things come up. I may need to know something about who they would recommend for an expert witness. We may have issues that come up that a physician is uncomfortable, is dissatisfied with maybe a vote and asks that we poll the board, or an incident may come up between meetings where -- like right now, we have one where one of the licensees has tested positive for cocaine. Rather than wait for a hearing and wait for a board meeting, we poll the board to find out, what do you want to do? Do you want to invite that person? Do

you want to issue an emergency order of suspension or a show cause?

Q. Is there one member of the board that you have contact with more than others in between meetings?

A. It would be Dr. Pierce.

Q. And is that just because he's the chairman?

A. Yes.

Q. How often do you think you have contact with Dr. Pierce?

A. Probably -- I don't -- some weeks it's every day, and sometimes it's every other day. It just depends on -- especially the closer we get to a meeting, when maybe he sees things that he would like to have gathered or collected to be presented. Those would be issue things. They're not physician things. Maybe discussions and stuff that the board would be looking at.

Q. So the chairman of the medical board, and even the members of the medical board do a lot more work for the medical board than just those two days every other month?

A. Yes. Can I expound on that a little bit?

Q. Yes.

A. Because this is really important, I think. Before every board meeting, currently, because we're still a paper society, we send out almost a complete Xerox box full of medical records and discussions and issues that the board members have to review prior to each meeting. There is an enormous amount of work that

has to be done before each board meeting. There's no way that they could come before a board and address issues fresh right there. They have to have studied it, they have to have read it, they have to have tagged it so that they can go through the discussions or we would never get finished.

Q. And how were those boxes of information sent to the various doctors?

A. UPS or FedEx.

Q. We talked about money a little bit earlier.

A. Money?

Q. How is the Arkansas State Medical Board funded?

A. We're a cash agency. We are funded totally from our application fees and for license renewals. We do, as we say, sell some of the -- sell the credentials for physicians, after they have given us permission. We do have -- by law, we are able to fine physicians $1,000 per violation of the Medical Practice Act. We also sell -- we do certifications and verifications. We do that. We also sell, not mailing lists, but names, roster-type names.

Q. And who do you sell those roster-type names to?

A. That's usually to a for-profit organization of some sort.

Q. Do you receive any money from the General Assembly of the State of Arkansas?

A. No.

Q. How large is your budget?

A. 3.5 million.
Q. And all of that money is generated from your own income?
A. Yes.
Q. You don't receive that from any governmental agency?
A. No.
Q. Does the Arkansas State Medical Board have a fee schedule?
A. A fee schedule? Yes.
Q. Let's look at Government's Exhibit 75, and kind of start at the top and work our way down.
A. Okay.
Q. This top is "Application for License."
A. That's correct.
Q. "M.D./D.O," medical doctor, doctor of osteopathy?
A. $500. And the occupational therapist, 75. Occupational therapy assistant is 50. Respiratory therapist, 75. Physician assistants are 80. And supervising physicians, PAs, cannot work independently, they are supervised, so they are connected with a specific physician. And that physician is also charged for that. Then the radiology assistant and radiology practitioner assistant, 75. And then the medical corporation.
Q. And this is the initial --
A. Application.
Q. So when you first come and I want to be licensed in Arkansas, this is what you first have to pay?
A. Yes.

Q. In order to maintain a license, do all of these people have to pay money every year?
A. Yes.
Q. Right under that, right under "Application for Licenses," there's "Temporary Permits," which you talked about earlier.
A. Right.
Q. We have "License Renewal."
A. Correct.
Q. Can you --
A. License renewal for M.D. and D.O.s is $200. If there's a late fee, it's $50 if it arrives after the last -- after 5 o'clock on the last business day of the month. OT, OTAs are 55. The respiratory therapists are 30. Physician assistants are 50. Medical corporation's 10. And then the radiology assistants are 50.
Q. And we don't have to go through each line of the rest of it. But are the rest of the numbers that are listed here some of the --
A. Yes.
Q. I can't talk this afternoon. I'm sorry. Those are some of the other fees that we have previously discussed?
A. Yes.
Q. But any time anybody wants anything from the medical board, they have to pay --
A. Yes.

Q. At my request, did you pull the 2008 licensing statistics for the Arkansas State Medical Board?
A. Yes.
Q. Let's look at Government's Exhibit 76. Is this what you sent me?
A. Yes.
Q. Let's go through that.
A. Okay.
Q. Were you able to separate out the number of in-state versus the number of out-of-state doctors for me?
A. Yes.
Q. So in 2008, how many total doctors were licensed by the medical board?
A. 5,712.
Q. Those are in-state. Correct?
A. Those are in-state.
Q. What's the total?
A. I'm sorry. 8,458.
Q. If my math is correct this late in the day, in 2008, 2,746 doctors from outside of the state of Arkansas paid fees and were licensed in the state of Arkansas?
A. They paid renewal fees. They may have paid the original fee or renewal fees.
Q. But in excess of 2,700 doctors who live outside of Arkansas were licensed inside Arkansas?

A. Yes. Yes.
Q. Now, I believe you testified earlier that those doctors could be located throughout the entire world?
A. Yes.
Q. Are there doctors from outside Arkansas that are providing care inside Arkansas?
A. Yes.
Q. And let me go back real quick on this. On the occupational therapists, physician assistants, and everything else that's listed on Government's Exhibit 26, were you able to separate out in state versus out of state?
A. I don't know that I was asked to do that. I probably could, if you would like it.
Q. Are there OTs and PAs that are licensed in Arkansas that live elsewhere?
A. Yes, there are, but it may be that they're maintaining their license. They do not necessarily provide -- some may provide care in the state, but they're maintaining a license.
Q. Let's talk about where we were going. I'm sorry about that.
A. Okay.
Q. You said that there were doctors from outside Arkansas that provide care inside Arkansas.
A. Correct.
Q. What type of doctors would those be?

A. Okay. It's a group, they're called telemedicine physicians, and they're physicians that, through electronic means, either review records or they review scans. They also may watch, live time, oh, heart rates and -- I can't think of the word. I'm not good at this. The heart rate -- I can't think of my word. Where they watch the heart rate, the blood pressure, and that type thing. They will watch those on individual patients. There are hospitals here in Arkansas, during the evening hours, when physicians aren't as readily at various hospitals, they will have what they call telemedicine physicians in another state monitoring what's going on in a hospital here in Arkansas. If something should go wrong, then they would immediately, if they notice one of the scans are not appropriate, they would immediately call and be in contact with the nurse or the doctor. They have the ability to make decisions for that patient.

Q. And if that doctor, for example, is in St. Louis, watching a patient lying in a hospital in Little Rock, does the doctor in St. Louis have to be licensed in Arkansas?

A. Yes.

Q. I go to the doctor, they draw blood, or whatever, and send it to some pathology lab in some other state, or x-rays are taken and sent to some other state for some radiologist to review it. The doctor in another state that's reviewing it, because I'm an Arkansas patient, does that doctor have to be

licensed --
A. Yes.
Q. -- in the state of Arkansas?
A. Yes.
Q. Are there any national associations for which the Arkansas State Medical Board is a member?
A. There is an organization called the Federation of State Medical Boards. It's a group that most all other state medical boards participate in.
Q. Are there other organizations outside the state of Arkansas that the Arkansas State Medical Board has contact with?
A. AMA, Osteopathic Association. Sometimes we have contact with the boards, the American boards, specialty boards, that type thing.
Q. You mentioned the Federation of Medical Boards.
A. Federation of State Medical Boards.
Q. Where is that located?
A. In Euless, Texas.
Q. In February 2009, was there a meeting of the Arkansas State Medical Board, February of '09?
A. A meeting of the state medical board, yes.
Q. Were any doctors licensed at that meeting?
A. Yes.
Q. Let's look at Government's Exhibit 77.
A. Okay.

Q. At my request, did you provide a listing of all of the medical doctors and osteopathic doctors that were licensed that month?
A. Yes.
Q. We won't run through all of it, but are there six pages to this document?
A. Yes.
Q. And what does this document show?
A. This is the physician's name, the medical school that he or she graduated from, the license number that was issued to that physician, and then also the birthplace of that particular physician.
Q. When a doctor is disciplined, is the Arkansas State Medical Board required to submit that information anywhere?
A. Yes.
Q. And where is that to?
A. We're required by law to submit it to the National Practitioner Data Bank.
Q. And what is that?
A. That is a federal agency that tracks physicians, or tracks disciplinary actions against physicians, and now expanding to other allied health officials -- healthcare personnel.
Q. If the Arkansas State Medical Board relays the disciplinary information to the National Practitioner Data Bank, does it ever get requests from any other entities about information or about

the disciplinary action?
A. Yes.
Q. And explain that process to us.
A. One thing is, every time a physician comes to the medical board to apply for a license, we automatically query the National Practitioner Data Bank. There's another organization that we submit documentation to called -- we submit documentation to the federation also, but it's not a requirement by law as is the data bank.
Q. But the Arkansas Medical Board does send it to the federation?
A. Yes.
Q. Where is the federation located?
A. The federation is in Euless, Texas. The federation on a monthly basis will send to the medical board, our board, a list of physicians that have had disciplinary action taken against them in other states. If they have a license in our state, they notify us.
Q. Can you then request information from the medical board that disciplined that doctor?
A. Yes, we do.
Q. Have you ever received requests from other states about doctors who have been disciplined in Arkansas?
A. Yes.
Q. Do you respond to those requests?

A. Yes.
Q. Does the Arkansas State Medical Board have any contact with medical malpractice insurance companies?
A. Malpractice insurance is not a requirement for licensure in the state of Arkansas. Now, the Centralized Credentials Verification Service that we operate in the medical board office collects the name of the insurance company and the policy per physician. That is, from that standpoint, the credentialing, we call it CCVS, is a separate organization. In other words, it's not regulated under the same Freedom of Information that everything within the medical board is. But it's a part of the medical board. So that's really kind of a double answer there.
Q. So I guess what my question is, does the credentialing part of the medical board assist insurance companies to get the documentation they need to credential the doctors so that those doctors have medical malpractice?
A. Yes. Yes.
Q. And are those companies, those medical malpractice insurance companies that you're working with, are they located inside or outside the state of Arkansas?
A. Usually outside. We also use regular health insurance companies too, like Aetna. I mean, we provide that information to Aetna and United Health and the others.
Q. And where are Aetna and United Health and those companies located?

A. I'm not sure which state, but generally it's in another state of some sort.
Q. I believe you've testified to this earlier, but other than the fees paid by medical practitioners and the monies from insurance companies for the credentialing purposes, are there any other funds that the board receives? I know you talked about fines earlier.
A. We do receive oftentimes when a physician has had disciplinary action taken against them and we have spent money on the investigation, the physician is required -- often required to reimburse the board for the expenses of the investigation.
Q. Do you have the authority or the ability to discipline doctors who live outside of Arkansas who are licensed in Arkansas?
A. Yes.
Q. So if a doctor is licensed in Mississippi, gets disciplined in Mississippi, can the board in Arkansas also discipline that doctor?
A. Yes.
Q. Do you have any other contacts outside the state of Arkansas?
A. I can't think of it, but I may be kind of fogged a little.
Q. What is the -- what is AMA? I've heard those three letters before.

A. American Medical Association.
Q. Do you have contact with them?
A. We do.
Q. You said you have doctors that are licensed around the world. Do you ever have contact with those doctors?
A. If it's a disciplinary issue, and through the licensure process we have contact.
Q. Are board members paid?
A. $115 a day for the days that they're appearing at the meeting. That's a per diem.
Q. So two days every two months they get 115?
A. Yes.
Q. Other than that, are they given a salary?
A. No.
Q. Do you have a doctor -- I know there's some doctors on the board that live in Little Rock. And I don't know if this has been said. Are the board meetings held in Little Rock?
A. Yes.
Q. And if you have a board member that lives outside of Little Rock, when they travel to Little Rock for board business, do they receive any reimbursement?
A. They receive reimbursement for their hotel, and they also receive mileage to and from their location.
Q. What is the mileage amount based on?
A. It is whatever the federal -- it's a federal/IRS kind of

thing. It's been fluctuating. But it's not something that the board sets. It's something with the federal and state.
Q. The mileage and the hotel and the per diem, is that authorized by state law?
A. Yes.
Q. And is it also voted on and approved by the medical board?
A. Yes.
Q. From the time that Dr. Pierce has been on the medical board, has he received travel expense reimbursement?
A. Yes.
Q. And is he paid fees for any trip he makes on behalf of the medical board, even if it's not for meetings?
A. Yes.
Q. So if he had to go to the Capitol for a meeting in regards to the medical board, he would be paid for that?
A. Uh-huh.
Q. Is that a "yes"? I'm sorry.
A. I'm sorry. Yes.
Q. You have before you Government Exhibits 78-A through -V. What are those?
A. Those are copies of the travel vouchers that have been paid to Dr. Pierce.
Q. And are these since he became chairman in December of '06? Looking at 78-A.
A. Oh, yes.

Q. And going to 78-V, does this actually -- it's kind of small, but up here in that top left-hand corner, does this actually take us up to June of this year?
A. Yes.
MS. WHATLEY: Your Honor, may I approach to retrieve something?
THE COURT: Yes.
MS. WHATLEY: Your Honor, if I may have the overhead. These four were not scanned.
THE COURT: Okay.
BY MS. WHATLEY:
Q. Do these -- this is Government's Exhibit 78-L. Are these showing round-trip mileage payments?
A. Yes.
Q. And are some of the dates listed on here August 17, September 26, all the way through May 23, from '07 to '08?
A. Yes.
MR. LASSITER: Your Honor, may we approach?
THE COURT: Yes.
(Bench conference reported as follows:)
MR. LASSITER: I think she has a series of reimbursement forms -- TR-1, I think is what it's called.
MS. WHATLEY: I'll take your word for it.
MR. LASSITER: That the physicians in town get reimbursed for mileage and hotel expense and that sort of thing.

I want to make a simple relevance objection to that.

THE COURT: What is the relevance of it?

MS. WHATLEY: Your Honor, Count 2 deals with the fact that his vehicle was damaged. We have to prove an element of the interstate commerce regarding that. He is paid by the medical board to drive his vehicle back and forth to medical board meetings, and the medical board is engaged in interstate commerce, and Dr. Pierce is engaged in interstate commerce in regards to that.

THE COURT: Okay. I'll let you make a record.

What were you going to say, Ms. Couch?

MS. CASSINELLI COUCH: I think the case law is clear on the vehicle, that the vehicle has to be engaged in interstate commerce. The case law is pretty strong on that attachment to that vehicle. He's driving from West Memphis to Little Rock and back. Way too attenuated of a connection to establish. And Ms. Whatley was asking questions about the board's business out of state, and we considered objecting at that point as well, that as a matter of law cannot establish the interstate commerce requirement of either Count 1 or 2. So if it's going to be suggested to the jury it can, we would object to that.

THE COURT: Okay. I'll overrule it. Of course, you can renew, what is it, Rule 50, after the evidence and we'll take it up and I'll look at the law to see whether to hand it to the jury. Did you want to make another --

MR. LASSITER: I do not, Judge. I would like the objection to apply to all of it. She's got a series of them.

(Whereupon, proceedings continued in open court as follows:)

THE COURT: You may continue.

BY MS. WHATLEY:

Q. Let's look at Government's Exhibit 78-M. Does this show travel in July and August of 2008?

A. Yes.

Q. And was Dr. Pierce reimbursed this mileage for that travel?

A. Yes.

Q. And are they -- they're not given state vehicles. Correct?

A. No.

Q. Medical board members are required to drive their own vehicles?

A. Correct.

Q. They're required to transport all those documents that you FedEx'd them back to Little Rock?

A. Yes.

Q. We won't run through all of these. But 78-N, does this just show some more in 2008?

A. Yes.

Q. And then from -N all the way through -V, do those show all of the meetings that he has attended since the October 2008 meeting where he's been reimbursed his mileage fee?

A. Yes.

MS. WHATLEY: Your Honor, may I approach to put these back in so I don't lose them?

THE COURT: Yes.

MS. WHATLEY: Okay. We're about to switch gears.

THE COURT: How long do you think this point of inquiry will take?

MS. WHATLEY: A while.

THE COURT: Because I know you have quite a bit of testimony with this witness, this might be a good time to break for the day and start up fresh in the morning.

Now, ladies and gentlemen of the jury, I wish we could have gotten started a little earlier this afternoon because maybe we could have heard this witness and let her go.

I hate to bring you over for a second day. I know that causes problems for people who are witnesses in court, but we just had some other issues we had to take up.

What I'll say to you is, we'll break for the day, and we'll start back up tomorrow at 9 o'clock. Same admonitions I gave you all along. Don't start forming firm opinions. Don't start talking to anybody about the case. Make sure that you wait to hear from all of the witnesses who are going to testify before you form an opinion. Also, refrain from reading, listening to, or watching any news about the case. And like I say, don't talk to anybody about the case, of course. And the final thing, same

thing I said from day one, be careful who you talk to, don't talk to any of the lawyers, any of the parties, any of the witnesses. And not only does this process have to be fair, it has to appear to be fair.

Anything else we need to take up before we go?

MS. WHATLEY: No, Your Honor.

THE COURT: We'll recess until 9 o'clock tomorrow morning.

(Overnight recess at 5:13 p.m.)

C E R T I F I C A T E

I, Eugenie M. Power, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Eugenie M. Power, RMR, CRR, CCR Date: February 22, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

July 16, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 9:20 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 5
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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On Behalf of Defendant Randeep Mann (1):

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813 West Third Street
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MR. J. BLAKE HENDRIX, Attorney at Law
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Little Rock, Arkansas 72201

[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - VOLUME 5 (July 16, 2010)

WITNESSES FOR THE GOVERNMENT:	Direct	Cross	Redirect	Recross
PEGGY PRYOR CRYER		802	814	
SUSAN WHITSON		817		
DENNIS PIERCE	826	833	834	834
NELL SMITH	847	858		
TONY MCCUTCHEON	866	896	912	
JASON SMITH	927	947		

EXHIBITS: **RECEIVED**

Government's Exhibits 88-A, 88-B, 89-A, and 89-B .....P. 793
Government's Exhibits 90-A1, 90-A2, 90-B1, 90-B2, 90-C1, and 90-C2 .....P. 795
Defendants' Exhibits 1 through 4 .....P. 803
Defendants' Exhibit 5 .....P. 815
Government's Exhibit 92 .....P. 819
Government's Exhibits 94-A and 94-B .....P. 828
Government's Exhibit 97-C .....P. 876
Government's Exhibits 100-MM and 100-NN .....P. 885
Government's Exhibits 100-OO, PP, QQ, and RR .....P. 887
Government's Exhibit 96 .....P. 893
Government's Exhibit 101-A .....P. 930
Government's Exhibit 101-B .....P. 933
Government's Exhibit 101-C .....P. 936
Government's Exhibits 98-A through 98-J .....P. 940
Government's Exhibits 99-A .....P. 943
Government's Exhibit 99-A1 .....P. 944
Government's Exhibits 99-B through 99-F .....P. 945

(Proceedings continuing in open court at 9:20 a.m, jury present.)

THE COURT: All right. Ms. Whatley.

BY MS. WHATLEY:

Q. Ms. Cryer, do you remember the morning of February 4th, 2009?

A. Yes.

Q. Was there an Arkansas State Medical Board meeting scheduled to begin that week?

A. That week, yes, ma'am.

Q. And were you expecting Dr. Pierce to be at that meeting?

A. Yes.

Q. When were you expecting him to arrive in Little Rock?

A. About 12:30 or 1:00 on that Tuesday.

Q. Tuesday, or Wednesday?

A. I'm sorry. I'm sorry. Wednesday. I'm sorry, Wednesday.

Q. February 4th was on a Wednesday?

A. Correct.

Q. The medical board meets on Thursdays and Fridays?

A. Correct.

Q. Why was he coming in on February 4th?

A. At that time he was coming for a PA meeting that began at -- right at 2 o'clock.

Q. PA means?

A. Physicians' assistant meeting.

Q. Did you receive notification that he had been involved in an explosion?
A. Yes.
Q. And how did you hear about that?
A. His office manager -- someone in his office called to say that he had been involved in an explosion.
Q. Later that day, were you contacted by law enforcement?
A. Yes.
Q. Were you asked for any information?
A. Yes.
Q. And based on that request, what did you do?
A. They asked us to go back through the files, and I've forgotten about how many years, but maybe five years, to see -- for a list of physicians that had been before the board that had had disciplinary action.
Q. And did you provide them with a list?
A. Yes.
Q. And how was it -- I'm sorry -- how was it decided which names to submit?
A. I don't actually recall that. I thought that they asked us to provide just a list, and we did, we did provide a list.
Q. And on that day, did you also provide board verifications for five doctors?
A. Yes.
Q. And why were those five doctors submitted?

A. Those five doctors were submitted -- and I truly can't recall if they asked us to pick five, or if they requested five out of that. I think that we presented verifications on everyone they asked for.

Q. Were there any discussions at the Arkansas State Medical Board regarding doctors who had come before the board more often than others?

A. Yes.

Q. And were these doctors some of those doctors?

A. Yes.

Q. Was there also discussions regarding doctors in the West Memphis area who were in close proximity to Dr. Pierce?

A. Yes.

Q. So were doctors also submitted because of that?

A. Yes.

Q. And were they submitted, this information -- original information, was it submitted in the form of a board verification?

A. Yes.

Q. And what is a board verification?

A. A board verification is a printout that shows a physician's name, address, and any board history where they have come before the board. Or, years ago, they even put if they had complaints alleged against them. We don't include that as much any more, but did at that one point.

Q. Do you recall what time of day you were first notified by law enforcement or first contacted by law enforcement?
A. I don't remember the exact time, however, I do know that it was before lunch.
Q. You have before you Government's Exhibits 79a through 79e. Will you please tell the jury the five doctors' board verifications that were provided to law enforcement that day?
A. Okay. One is James Curtis Dilday. Another one is Lonnie E. Harrison. Another one is Robert Leigh Kale. Randeep Mann. And James Lee Miller.
Q. And those are in alphabetical order, correct?
A. Yes.
Q. Let's look at 79a.
A. Okay.
Q. Who is this a board verification on?
A. James Curtis Dilday.
Q. I think you said this, but the board verification shows the entire history a doctor has had before the medical board?
A. Yes.
Q. And going to 79b.
A. Lonnie Harrison.
Q. What's his specialty?
A. Cardiology.
Q. Going down to the license information, what does this show down here at the bottom?

A. His license was inactive and it had been revoked.
Q. Does this also show the original issue date?
A. Yes.
Q. Going to 79k. Who is this on?
A. Robert Kale.
Q. And his specialty?
A. Anesthesiology.
Q. 79d?
A. Randeep Mann, internal medicine.
Q. And let's go down to his license information. What was his license category?
A. Revoked/stayed.
Q. And 79e.
A. James Lee Miller, general practice.
Q. Let's go to his address information.
A. 200 South Rhodes Street, Suite C, West Memphis, 72301.
Q. Does the fact he was from West Memphis -- is that why his name was given to law enforcement?
A. Yes.
Q. You stated that Randeep Mann was one of the names submitted to ATF that day?
A. Yes.
Q. Why was that?
A. Because Dr. Mann had several appearances before the board. He had had a lot of interaction with the board.

Q. So --
A. And it met the criteria they asked for.
Q. So Dr. Mann was licensed to practice in the state of Arkansas?
A. Yes.
Q. Let's go through his history with the board.
A. Okay.
Q. You have in front of you Government's Exhibit 80.
A. Okay.
Q. What is that?
A. This is Dr. Mann's application for licensure.
Q. Okay. Let's look at that one.
A. Okay.
Q. When an application is filled out, who fills out this information: the board, or the applicant?
A. The applicant is supposed to.
Q. Let's look at page 1 and kind of go through it.
A. Okay.
Q. Where does -- what was his address at the time?
A. 2874 Waterleaf Drive, Germantown, Tennessee.
Q. And going to No. 7, where did he intend to practice?
A. In Jonesboro.
Q. And what was his specialty?
A. Emergency room.
Q. And going down, it appears that there's a place for

education and medical schools. Could you please explain to the jury what that information is needed for?

A. Would I explain to the jury -- say that last part again. I didn't hear you.

Q. Explain to the jury what 9 and 10 are needed for.

A. Okay. No. 9 is the -- they are to put -- the applicant is to put in the name of the school where they graduated. And the No. 10 is the institution, it's also a medical education and showing the location of that medical education.

Q. And are all applicants required to provide this information?

A. Yes.

Q. Are verifications then needed from these various schools?

A. Yes.

Q. And then attached to the medical board application, are there a number of different verifications?

A. Yes.

Q. Let's go through those if we can look at the next page of Government's Exhibit 80. He also has to provide postgraduate training and fellowship training?

A. Correct.

Q. And this is all information that the applicant --

A. Correct.

Q. -- puts? Go on to the next page. What is the information that is requested on this page?

A. There are a series of questions, education-type questions they are to answer, some telling about the exam they took, this, that, and the other. On No. 23, it lists the other states that the applicant currently has a license to practice or has had a license to practice. It may not be active.

Q. And then are verifications required from those states as well?

A. Yes.

Q. We can go to the next page of that exhibit.

There are a number of different signatures on this. Whose signatures are those?

A. Those are the board members that sign off on the original application.

Q. And going down to the bottom, does the applicant actually have to sign an affidavit?

A. Yes.

Q. And did Randeep Mann sign this affidavit?

A. It appears that he did.

Q. On what date?

A. On the 27th of October, 1994.

Q. Go to the next page.

A. I'm sorry. The date that I gave you was the date that -- it was the notary's date. But that does appear to be his signature and I assume he was there in front of her.

Q. And is this one of the verifications that we discussed?

A. Yes.
Q. And are there actually a number of verifications attached to Dr. Mann's application?
A. Yes.
Q. So all of that had to be presented to the board?
A. Yes.
Q. If we can go back to the first page of Government's Exhibit 80, and to the very bottom where it says "For use of secretary only," who is required to fill that information out?
A. That is the staff that fills that part out.
Q. Does this show that Randeep Mann was actually given a license to practice medicine in the state of Arkansas?
A. Yes.
Q. What is his license number?
A. E-0385.
Q. And what day was the application received?
A. On October the 28th, '94.
Q. And it says, "Fee, $400"?
A. Correct.
Q. Is that how much the application fee was in 1994?
A. Yes.
Q. And what date was his license issued?
A. 3-10-95.
Q. How long are medical licenses valid for?
A. They have to be renewed on an annual basis.

Q. And what's the time frame for renewing? Is there a certain day every year that every medical -- every physician in the state has to have paid the fees and --

A. At one point everyone had to pay by a certain day. And that day was the same for everyone. However, several years ago, the board changed so that renewals now are due on -- by the last day of the birth month.

Q. And did Randeep Mann have his license renewed on a regular basis from the time he was originally licensed in 1995?

A. Yes.

Q. Let's look at Government's Exhibit 81a. Is this one of those renewals?

A. Yes.

Q. And for what year is this renewal?

A. 2007.

Q. On the upper left-hand corner of this document, it says "License Expires" 7-31-07." So was he -- was this document having to be forwarded so that his license would not expire on that date?

A. Yes.

Q. And what was the amount that was due?

A. $200.

Q. And let's -- there's a part that says, "Review the following for accuracy. Please make any necessary changes below." How is this information that is contained under this

section generated?
A. It's generated when it goes to the application from our data base as to the current information we have on that physician: name, address and that type thing. If there is -- if they make a change, then they record it on this renewal when they return it.
Q. So this information would have been previously provided by the defendant to --
A. Yes.
Q. -- the medical board?
A. Yes.
Q. Are there any changes noted on this renewal statement?
A. There do not appear to be any, no.
Q. What was the business address for Dr. Mann?
A. Okay. 111 Skyline Drive, Russellville.
Q. And what about his home address?
A. 313 Milky Way Lane, London, Arkansas, 72847.
Q. His business telephone number?
A. Area code (479) 880-8828.
Q. His home phone number?
A. (479) 293-3030.
Q. And his e-mail address?
A. Mannrs@hotmail.com.
Q. And is the physician required to sign the license renewal statement?

A. Yes.
Q. And did he do so?
A. Yes.
Q. Was his license renewed in 2007?
A. Yes.
Q. And let's look at Government's Exhibit 81b. What is this?
A. This is his license renewal for 2008.
Q. And when was this received by the medical board?
A. July the 11th, 2008.
Q. And did he also sign this document?
A. Yes.
Q. Going to page 2 of that document, is this the change of address form?
A. Yes.

MS. CASSINELLI COUCH: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MR. HENDRIX: The concern is that this has a social security number on it, and Ms. --

MS. WHATLEY: I caught that when it was up there. We'll redact it before we send it to the jury.

MS. CASSINELLI COUCH: I think we had a little concern about it being on the overhead for the people in the gallery. Can we just --

THE COURT: Can you just cover it for purposes --

MS. CASSINELLI COUCH: Probably a Sharpie or something?

MS. WHATLEY: That's fine. I'm not putting it back up there.

MR. DUDLEY: I think it's on what you've got up there now in the upper left-hand corner.

MS. WHATLEY: There's nothing up there right now.

(Proceedings continued in open court as follows:)

BY MS. WHATLEY:

Q. Let's go to Government's Exhibit 82. What is this?

A. This is a board verification that was generated on Dr. Mann that was generated on March 1st, 2010.

Q. Was this board verification generated at my request?

A. Yes.

Q. And what is the address information for this board verification?

A. His mailing address is 111 Skyline Drive, Russellville, Arkansas, 72801.

Q. Is information in the board verification updated as new actions involving the physician occur?

A. Yes.

Q. So Government's Exhibit 82 would have every action of the board regarding Dr. Mann from March 10th -- from March 1st, 2010, all the way back to the date of his licensure?

A. Yes.

Q. Let's go down to his license information. What is the original issue date of his license?
A. March 10th, 1995.
Q. What is the current expiration date of his license?
A. 7-31-2010.
Q. What is his "License status"?
A. Active.
Q. What is his license category?
A. Revoked/stayed.
Q. Can you explain what "License status" is?
A. The license status means that the physician can actually continue to practice.
Q. And what does "License category" mean?
A. It has the conditions in which or the categories in which the license rests. This particular one is revoked/stayed.
Q. Let's go down to board history. It says "Appearance: Yes." What does "Appearance" mean?
A. It means that a physician would have made an actual appearance before the board.
Q. And what was the reason for this first appearance?
A. He -- Dr. Mann is an international graduate. All international graduates make appearances for licensure.
Q. Every time a physician appears before the medical board for any reason, is -- are those hearings transcribed?
A. No, not always.

Q. Which ones are?
A. Those that are appealed. In other words, the court reporter takes -- takes the data down or does the court reporting during a hearing, but if it's not one that we -- the board never just automatically gets the transcription of the hearing or the meeting. If it's appealed in any way, then the attorney, I think, gets the -- gets it transcribed.
Q. Are show cause hearings transcribed?
A. Explain what "transcribed" means.
Q. Is a court reporter present for it?
A. Yes. I'm sorry. Yes.
Q. And so at a show cause hearing the court reporter --
A. Yes.
Q. -- is there taking everything down?
A. Yes. Yes.
Q. Do you see the person referenced in this board verification in the courtroom?
A. Yes.
Q. And can you please point him out?
A. Dr. Mann.
Q. So you've identified the defendant sitting at counsel table?
A. Yes.
Q. Okay. Let's go to page 2 of Government's Exhibit 82, the very top. Was there an appearance on this date?

A. No.
Q. What was the date of action?
A. 6-5-2003.
Q. The last thing that we had was dated 3-9 of 1995 for licensure. So based on the fact that there's nothing between those two dates, does that mean that there was no board action involving Dr. Mann from 1995 until June of 1990 -- of 2003?
A. Yes.
Q. What happened on June 5th of 2003?
A. A discussion was presented before the board and the board voted unanimously to issue an emergency order of suspension.
Q. What is an emergency order of suspension?
A. That means that the physician will -- license will be revoked as he is served.
Q. Let's go to Government's Exhibit 82a.
A. I'd like to correct that. It's not that it's revoked as it is served. It is suspended. It's automatically suspended instead of revoked.
Q. Is this the emergency order of suspension?
A. Yes.
Q. And what were the allegations in this emergency order of suspension?
A. Are you going to go on down? I can look at those if you would like. Pull this one out?
Q. Please. If you'll tell us what page they are on, we'll go

along with you.

A. The allegation, it says there was an alleged violation of the Medical Practices Act and the rules and regs of the board of Code Annotated 17-95-409(a)(2)(e), the violation of the law of the United States of Arkansas regulating possession and distribution and use of narcotics or scheduled medications, more specifically, the prescribing of scheduled medications for nonmedical reasons, the prescribing of medications and the treatment of addiction without being licensed to the same, and the prescribing of methadone, a scheduled medication, without being licensed by the federal authorities as a methadone clinic for the treatment of drug addiction; and Arkansas Code Annotated 17-95-409(a)(2)(p) that is violating the regulation of the board, more specifically, Regulation 2.4 in the overprescribing of scheduled medications for his patients, Regulation 2.6, the prescribing of scheduled medications for pain not associated with a malignancy or terminal illness for more than six months for his patients without keeping proper records and reviewing and monitoring of treatment rendered the patients as required by the regulation; Regulation 2.7, engaging in sexual conduct -- contact or sexual relations with a patient; and Regulation 7, the prescribing of methamphetamines for conditions listed in the regulation more than one time without obtaining a concurring opinion to the diagnosis of the patient and the medication prescribed; and

Arkansas Code Annotated (2)(a)(g), (sic) gross negligence by providing scheduled medications to a patient without diagnosing the patient or maintaining records of the treatment. The allegations upon which the above charges are based -- on the following.

Q. The things that you read, Arkansas Code Annotated, is that an Arkansas statute?

A. Yes.

Q. And there's also something called "Regulations." You read Regulation 2.4, Regulation 2.6, 2.7, and Regulation 7.

A. Yes.

Q. Where are those regulations from?

A. They are from the Arkansas Medical Practices Act.

Q. So he was alleged to have violated Arkansas state law as well as the Arkansas Medical Practices Act?

A. Yes.

Q. Does the board just come up with an emergency order of suspension on its own, or is this emergency order of suspension based on an investigation?

A. This was based on an investigation.

Q. And who conducted that investigation?

A. The Arkansas Department of Health, Department of Pharmacy Services.

Q. And who requested that that investigation begin?

A. The medical board.

Q. And did you write the letter?
A. Yes.
Q. And were addendums to that report received for the board to also consider, if you remember?
A. I don't remember whether we did on this one or not.
Q. This document, 82a, is entitled, "Emergency order of suspension and notice of hearing."
A. Uh-huh.
Q. If we can go to page 10 of that document, was a hearing date set in this matter?
A. Yes.
Q. And when was the hearing?
A. The hearing was set for 1:00 p.m. on the 2nd day of October.
Q. Did a hearing actually occur in this case?
A. Yes.
Q. Let's look at Government's Exhibit 82c. What is this?
A. It's the copy of the minutes, of the October 2003 minutes.
Q. Was Dr. Pierce present at this meeting?
A. Yes.
Q. Were you present at this meeting?
A. Yes.
Q. Let's go to page 7 of this document. And does this show that there was actually a hearing regarding Randeep Mann which took place at this October --

A. Yes.
Q. And what was the outcome of this hearing?
A. Dr. Mann -- the board voted that Dr. Mann's license would be revoked for a period of five years, and revocation being stayed so long as Dr. Mann complies with the following conditions: He will surrender his DEA permit. He will not apply for his DEA permit for one year. And "he will complete the Vanderbilt University continuing medical education course on appropriate prescribing, this course should include education regarding prescribing medications for the treatment of chronic pain and depression, and Dr. Mann will pay expenses totaling $9,549.67 within two years."
Q. It's stated that his license to practice was revoked, but stayed?
A. Correct.
Q. Can you please explain to the jury what that means?
A. The board has the ability to revoke a physician's license. When a physician's license is revoked, that's the most -- that is the harshest punishment that they can actually give to a physician. When a license is revoked, they cannot practice medicine. The board voted that this particular revocation, however, they stayed, meaning that they set aside that revocation. But to set it aside, they put conditions on it. And the conditions were that he would do those particular things that I listed. That's what a revocation is and that's

what a stay is.
Q. And another thing that you read was that he would surrender his DEA permit?
A. That's correct.
Q. And not reapply for it for one year?
A. Correct.
Q. What is a DEA permit?
A. A DEA permit is something that -- a federal permit that a physician must have in order to prescribe scheduled medications, scheduled drugs.
Q. Are those also sometimes referred to as controlled substance --
A. Controlled substances, correct.
Q. But he could still practice medicine?
A. He could still practice medicine. And he could still prescribe medications that did not require -- that were not controlled or scheduled.
Q. And what are some of those medications, if you know?
A. Maybe the blood pressure type medications or it may be antibiotics and type things.
Q. After this hearing, was an actual order drawn up?
A. Yes.
Q. Look at Government's Exhibit 82d. And who is this letter from?
A. It is from the board attorney, William Trice, to Drake

Mann, the attorney representing Dr. Mann at that meeting.

Q. And going to page 2 or to the first page of the order -- actually, is this what was attached to that letter?

A. Yes.

Q. Does the order just sum up what had happened before the medical board?

A. Yes.

Q. Going to page 2 of the order, in paragraph 3, does this set forth all of the punishments that you just outlined based on the board minutes?

A. Yes.

Q. I'm sorry. Let's go back to page 1 of the order. There had been a number of allegations in the emergency order of suspension, correct?

A. Correct.

Q. By the time the order came down, how many violations were there going to -- under where it says, "Wherefore, it is considered, ordered and adjudged"?

A. Okay. Thank you. It says Dr. Mann has violated the Arkansas Medical Practices Act. And it cites, "that is violating a regulation of the Board, more specifically Regulation 7, governing the prescribing of Schedule II amphetamines and methamphetamines for conditions listed in the regulation on more than one occasion without confirming" the diagnosis with a second licensed physician and "confirming

approval opinion as to the medication regimen prescribed."
Q. Let me stop you after that one. Regulation 7, does that have to do with prescribing of ADHD medications?
A. Yes.
Q. And there's a regulation that says you have to get two opinions?
A. You can prescribe one time on your own or without an opinion. Anything beyond that, you have to have a second opinion.
Q. And what was the second violation that the board found that's listed in paragraph 2?
A. Violation regulating the possession and distribution of the use of narcotics or scheduled medications, more specifically, the prescribing of scheduled medications, that is, methadone, for the treatment of the addiction without being licensed as a methadone clinic to do the same.
Q. Let's go to the very last paragraph of page 2 where it's just really one sentence.
A. Okay. Upon Dr. Mann "complying with the conditions of stay for a period of five years, his license will become unencumbered." If the board finds that Randeep Mann has not complied with the conditions of the stay, the license will be revoked.
Q. And who signs this?
A. The board chairman.

Q. And who was it at that point?
A. W. Ray Jouett.
Q. Did the defendant appeal this decision?
A. Yes.
Q. Let's look at Government's Exhibit 82e1. Is this his petition for judicial review?
A. Yes.
Q. When the board is appealed, where does it go to?
A. It goes to the circuit court.
Q. Of Pulaski County?
A. Of Pulaski County.
Q. So it doesn't matter where the doctor lives, it also goes to Pulaski County Circuit Court?
A. I'm not positive about that.
Q. Was the board's determination affirmed?
A. Yes.
Q. Let's look at Government's Exhibit 82e2.
A. Yes.
Q. And what was the date that it was affirmed?
A. March 17th, 2004.
Q. Was this also appealed?
A. Yes.
Q. Let's go to Government's Exhibit 82e3. Is this the appeal?
A. Yes.

Q. So the appeal -- this was filed in circuit court. Is Dr. Mann appealing to the Arkansas Court of Appeals or Supreme Court?

A. Yes.

Q. Was all of this ultimately resolved in June of 2004?

A. Yes.

Q. Let's go to Government's Exhibit 82f. Do you recall what the resolution was?

A. The resolution, yes. Do you want me to summarize it, or read it?

Q. If you would just summarize it, that would be great.

A. Well, I think I would rather read it because I don't want to -- at the said hearing, Randeep Mann was found --

Q. Why don't we go to page 3 of that document? That may help.

A. Yes. No. It's on, I believe, page 4, (sic) 6A. Randeep Mann will dismiss his appeal to the Court of Appeals of the decision of the Circuit Court of Pulaski County affirming the board's order of 10 October 2003.

The Arkansas State Medical Board would amend its findings to the order of 10 October 2003 in that the board would find that Randeep Mann only violated Arkansas Code Annotated 17-95-409(a)(2)(P), that is, violating a regulation of the board, more specifically, Regulation 7.

That the board would make a specific finding and order

that, upon providing the board's executive director with proof of his completion of the Vanderbilt University continuing education course on the prescribing of scheduled medications, Randeep Mann will be deemed to have met all continuing education course requirements as set forth in the order of 10 October 2003.

The medical board would amend its order of 10 October 2003 to require Randeep Mann to reimburse the board of costs of the investigation and hearing of $7,500.

Dr. Mann would pay the $7,500 to the Arkansas State Medical Board within 30 days of the order.

The Arkansas State Medical Board would amend its order of 10-2003 by omitting its required forfeiture of the DEA permit of Randeep Mann, thereby allowing Dr. Mann to reapply for his DEA permit, which would authorize him to prescribe scheduled medications upon receipt of his DEA permit from the Drug Enforcement Administration.

The Arkansas State Medical Board would amend its order of 10-2003 to reflect the license of Randeep Mann to practice medicine in the State of Arkansas would be unlimited and unencumbered.

Q. And was that actually signed by Dr. Jouett?

A. Yes.

Q. And was it also agreed to by Mr. Trice, Dr. Mann and Mr. Mann?

A. Yes.
Q. I'm going to ask you a couple of questions about that. It talked about paying the cost of the investigation. Is that -- does that normally happen in disciplinary actions?
A. Yes.
Q. And it also said, omitting the required forfeiture of the DEA permit and allowing him to reapply.
A. Correct.
Q. Can the board just not give his DEA back to him?
A. The board -- the board cannot -- the board cannot take his DEA away, nor can they give it to him. That is a federal certificate and it has to be applied for through a federal agency, through the Drug Enforcement. What the board can do is ask the physician or require the physician not to utilize it, but they cannot take it away or give it back.
Q. And are there times that they can require him to surrender his DEA?
A. Yes.
Q. And if the board requires a physician to surrender their DEA, and they don't surrender their DEA, would they be in violation of the board's order?
A. Yes.
Q. And you read this, but on page 4 of the order, paragraph G, it is stated that his license was unlimited and unencumbered?

A. Yes.
Q. So that five-year revocation stay was completely lifted?
A. Yes.
Q. And what date was this signed?
A. July the 13th, 2004.
Q. Later that year in December of '04, do you recall if new allegations regarding Dr. Mann were made?
A. Yes.
Q. And as a result of those allegations, did the board once again request an investigation?
A. Yes.
Q. Was that investigative report ultimately sent back to the board?
A. Yes.
Q. Do you recall what the allegations were this time?
A. I don't recall it right off, but I think it was over -- it was overprescribing, but I don't --
Q. After the investigative report was received, was the matter referred to a subcommittee at the board?
A. Yes.
Q. Let's look at 82h.
A. Okay.
Q. Who is this from?
A. Dr. Krishnan.
Q. And he's the chairman of what committee?

A. He was the chairman -- he is no longer the chairman of the Pain Management Review Committee.
Q. What is the Pain Management Review Committee?
A. Legislation was passed indicating that before the board could take action against a physician for overprescribing or utilizing medications for pain management, that it needed to go before a committee of the board. And the committee was set up, it's called the pain management committee. This investigation or this allegation was sent to the pain committee at that point.
Q. And did the pain committee make a recommendation to the board?
A. Yes, they referred it back to the board.
Q. Based on that referral and the recommendation, was another emergency order of suspension entered against Dr. Mann?
A. Yes.
Q. We can go to 82i. Is this that emergency order of suspension?
A. Yes.
Q. And if you'll glance through that briefly, do all of these allegations, at least the majority of these allegations, involve overprescribing of medications?
A. Yes.
Q. If you can glance through that document, Government's Exhibit 82i, are there approximately 11 allegations of

overprescribing?
A. Yes.
Q. Going to the next page of that document, more allegations?
A. Yes.
Q. And the next page?
A. Yes.
Q. More allegations on that page?
A. Yes.
Q. And the next page?
A. Yes.
Q. Let's go to the very bottom of this next to the last page. Was a hearing date set in this matter?
A. Yes.
Q. What was the date that was originally set?
A. The date was June -- the 7th day of June, 2006.
Q. And up where it says, "Wherefore," will you please read that paragraph?
A. Yes. "Wherefore, it is considered, ordered and adjudicated that the license to practice medicine in the State of Arkansas of Randeep Mann is suspended on an emergency basis, pending a disciplinary hearing and further orders of the board."
Q. Was this emergency order of suspension amended?
A. Yes.
Q. Let's look at 82i1. Were there more allegations of

overprescribing set forth in this order?
A. Yes.
Q. Going to the last page of this document, were these matters also to be considered at the June 7th, 2006, hearing?
A. Yes.
Q. Looking at 82i2, was there a second amendment to the emergency order of suspension?
A. Yes.
Q. And what were the allegations in this second amendment?
A. They also had to do with prescribing.
Q. Did a hearing on this matter actually occur?
A. Yes.
Q. Did it occur later than June of '06 when it was originally scheduled?
A. Yes.
Q. Let's go to -- let me ask you this before we go there. Prior to that meeting, did the defendant file any motions in regards to certain members of the board?
A. Yes.
Q. And what were those?
A. He filed a petition for two of the board members to recuse from participating in the meeting.
Q. Let me show you Government's Exhibit 82j1. Who was the first member that he requested recuse from the meeting?
A. Dr. Ray Jouett.

Q. And remind us again who Dr. Jouett is.
A. At this time he was the chairman of the board.
Q. And read the opening paragraph of why this motion was filed.
A. It says, on the grounds that Dr. Mann will call Ray Jouett to testify as a witness at the hearing of this matter and that both due process and Rule 605 of the Arkansas Rules of Evidence render a judge incompetent to testify in a trial as a witness, Dr. Mann applies for an order that Dr. Jouett recuse from the hearing of this case.
Q. Looking at 82j2, who is the second person he asked to recuse from this hearing?
A. Dr. Trent Pierce.
Q. What was the reason that Dr. Mann requested that Dr. Pierce recuse from the hearing?
A. On the grounds that Dr. Trent Pierce has expressed an unwillingness to judge this case by the evidence presented at the hearing, Dr. Mann applies for an order that Dr. Pierce recuse from the hearing of this case.
Q. Were these the only two motions for recusal that were filed?
A. Yes.
Q. Did Dr. Jouett or Dr. Pierce recuse from the hearing?
A. No.
Q. Did the disciplinary hearing against Randeep Mann actually

take place?
A. Yes.
Q. Was a special hearing called?
A. Yes.
Q. Let's go to Government's Exhibit 82k. What is the date of this meeting?
A. July the 6th and 7th of 2006.
Q. Was Dr. Pierce present?
A. Yes.
Q. And going down, does this -- do these minutes reflect that Dr. Mann was present and that a hearing actually occurred?
A. Yes.
Q. Were you present at this meeting?
A. Yes.
Q. I believe you testified yesterday that you always attend medical board meetings.
A. I have -- yes, I have missed one in right at 20 years.
Q. You stated you recognize Dr. Mann as having been at these meetings. Did you ever see his wife there?
A. Mrs. Mann was often with Dr. Mann.
Q. What happened as a result of this hearing which occurred July 6th and 7th of 2006?
A. The board voted at this particular -- well, to accept an offer made by Dr. Mann and his attorney.
Q. And is that -- does that happen on a regular basis after a

hearing that everybody kind of comes to an agreement?
A. It's not unusual.
Q. So can you please read the paragraph regarding what the agreement was?
A. Right. The proposal made by Dr. Mann, Dr. Mann acknowledges that he is in violation of Regulation 2.4 and that his license will be placed on revoked/stayed status and he will not utilize his DEA certificate, he will not prescribe the drug Ultram, and he will not treat chronic pain patients, he will not hire a physicians' assistant or an advanced nurse practitioner to utilize their DEA, and he will not appeal the board's decision. He will reimburse the board's expenses of $18,038 within one year of the hearing.
Q. Was the order actually reduced to writing?
A. Yes.
Q. Let's look at Government's Exhibit 821. This cover sheet, is that a letter that's just sent to the attorney?
A. Yes.
Q. And let's go to the first page of the consent order. Does this first page just show the hearing occurred on the dates we previously discussed?
A. Uh-huh.
Q. I'm sorry. Is that a yes?
A. Yes.
Q. Let's go to page 2 of that order, Paragraph b, can you

please read that?
A. Randeep Mann "acknowledges that he violated the Medical Practices Act and the rules and regulations of the Arkansas State Medical Board, more specifically, Arkansas Code Annotated 17-95-409(a)(2)(p), that is, he violated a regulation of the board, more specifically, Regulation 2.4 in that he overprescribed scheduled medications."
Q. And the order of the board, the discipline that was imposed, is that what's set forth in paragraph c?
A. Yes.
Q. Would you please read that?
A. As a result of the above violation of the Arkansas Medical Practices Act, the license of Randeep Mann to practice medicine in the State of Arkansas will be revoked. Said revocation will be stayed for so long as Randeep Mann complies with the following conditions of the stay.
Q. And can you please read what those conditions were?
A. Yes. Randeep Mann will surrender his DEA Enforcement Administration permit authorizing him to prescribe scheduled medications in the State of Arkansas; and, further, Randeep Mann will refrain from prescribing any scheduled medications for patients in the State of Arkansas as well as the legend drug Ultram.

Randeep Mann will exclude from his practice any chronic pain management patients.

Randeep Mann will not hire nor enter into a contractual relationship with any physicians or collaborate with an advance practice nurse who might prescribe scheduled medications for patients in the practice of Randeep Mann.

Randeep Mann will pay and reimburse the Arkansas State Medical Board the costs of the investigation and hearing in this matter of $18,038 within one year from July the 7th, 2006.

Randeep Mann will dismiss all other lawsuits and controversies pending between himself and the Arkansas State Medical Board as of 7-7-2006.

It is represented and understood -- he is represented and understood by -- it is represented and understood by Randeep Mann that a violation of the terms of this consent order will result in the stay of the revocation of his license being lifted, and that his license to practice medicine in the State of Arkansas will be revoked.

Q. We can go back to the previous page and look at paragraph c(1). Let me ask you a question about it.

A. Okay.

Q. Under the terms of the consent order, he was required to surrender his DEA; is that correct?

A. Correct.

Q. And going to the next page, paragraph (6), what would happen if he violated any of the terms of the consent order?

A. The revocation -- the stay would be lifted and the

revocation would be enforced.
Q. Up to this point, had the board disciplined all it could up to actually taking his license?
A. Yes.
Q. One part of the consent order, paragraph c(5) which is right above -- it says he will dismiss all other lawsuits and controversies?
A. Uh-huh.
Q. Were there lawsuits pending against the board?
A. There were, I believe appeals, maybe -- I'm not sure of the terminology of that. Yes, there was something filed against us. In all honesty, our attorney actually handles the legal part of that, so I'm not as involved in that, but, yes.
Q. Let's look at Government's Exhibit 82a1 -- I'm sorry -- 83a1. Sorry. Is this the lawsuit that was dismissed after the consent order?
A. Yes.
Q. And who is the plaintiff in this lawsuit listed at the top?
A. Randeep Mann.
Q. And who are all of the defendants in the lawsuit?
A. The Arkansas State Medical Board -- would you like me to read each of them?
Q. Sure.
A. Arkansas State Medical Board, W. Ray Jouett, chairman;

Orman Simmons was vice chairman; David Jacks; Bobbye H. Daniels; J.R. Baker; Dr. John E. Bell; Anne Britton; Sue Chambers; Dr. Trent Pierce; Douglas Smart; Dr. Tommey; Dr. Alonzo Williams; James E. Zini; and myself.

Q. All of these people other than yourself, are they members of the medical board?

A. Yes.

Q. And according to the file stamp in the upper right-hand corner of this document, when was the lawsuit originally filed?

A. November the 12th, 2004.

Q. And going to Government's Exhibit 83a2, was this complaint amended at a later date?

A. Yes.

Q. And what was the date of the amendment according to the file stamp in the upper right-hand corner?

A. January the 29th, 2005.

Q. Going to Government's Exhibit 83a3, is this an order regarding the action?

A. Yes.

Q. And reading that first paragraph under "Order," please?

A. Presently before the Court is the motion to dismiss filed by the defendants on February the 4th, 2005. The Court will grant the motion in favor of the individual defendants and deny the motion as to the defendant Arkansas State Medical Board.

Q. And was this lawsuit ultimately dismissed as a result of

the consent order?
A. Yes.
Q. Let's go to 83a4. And will you please read what it states under "Notice of voluntary dismissal by stipulation"?
A. The parties hereby stipulate to the plaintiff's voluntary dismissal of this action with prejudice, pursuant to federal regulation -- I don't know what that other means -- page 41.
Q. Okay. And go to the very top of this document because we had gone to ECF by this time. What was the filing date?
A. September the 19th, 2006.
Q. So it was after the hearing in July?
A. Yes.
Q. Just so that we can go down just a little bit, it states, submitted by the plaintiff, Drake Mann. Who was Drake Mann?
A. Dr. Randeep -- Drake Mann is -- I'm sorry. Drake Mann is the attorney that was representing Dr. Mann at that time.
Q. And over on the right-hand side, it has the Attorney General's Office. Mr. Trice is not listed?
A. Correct.
Q. Is the medical board sometimes represented by the Arkansas Attorney General?
A. Yes.
Q. After this lawsuit, did the defendant file another lawsuit against the Arkansas State Medical Board?
A. Yes.

Q. Let's go to Government's Exhibit 83b1. When was this lawsuit filed?
A. May 30th, 2008.
Q. And who are the parties as set forth in the style of the case?
A. Dr. Randeep Mann versus the Arkansas State Medical Board.
Q. And was this lawsuit ultimately dismissed in November of '08?
A. Yes.
Q. Let's look at Government's Exhibit 83b2. And according to the file stamp at the top, what was the date of the dismissal?
A. November the 24th of '08.
Q. And has another lawsuit been filed?
A. Yes.
Q. Let's go to Government's Exhibit 83c. Just looking at the very top, what is the date that this was filed?
A. April the 14th, 2009.
Q. Who are the parties to the lawsuit?
A. Anne Britton, Omar Atiq, Harold Betton, Jim Citty, Bob Cogburn, Bill Dudding, Roger Harmon, Patty Pettway, Trent Pierce, Doug Smart, Eldon Tommey, John B. Weiss, Jim Moss, myself, Peggy Pryor Cryer, Ray Jouett, David Jacks, Bobbye Daniels, J.R. Baker, John E. Bell, Sue Chambers, Jim Zini.
Q. You again?
A. Me again, Jim Moss, Dr. Krishnan, Vincent Lucy, James

Rogers, John Swicegood, David Cannon, Gary Moffit, John Doe One, John Doe Two, and John Doe Three through Six.

Q. Other than the John Does, who are these other people that are listed or what is their association?

A. They are either board members or former board members. Jim Moss is the former investigator through the Department of Health. And then Dr. Sunder, Lucy, Rogers, Swicegood, Cannon, Moffit are members of the -- or were members of the pain committee.

Q. That's the pain committee we discussed earlier?

A. Yes.

Q. And this was actually filed after the --

A. Yes.

Q. -- bombing? Okay. After the defendant lost his ability to prescribe controlled substances, lost his DEA permit, did he correspond with the board about that issue?

A. Yes.

Q. And what was he requesting?

A. He was requesting to appear before the board seeking to be able to reapply for his DEA.

Q. Let's look at Government's Exhibit 84a. What is the date of this request?

A. May 8th, 2007.

Q. And what was he requesting?

A. He was requesting to appear before the board to reapply

for his DEA.
Q. Was he granted an appearance?
A. Yes.
Q. Let's go to Government's Exhibit 84b. When was he scheduled to appear before the board?
A. June the 7th, 2007.
Q. This is signed by Juli Carlson. Who is Juli Carlson?
A. Juli Carlson is my assistant.
Q. And did he actually appear at the June of '07 meeting?
A. Yes.
Q. Let's go to Government's Exhibit 84c. Are these the minutes from that meeting?
A. Yes.
Q. Was Dr. Pierce present at that meeting?
A. Yes.
Q. Going to page in the minutes where it reflects Dr. Mann was present, page 8, what happened?
A. It shows that he appeared to discuss his current status of the Arkansas medical license and discuss -- after discussion and upon a motion by Dr. Dudding and seconded by Ms. Anne Britton, the board voted unanimously to accept Dr. Mann's appearance for information only.
Q. So what does that mean?
A. That means they actually took no action on his request other than just to say that we have heard it, but they did not

make any changes.
Q. So he was not allowed to reapply?
A. No.
Q. Did he make further a request to have his DEA reinstated?
A. Yes.
Q. Let's go to 85a. Who is this to?
A. This is to Dr. Trent Pierce of the Arkansas State Medical Board.
Q. What is Dr. Mann stating in this letter?
A. He indicated that he appreciated the opportunity to appear before -- he would appreciate Dr. Pierce allowing him to appear before the board, and did appreciate it at the June -- he would like to come before the July 6 and 7 -- for the events.
Q. Was part -- can you read paragraph 2 of this letter?
A. Uh-huh.
Q. Can you read that paragraph 2 out loud for the jury?
A. An issue was raised regarding my not having met the guidelines which set down by the Arkansas State Medical Board at the previous hearing, namely my not yet having reimbursed the board for the sum of $18,038 for legal fees incurred by the board during my case. My motion to reapply for a DEA was hence denied.
Q. And paragraph 4, can you please read that?
A. I would appreciate if you could help me get some normalcy back to my practice. Getting my DEA number would enable me to

get hospital privileges, in addition to helping me get back on some of the insurance plans that I have been removed from due to the previous restrictions imposed on me. I would also like to be able to resume endoscopies.

Q. And did he actually with this -- had he actually paid the $18,000 after the June hearing?

A. Yes. He came back that day, I believe.

Q. We can show Government's Exhibit 85b. And is this a copy of that check?

A. Yes.

Q. And in this letter to Dr. Pierce does he notify Dr. Pierce that he's paid the money?

A. Yes.

Q. Let's go back to Government's Exhibit 82, page 4, the bottom of that page. Does it show an appearance before the August 2nd, 2007, medical board meeting?

A. Yes.

Q. Can you please read that?

A. Randeep Mann appeared requesting permission to reapply for his DEA permit. Upon a motion by J. Beck, seconded by A. Britton, the board voted unanimously to deny Dr. Mann's request and informed him that it would not happen in the near future.

Q. Do you recall who informed him of that?

A. I don't truly -- I mean, it's been said who informed him of that, but I don't really recall that.

Q. Let's go to Government's Exhibit 85c.
A. Okay.
Q. Was a letter to this effect also sent to Dr. Mann?
A. Yes.
Q. Did he make another request to have his DEA permit reinstated?
A. Yes.
Q. Let's go to Government's Exhibit 86a. Who is this to?
A. To the Arkansas State Medical Board.
Q. What is the date?
A. December 19th, 2007.
Q. Can you please read this for the jury?
A. I would like to request an appearance before the board in or around April of 2008 regarding a change in status pertaining to my DEA/license restrictions. I have nothing new to request other than that I will -- that I have already presented to the board previously.

If I am wasting Dr. Pierce's time, it would not hurt my feelings if you -- for you to turn down this request. It would not only keep from wasting his time, but mine as well. If there are any further questions, please feel free to contact me. Thank you.

Q. Prior to this letter, had anything been said about wasting Dr. Pierce's time?
A. Yes.

Q. And where was that statement made?
A. That's not really true. There was a statement made about not wasting the board's time.
Q. And where was that statement made?
A. During a board meeting.
Q. And who said that?
A. At that point -- and I'm not sure which meeting, so -- but I do know that the chairman at that point indicated to Dr. Mann --

MR. HENDRIX: Your Honor, if I may object. It sounds like it's going to be a hearsay response.

MS. WHATLEY: Your Honor, I'm not offering it for the truth of the matter asserted, but why this letter was written in the way it was written.

THE COURT: That's sustained.

MR. HENDRIX: Thank you, Judge.

BY MS. WHATLEY:
Q. Did you respond to this request?
A. Yes.
Q. Let's go to Government's Exhibit 86b.
A. Yes.
Q. What is the date of this letter?
A. January the 11th, 2008.
Q. And what did you tell Dr. Mann?
A. The Arkansas State Medical Board was in receipt of his

letter dated December the 19th regarding his request to appear before the board at their April 2008 meeting "regarding your DEA/license restrictions."

Your request will be presented at the February 2008 meeting. We will notify you approximately two weeks after the meeting of the board's decisions. If you have any questions -- further questions, please feel free to contact me.

Q. Did the board actually consider it at the February 7-8, 2008, meeting?

A. Yes.

Q. Did they allow him to have his DEA permit reinstated?

A. No. They voted that they would not address his request to have his DEA permit reinstated.

Q. And was that decision told to the defendant?

A. Yes.

Q. Let's look at Government's Exhibit 86c. Can you please read -- what was the date of this letter?

A. February the 20th, 2008.

Q. And can you please read this letter to the jury?

A. "The Arkansas State Medical Board voted at the February 7-8, 2008 meeting that they would not address your request to have your DEA permit reinstated.

"Should you have any questions regarding this matter, please contact our office."

Q. And after this, did the defendant send yet further

correspondence regarding this request?
A. Yes.
Q. Let's look at Government's Exhibit 87a1. What is the date of this?
A. November 18th, 2008.
Q. And what is the regarding line of this memo?
A. Consideration for licensure status.
Q. In addition to 87a1, did the defendant provide other information to support his request?
A. Yes, he had a memorandum.
Q. Let's look at 87a2. In 87a2, does Dr. Mann go through his entire history with the board and request --
A. Yes.
Q. -- and request getting his DEA back?
A. Yes.
Q. Let's look at Government's Exhibit 87b. Was this -- was what we just discussed in 87a1 and a2 looked at and reviewed by the board?
A. Yes.
Q. And is this the response?
A. Yes.
Q. Could you please read this?
A. "The Arkansas State Medical Board reviewed your request for a DEA license at the December 4-5, 2008 meeting. The Board voted to deny your request at this time and to allow you to

appear at the June 2009 meeting at which time you will have" -- you will have been without your DEA for three years.

"If you have any questions, please contact our office."

Q. And what is the date of that letter?

A. December the 11th, 2008.

Q. Okay. When actions were taken by the board in 2003 and 2006, were those actions reported to the National Practitioner Data Bank?

A. Yes.

Q. And what was the purpose of that reporting?

A. By law, we have to report any type of action to the National Practitioner Data Bank.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government's Exhibits 88a and b and 89a and b. What are these?

A. These are copies of the reports that were submitted to the National Practitioner Data Bank.

Q. And have you maintained a copy of these reports in your files?

A. Yes.

Q. And did these show the actions that were taken by the board against Dr. Mann?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 88a and b and 89a and b.

MR. HENDRIX: Your Honor, can we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MR. HENDRIX: Your Honor, these were the ones that we had objected to that Ms. Whatley was just going to have them identified by the witness and then see if they get connected up; isn't that right?

MS. WHATLEY: No.

MR. HENDRIX: Why am I objecting then?

MS. WHATLEY: I have no idea. That's 91.

MR. HENDRIX: What are you trying to offer?

MS. WHATLEY: The adverse action reports to the National Practitioner Data Bank we have put in evidence.

MR. HENDRIX: That goes to the commerce clause, right?

MS. WHATLEY: Yes, part of it does. That's 91 we were going to connect up later regarding the controlled substances.

MR. HENDRIX: All right. I thought we were on that. Ms. Whatley's telling me I'm wrong, so that does not surprise me at my advanced stage.

MS. WHATLEY: That's what I've been telling you, you've been wrong for 20 years. Let me go grab a copy of it. It's all of those.

MR. HENDRIX: Somebody with a better memory needs to deal with it. I thought that we -- I thought that -- it goes to commerce clause and the objection was you have to --

MS. WHATLEY: Can I tell you what your objection was?

MR. HENDRIX: Please.

THE COURT: I don't remember what the objection was at the time. I remember --

MS. WHATLEY: I think their objection was that they didn't know what they were, and it was see if you can, you know --

THE COURT: Lay a foundation for it? I think that's what it was.

MS. WHATLEY: Lay a foundation. 91 was the one not to be received, but at least identified, and then the Court can make the determination later if we presented other evidence to link up 91. 88-A through 90 -- whatever you have in there -- are the adverse action reports, and then the letters that were received from various states requesting information on the disciplinary actions, which comes back to some of the information that she testified to yesterday that this is what normally happens.

MR. HENDRIX: Uh-huh.

MS. WHATLEY: And all of these only concern Dr. Mann and what happened before the board. They do not deal with the other issue that --

MR. HENDRIX: Right.

MS. WHATLEY: -- we get to with 91.

THE COURT: Do you have a record you want to make?

MR. HENDRIX: I just -- had you written down where we were on this?

THE COURT: Here's what I believe. I believe when we were going through all of the exhibits, we were going to try to get some agreement. You could not agree to -- if I remember correctly, because we didn't know what they were. And you could not consent to allow them in without knowing who laid a foundation for it. Did you want to make any more of a record?

MS. CASSINELLI COUCH: I think we would object that they are irrelevant. I mean, I don't know that -- I think there's been testimony to the facts, and I think the transcripts of the hearings would reflect that these things are -- any adverse action is told to the other states where somebody's licensed, and they have access to the information. And I don't know that these are just sort of hearsay. I mean, these are correspondence documents between insurance companies and the board. So, I mean, what's the relevance?

MS. WHATLEY: I'm showing --

THE COURT: Your objection is to relevance and whatever --

MS. CASSINELLI COUCH: And hearsay.

THE COURT: Overruled.

MR. HENDRIX: Can I ask one more question? Are we close to break time?

MR. DUDLEY: Please.

MS. WHATLEY: I'm almost finished with her on direct. I may have five minutes if you don't object to any more --

THE COURT: Let's take a break right after her direct.

MR. HENDRIX: That raises the second issue. Let me tell Ms. Whatley, here's the deal. She has testified about these five other doctors. The government has given us access to those doctors' files, but not allowed us to copy them. So I've just gotten notes on them right now. In order to prepare for this cross-examination, I need to now go look at those files and have them with me. An easy reason why is if I ask her about Doctor A, she says, "I don't know," I've got to go here and refresh her recollection.

MS. WHATLEY: Your Honor, I'll object to that. They have had these board verifications for a number of months. All of these doctors' files would have been available for them to go access and review at the Arkansas State Medical Board.

THE COURT: How long is your cross?

MR. HENDRIX: Probably going to be lengthy.

THE COURT: Here's the deal. I have a sentencing at 11:45 and I have one at 12:15, so we'll probably break at about 11:40 anyway. Start your cross, get to lunch, take a look at your file at lunch, and come back and finish up.

MR. HENDRIX: And I can tell you the files are insufficient because we were not allowed to copy them. So, I mean, I've got my handwritten notes on these things, but we need the actual tangible files.

MS. WHATLEY: But, Your Honor, they have the board verifications themselves on each one of those other four doctors that you could go through as it has all of the activity that took place before the board.

MS. CASSINELLI COUCH: The file contains much more.

MR. HENDRIX: Yeah.

MS. WHATLEY: But, Your Honor, my argument is they could have gone to the Arkansas State Medical Board well before today when they knew what these other four doctors' names were and have gone through the file of the Arkansas State Medical Board.

THE COURT: Are those files public record?

MS. WHATLEY: Yes, Your Honor.

THE COURT: Can I just go out and pull doctors' files and start looking through them?

MS. WHATLEY: If you make an appointment with Ms. Cryer or Ms. Cryer's office, you can go down there and they will allow you to go through the file. It's a public record.

MR. HENDRIX: If I may -- I'm sorry.

THE COURT: Let's do this. Ms. Cryer can call over there and say, "Copy the file." You can look at it during

lunch. And we can come back and do the second part of your cross after you look at the file. It's not hard -- if it's that easy to get a copy of the file, it's not that hard to call over and say, "Hey, look, make copies of the files 1, 2, 3 and 4," and then let you take a look at them.

MR. HENDRIX: Here's the missing piece of information. The files that the United States Attorney's Office has also have the officers' investigative notes. These are men and women who were investigated in relation to this offense and they contain law enforcement information that I cannot get and have not been allowed to copy.

THE COURT: What gives you the right to see a law enforcement's notes though?

MR. HENDRIX: Jencks.

MS. WHATLEY: No, it's not Jencks.

THE COURT: Where the person is not a defendant in a case?

MR. HENDRIX: Yes, particularly when it comes to motive. Part of the defense is there are many people that have as much or more motive and animosity towards the board than Dr. Mann did.

MS. CASSINELLI COUCH: It's exculpatory.

MR. HENDRIX: It's Brady.

MS. WHATLEY: We allowed them to see everything. This is not Jencks for Ms. Cryer, and investigative notes is not

Jencks for Ms. Cryer. Therefore, it does not have to be given to them as Jencks for Ms. Cryer. Any of the board verifications, they can go through and state to Ms. Cryer, "Isn't it true that this doctor also had some numerous appearances before the Arkansas State Medical Board?"

THE COURT: Here's what I'm going to do. I'm going to -- Ms. Whatley, ask Ms. Cryer what these doctors -- four doctors?

MR. HENDRIX: And I've had an additional --

THE COURT: Four in addition to Randeep Mann?

MR. HENDRIX: Five.

THE COURT: Five in addition to Randeep Mann. Tell her to call her office and get copies of the records. We'll order those produced. I'm not going to get into investigators' files at this point of the proceeding. So you'll have access to that. We'll take a break when Ms. Whatley gets finished with her cross for about five or ten minutes, let everybody run down the hall, come back, and go until 11:45, and we'll break. And you can cross her up to 11:45.

MR. HENDRIX: Okay.

THE COURT: How much time do you need for lunch to allow you to look at the file and her to give it to you?

MR. HENDRIX: The State Medical Board files, not very long, but I'm most interested in getting access, again, to the law enforcement files.

MS. CASSINELLI COUCH: Which are Brady.

MS. WHATLEY: Your Honor, he can't cross Ms. Cryer on the law enforcement files.

THE COURT: What would she know --

MR. HENDRIX: That's for the future. At some point I need to make a motion to ask that those records be produced.

THE COURT: Okay. Let's deal with that after this witness.

MR. HENDRIX: I understand.

THE COURT: Now, can you ask her when we take a lunch break, or maybe if you ask her now if there's some way she can get it and we can start getting copies so by the time we break for lunch, we can start getting files?

MS. WHATLEY: I guess I need to ask what he needs out of the medical board files because some are probably --

MR. HENDRIX: Fairly large.

MS. WHATLEY: But my argument is, Your Honor, I shouldn't be responsible for doing this at this moment in time because he's had months to go out there and do it.

THE COURT: I understand.

MS. CASSINELLI COUCH: I was told we could not get those files -- like I've been delinquent in our duty here.

THE COURT: No, no. My order is that she needs to produce the files. And we can ask her and it won't take much. I mean, have her call up there and say, "Copy all of the files

and get them over here," unless -- I know you don't want to bring the actual files for them to look at, but if they don't want to copy them, they can do that.

MR. HENDRIX: We'll strategize about it.

THE COURT: Let's go back and finish up the direct of this witness.

(Proceedings continued in open court as follows:)

BY MS. WHATLEY:

Q. Okay. Let's go through this 88-A and 88-B. Do these concern the 2003 disciplinary action? Look at the processing date at the top.

A. Yes. Yes.

MS. WHATLEY: Your Honor, I believe these have been admitted.

THE COURT: Let's make sure, Ms. Whatley. These are 88a, b, a and b?

MS. WHATLEY: 88-A and B and 89-A and B.

THE COURT: Okay.

(Government's Exhibits 88-A, 88-B, 89-A, and 89-B received in evidence.)

BY MS. WHATLEY:

Q. What was the purpose of sending this to the National Practitioner Data Bank?

A. It's a requirement for all state boards to send their disciplinary action or change of licensure status to the

National Practitioner Data Bank.

Q. And is this information also sent to the Federation of State Medical Boards?

A. Yes.

Q. Do licensing boards in other states use this information and know when disciplinary action occurs against one of its licensed doctors?

A. They have access to that, yes.

Q. And then based on the disciplinary actions that the Arkansas State Medical Board has done against its doctors, do you then receive requests from those other boards?

A. Yes.

Q. Do you respond to those requests?

A. Yes.

Q. I'm going to hand you what's been marked for identification as Government's Exhibits 90-A1, 90-A2, 90-B1, 90-B2, 90-C1, and 90-C2.

A. Okay.

Q. Are these requests from other states that you received regarding the disciplinary action against Dr. Mann?

A. They are requests for other states and there is also a request here for, looks like, health insurance program.

Q. And did you respond to those requests?

A. Yes.

Q. Would documents related to the disciplinary actions have

been attached to those responses?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move the admission of Government's Exhibits 90-A1, 90-A2, 90-B1 and B2, and C1 and C2.
THE COURT: They're received.
(Government's Exhibits 90-A1, 90-A2, 90-B1, 90-B2, 90-C1, and 90-C2 received in evidence.)
BY MS. WHATLEY:
Q. We'll run through those very quickly. Let's look at 90-A1. What is the first entity that requested information?
A. HealthLink, Inc., of St. Louis, Missouri.
Q. And going to 90-A2, did you respond to that request?
A. Yes.
Q. And the second entity, 90-B1?
A. The State of Iowa.
Q. Did you also respond to that request?
A. Yes.
Q. Let's go to 90-C1.
A. This would be the State of Massachusetts.
Q. And did you respond to that request?
A. Yes.
Q. So you had contact with at least three other entities regarding Dr. Mann after disciplinary actions were taken?
A. Yes.

Q. Since the defendant entered into the consent order in July of 2006, have you requested that the Arkansas Department of Health conduct any additional investigations into Dr. Mann?
A. Yes.
Q. And when did you request that investigation?
A. I don't have the date in front of me, but it was in late 2008, I believe.
Q. And why did you request that investigation?
A. We had received some information. We had received a letter from someone who made some allegations. And so when we receive information like that, then we provide that to the Department of Health.
Q. Was it regarding a patient?
A. Yes.
Q. Do you remember who the patient was?
A. We usually -- I think it's R.B. I think we go by initials, but I think it's R.B., but it's R. something.
Q. And has an investigative report been received in this case?
A. Has it? Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:
Q. I just handed you what's been marked for identification purposes as Government's Exhibit 91. Is this the report?

A. Yes.
Q. And can you confirm the initials of the patient that we are discussing?
A. Yes.
Q. And what were the initials?
A. R.B.
Q. Do you recall the patient's name?
A. Rita something, but I don't -- Barthelme -- Rita something.
Q. Have any hearings been held regarding this report?
A. No. Well, no hearings have been recorded -- have been held.
Q. I want you to go back and think about the consent order that was issued in July of 2006.
A. Okay.
Q. In light of that consent order, if this were a disciplinary hearing on this matter and the board determined that Dr. Mann had violated the consent order, what would the board's recourse be?
A. They would lift the stay that was on the revocation and his license would be revoked.

MS. WHATLEY: No further questions.

THE COURT: Okay. All right. We're going to take a quick break. We will come back at 11:15. And let me tell you what our schedule is going to be. I have a hearing that starts

up at 11:45, and I have another one that starts up at 12:15, so we're going to come back -- we'll start up with the cross-examination at 11:15 and go until 11:45. We'll break. We will come back at 1:30. Maybe that's not long enough. Maybe 2 o'clock. That'll give me a chance to get the other hearings out of the way. We'll come back at 2:00 and we will finish up sometime around 5:00 or 5:30.

As I told you before, make sure you don't talk to anybody about the case. Don't start -- don't form hard opinions about the case yet. Make sure that you wait until you hear all of the evidence that will come in, listen to all of the witnesses and view all of the documents and you'll have a chance to speak with your fellow jurors when the case has concluded.

Also, during all of your breaks, as I keep saying, don't talk to any of the lawyers, parties, or anybody associated with the case. We want the process to not only be fair, but to appear to be fair.

We'll be in recess until 11:15.

(Recess at 11:03 a.m. until 11:17 a.m.; jury present.)

MR. HENDRIX: May we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MR. HENDRIX: Sorry for the delay, No. 1. We have been conferring with the government, and here's what we're proposing to do. I'm going to do a short limited cross to get

at a few documents through Ms. Cryer, then release her. The government can put on a couple of more witnesses, I think, pretty quick before lunch, and then at some later time recall Ms. Cryer to continue her cross.

THE COURT: So you're going to call her, but it would be the government's witness, so you can cross her?

MR. HENDRIX: In other words, I get to lead her, which may be the most efficient way.

MS. WHATLEY: That way it gives the defense time to let me know what they need and I can get Ms. Cryer to get the files together.

THE COURT: That makes a lot of sense and I think that's a good way to handle it. I would say this. Yesterday we had a witness on the stand Mr. Gordon said he was going to recall. I let the defense get into a cross that covered the waterfront. And the reason why I did that is because when one party has a witness that the party has subpoenaed or brought into the courtroom, and the other party is crossing, the plaintiff, prosecution, whoever it is, can then say, "Well, I chose not to recall the person." And, therefore, you kind of leave the other side out there, "Well, we didn't subpoena that person, so, therefore, we have a witness we didn't get a chance to cross." And that's why I let you cover the waterfront because if the prosecution decided we really don't need him back, you would have gotten your chance to fully cross that

witness.

In this case, if we let Ms. Cryer go, the prosecution might decide we don't need to bring her back. How do we --

MR. HENDRIX: I trust the United States Government.

THE COURT: I trust them, too. And I guess right now, Ms. Whatley is not planning to bring Ms. Cryer back in the future, so the agreement is that she is not really released. She's just given temporary --

MR. HENDRIX: In a holding pattern.

MS. WHATLEY: It may be that they wait and recall her in their case in chief and then they cross her in their case. And I've seen it done, and it's a little weird.

THE COURT: Hostile witness.

MR. HENDRIX: I think what we're going to go ahead and do is just issue subpoenas for these --

THE COURT: The records?

MR. HENDRIX: -- those records, that would include the subpoena to Ms. Cryer.

THE COURT: And then you have time to read them at your leisure -- not your leisure -- where you're not doing it in 20 minutes. So we don't need as long of a lunch then?

MS. WHATLEY: Correct.

THE COURT: We can come back at -- we can come back around 1 o'clock?

MS. WHATLEY: And before we bring the jury back, I

know the defense has one objection to a witness that I will be calling after lunch, and it will just take five minutes to argue before the Court.

THE COURT: I'll tell you what we should do before we bring the jury in. After lunch, I'll come in and we can come in and take care of that and then bring the jury in.

MR. HENDRIX: I was going to say, do you guys have a problem if I sort of announce to Ms. Cryer on the stand, "Here's what I'm going to do. I'm going to introduce a few documents for you and release you and call you back"?

THE COURT: I would rather not do that. I would rather when she comes back, she just -- well, then, again, how do we explain to the jury why she's leaving and coming back?

MS. WHATLEY: I think that's fine if Ms. Cryer -- just saying what you just said.

THE COURT: Go ahead.

(Proceedings continued in open court as follows:)

THE COURT: Ladies and gentlemen, we are going to amend what I told you 25 minutes ago or 20 minutes ago. We are going to take our break at 11:45, but we are not going to extend it out until 2 o'clock. There's some issues we're going to deal with and just put off for another time. So I'm still having a hearing at 11:45 and 12:15, but what we'll do is we'll take our break at 11:45 and come back at 1:00. I hope you didn't go make plans while we were having that break. And if

you did, be mad at me. Don't get mad at anybody else.

All right. Mr. Hendrix.

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Ms. Cryer, I'm going to do a few things, introduce a few documents through you, and then, at a later time, we're going to have you back.

A. Let me also share with you, I do have some hearing issues.

Q. I understand.

A. I don't hear you well.

Q. And I sometimes speak softly and have a little, as a judge once said, smoky voice.

MR. HENDRIX: May I approach, Your Honor?

THE COURT: You may.

BY MR. HENDRIX:

Q. Actually, I'm going to show you what I'm marking as Defendants' 1, 2, 3, 4, and I will go ahead and do 5 while I'm here. And, Ms. Cryer, can you just explain to the jury what I've shown you? Is that convenient for you?

A. I guess. The first four documents happen to be copies of the board newsletter. And I can't read the other one.

Q. I'm sorry?

A. This is a copy of a subpoena to Dr. Mann.

Q. Yes, ma'am. If you could go back then to Defendants' 1,

Ms. Cryer, and as you've said, this is a newsletter from the Arkansas State Medical Board; is that correct?

A. Correct.

Q. And I believe there was one in the package of information that has already been introduced that you have seen already, correct?

A. Correct.

Q. Mine is not colorful like that. These were taken off the State Medical Board's website.

A. Okay.

Q. And is that a practice, you guys upload your quarterly newsletters on the website --

A. Yes.

Q. -- so the public can have access to them? And do these fairly and accurately represent a newsletter? Is that what these are?

A. They seem to, yes.

MR. HENDRIX: Your Honor, I would move to the introduction of Defendants' 1 through 4.

THE COURT: Any objection?

MS. WHATLEY: No objection.

THE COURT: They are received.

(Defendants' Exhibits 1 through 4 received in evidence.)

BY MR. HENDRIX:

Q. The first newsletter at the top right says winter of '07?

A. Correct.
Q. Let me see if I can -- I don't know if I can get this to work or not. And if it's time-consuming, I can do without it.
THE COURT: We'll pull it up. Mr. Hendrix, is there a button on there that you're supposed to hit?
MR. HENDRIX: It looks like the "On" button is on. Well, they are going to be introduced. Judge, what I'll do is just publish them to the jury.
BY MR. HENDRIX:
Q. There we go. If you wouldn't mind going to page 2 of the Defendants' 1. And just by way of explanation, the newsletters come out as informative information for doctors, for the public, and they come out quarterly; is that correct?
A. They try to -- we try to.
Q. Okay. And then annually part of what you publish in the newsletter are the disciplinary actions against doctors that have come in front of the board for that year; is that correct?
A. Yes.
Q. And if you would look again on page 2, and I've put it up here in front of us, and where I've highlighted, it says "2006 Board Actions"?
A. Okay.
Q. And these would be the disciplinary actions and the type of action taken by the board against doctors for --
A. Yes.

Q. -- the 2006 year; is that correct?
A. Yes. It may include other allied health.
Q. As in osteopaths or occupational therapists --
A. Yes.
Q. -- that sort of thing? And just to go through these, there were no -- no one was put on probation for '06?
A. Correct.
Q. 20 were suspended. And could you just again describe what that means?
A. Suspension means that there is -- the physician is not allowed to practice medicine at that point. Their license has been suspended.
Q. And are they able to practice at all?
A. No, not when their license is suspended.
Q. And oftentimes though suspensions are in -- for instance, with Dr. Mann, you went over an emergency order of suspension?
A. Correct.
Q. Would that include this suspension?
A. Yes.
Q. And it's a fairly brief period once an emergency order of suspension comes in. Don't you generally have a hearing 30, 60 days out?
A. Yes.
Q. So it's a very short-term suspension, I understand?
A. Yes.

Q. There were seven licenses revoked; is that correct?
A. Uh-huh.
Q. And revocation means flat out you don't practice law --
A. Yes.
Q. -- or whatever discipline you're in?
A. Correct.
Q. The next to the last is "Revocation (stayed)." And for '06 it shows nine?
A. Okay.
Q. And this was the year that Dr. Mann was disciplined; is that correct?
A. What year? Yes.
Q. 2006?
A. Yes.
Q. And his revocation was stayed, correct?
A. Yes.
Q. So Dr. Mann would be one of those nine for 2006 whose revocation was stayed?
A. Yes.
Q. Okay. By my calculations, that's 39 doctors or related people in the medical field that were disciplined by the board in '06?
A. Okay.
Q. Okay. The next one is, I believe, winter of '08. Do you have that? It would be Defendants' 2.

A. Yes.
Q. And if you would look on page 4, same process. And I'll be very brief with you. "2007 Board actions" --
A. Yes.
Q. -- is that correct? 13 suspensions, three revocations, two revocations stayed, and four surrendered. And what does surrendered mean?
A. That's when a physician -- sometimes he or she is no longer wanting to practice medicine for some reason, and they will surrender their license.
Q. I know with attorneys sometimes -- nobody in this room -- attorneys sometimes feel, in front of our ethics board, that they've gotten it so bad and it's looking so bleak, they'll just surrender. Does that sometimes happen with the medical professionals as well?
A. Yes.
Q. Defendants' 3 would be the winter '09 newsletter. And does this accurately reflect the 2008 board actions?
A. Yes.
Q. Nine suspensions, two revocations, one revocation stayed and five surrendered?
A. Yes.
Q. And the final one is winter of '010. So this would be Defendants' 4. And it would show the disciplinary actions by the board for 2009, correct?

A. Yes.
Q. 19 suspended, seven revoked, seven revocations stayed, two probation, and four surrendered, correct?
A. Yes.
Q. I didn't notice probations on the other ones. Is that a new form of discipline by 2009?
A. No, but it is -- the board does not use probation as much, so maybe it was not utilized, but it's not new.
Q. It's always been there?
A. Yes.
Q. How does it differ from the other forms of discipline?
A. Do you want me to go through each one of them?
Q. If you don't mind.
A. Okay. If a physician is -- or a person is on probation, that's just one of the terms that the board will outline. It can be by consent order or it be by regular board order, they will say, "We are putting your license on probation." Technically I don't know the difference. I don't know -- it's like -- it's different than a revocation/stay. With a revocation/stay, you have conditions that have to be met. With the probation, the license is strictly put on probation. Also, if a revocation/stay is lifted, the revocation is in place. The probation, you go through another full disciplinary hearing.
Q. I think I see.

A. Okay.
Q. Probation is "There are certain conditions you have to meet, but we, the board, are probably going to oversee you during this time"?
A. Yes.
Q. I understand revocation/stayed is you're free to go practice medicine, you're almost revoked, but if you follow these conditions --
A. Yes.
Q. -- you're going to be fine?
A. Yes.

MR. HENDRIX: May I publish these, Judge?

THE COURT: Yes. Mr. Hendrix, you asked could you publish those. And for the jury, normally what that means is can he hand you copies of those documents. I don't know if I would like for you to publish those now, because we have so many documents now, if we start handing them out --

MR. HENDRIX: They'll get separated.

THE COURT: -- it will be quite cumbersome.

MR. HENDRIX: I understand, Judge.

BY MR. HENDRIX:
Q. The defendants' -- well, while I'm on this topic, let me spend just a few more minutes. It sounds like the board is a fairly active board. And by that, I mean the board receives many complaints during the course of a year, correct?

A. Correct.
Q. Do you have a notion of maybe about how many in a given year?
A. The same reports that we just looked at may have that.
Q. And I'll just try to generalize. I'm assuming that every complaint that comes in does not result in discipline?
A. That is correct.
Q. And not every complaint that comes in even results in a hearing?
A. That is correct.
Q. And some complaints come in that there's no even -- that all that happens is a doctor's asked to respond, like, in writing?
A. That's correct.
Q. And I'm assuming that there are some complaints that come that are just sort of summarily dismissed?
A. They are summarily dismissed by the board, but not by the staff.
Q. I understand. So is it safe to say that you might have hundreds of complaints come in during the course of a year?
A. Yes.
Q. Most of the complaints for doctors originate from what source?
A. Most of them are patient complaints or possibly other physicians.

Q. And sometimes people -- third parties that may be affiliated with a patient?
A. Yes.
Q. Okay. And do they come in from law enforcement?
A. Yes, we have had some from law enforcement.
Q. And I know that there are doctors that have run in, they have a drug problem themselves, and that might be a referral from a law enforcement or from a court where a doctor has been convicted of maybe a drug crime?
A. Correct.
Q. In general -- you have an investigator on staff; is that correct?
A. No, not on staff. It's with the Department of Health, Investigative Services.
Q. Any contracts out to the medical board to do investigations?
A. No.
Q. You just use the Health Department --
A. That is correct.
Q. Understood. And are there guidelines for him to follow in how he is to investigate?
A. I'm sure that there are, but they are not reflected in the Medical Practices Act, so I don't always know what those would be.
Q. Would he generally work in conjunction with local law

enforcement?
A. I would say generally the answer to that is no.
Q. Understood. Defendants' 5 -- and I'm skipping ahead to put this in context. Can you describe to the jury what Defendants' 5 is?
A. This is -- looks like it's an attachment that came possibly out of an investigative report. It is an attach -- it is a subpoena that we issued to have served on Dr. Mann.
MR. HENDRIX: And may I approach again?
THE COURT: Yes.
BY MR. HENDRIX:
Q. And if you don't mind, Ms. Cryer, what I'll do is I'll put it on the ELMO so we can all look at it. This is in reference to the '09 investigation of Dr. Mann that you've testified about, correct? Can you see that?
A. January of '09, yes.
Q. And it's a subpoena to Dr. Mann, correct?
A. Correct.
Q. And oftentimes subpoenas come out when a complaint has come in and an investigation is beginning, you will issue a subpoena for the doctor's records?
A. That is correct.
Q. For instance, if it's a complaint from a patient or a family member of a patient, you guys and the investigator want to look at those medical records, right?

A. Yes.
Q. And that's what this is for, right?
A. Yes.
Q. Okay. And I see you signed it as the executive secretary of the board, correct?
A. Yes.
Q. And so you're issuing this subpoena, right?
A. Yes.
Q. And the subpoena date is January 30th of '09?
A. Yes.
Q. Okay. And do you see what it says below and can you read that? Sorry for doing that.
A. Proof of service: I have this 18th day of February, 2009, at office duly served within the showing of the original and stating the substance thereof to be within named, Dr. Mann. Server" -- I think that's Jim Myatt.
Q. Would that be the investigator?
A. It is.
Q. And so this shows that Dr. Mann was served with this subpoena and notice of that investigation on February 18th of 2009, correct?
A. He probably knows of the investigation prior to this, but this is the date that he is served and the date of the investigate -- the subpoena.
Q. This would be the best -- an official notification when

you receive a subpoena, right?
A. Yes.
Q. And that's dated February 18th, which was about two weeks after the incident with Dr. Pierce?
A. Tell me the date of that again.
Q. The notice here it shows he was served with it February 18th of '09?
A. Yes.
Q. And Dr. Pierce was injured February 4th, 2009?
A. Yes.

MR. HENDRIX: And I'll pass the witness. And, again, if I tender my exhibits to the Court for later publication?

MS. WHATLEY: Your Honor, may I ask one question on redirect?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Just because Dr. Mann was served the subpoena on February 18th, had that investigation actually already began?
A. Yes.
Q. When did you request that investigation to begin?
A. I don't have a copy of that in front of me, but I thought it was in December of '08. I don't have a copy of that. I could get -- I could get the date for you.
Q. But it was well before this February 18th date?

A. Yes. I mean, it was well before the subpoena, yes.
Q. The subpoena is issued kind of after the investigation starts?
A. Yes.
Q. So --
A. The subpoenas are usually issued after the investigation has already started and the investigator has decided basically what he's going to -- has organized his investigation and his process.
Q. And I believe that on Defendants' 5 -- which I don't think has been admitted --

MR. HENDRIX: I'm sorry. I do move for its admission.

MS. WHATLEY: No objection.

THE COURT: It's received.

(Defendants' Exhibit 5 received in evidence.)

BY MS. WHATLEY:
Q. What is on Defendants' 5, the date on it there --

MS. WHATLEY: Do you have a copy --

MR. HENDRIX: It's on there.

BY MS. WHATLEY:
Q. The date you placed on here is January 30th of 2009, correct?
A. That is correct.
Q. So prior to January 30th, 2009, the investigation had already begun?

A. Yes.
Q. You had already requested that to occur?
A. Yes.
MS. WHATLEY: No further questions.
THE COURT: Okay. Ms. Cryer, you can stand down. You can stand down.
THE WITNESS: What?
THE COURT: You're released. You can stand down.
THE WITNESS: Thank you.
THE COURT: Now, you will be recalled, however. You know that, right?
THE WITNESS: No, I did not know that.
THE COURT: I hate to disappoint you, but we're going to call you back at a later date.
THE WITNESS: Okay.
THE COURT: We have some other issues we need to discuss with you.
THE WITNESS: Okay. Thank you. These --
MS. WHATLEY: You can leave them there. I'll come grab it.
THE COURT: Call your next.
MS. WHATLEY: Susan Whitson.
May I approach to retrieve?
THE COURT: Yes.
MS. WHATLEY: Ms. Whitson has not been sworn, Your

Honor.

THE COURT: Ms. Whitson, come down. Let's get you sworn in first.

SUSAN WHITSON, GOVERNMENT WITNESS, DULY SWORN

THE COURT: Come and sit over here.

MS. WHATLEY: And, Mr. Williams, I can already tell you, I'm going to need to flip it back to Ms. Newton.

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Please state your name.

A. Susan Whitson.

Q. What do you do for a living?

A. I'm a court reporter.

Q. Based on that, I bet I don't have to tell you to slow down.

A. Yes, ma'am.

Q. How long have you been a court reporter?

A. 30 years.

Q. Have you ever reported any of the meetings for the Arkansas State Medical Board?

A. Yes, ma'am.

Q. And do you ever report meetings for other boards in the state of Arkansas?

A. Yes, ma'am.

Q. How many times do you think you've reported for the

medical board?
A. I can remember two.
Q. So you're not their regular court reporter?
A. No, ma'am.
Q. Do you recall being at the October 2nd, 2003, board meeting?
A. Yes, ma'am.
Q. Was this the last time you reported for the board?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government's Exhibit 93. What is this?
A. This is my transcript of the hearing held October 2, 2003, before the State Medical Board.
Q. And is your signature on the end of this transcript?
A. Yes, ma'am, it is.
Q. And is this a true and accurate recording of reporting of the October 2003 hearing concerning Randeep Mann?
A. Yes, ma'am, to the best of my ability.
MS. WHATLEY: Your Honor, I move the admission of Government's Exhibit 93.
MR. HENDRIX: No objection.
THE COURT: It's received.

(Government's Exhibit 92 received in evidence.)

BY MS. WHATLEY:

Q. Does this transcript contain all of the statements made during that hearing?

A. Yes, ma'am.

Q. Is there ever a time that the board goes off record as it comes to court reporting?

A. Yes, ma'am. Sometimes during a hearing they'll go off the record. Like, we took a dinner break, if I remember right, in this. And then when they go to deliberate, that's off the record. And then the motion made afterwards is off the record.

Q. So deliberations by the board itself are not going to be contained in your transcript?

A. That's correct.

Q. To your knowledge, was Dr. Pierce present at this hearing?

A. Yes, ma'am.

Q. And is that listed?

A. Yes, ma'am.

Q. Let's look at the front cover of this transcript, 93. And what is the date of the hearing?

A. October 2, 2003.

Q. And going down on there to the line 20, who was -- was Dr. Pierce present?

A. Yes, ma'am.

Q. I want to read some portions of this transcript into the

record. If we can go to page 109 of the transcript, the very bottom of the page, line 24. It says, "Dr. Pierce." Is this Dr. Trent Pierce?

A. Yes, ma'am.

Q. And is this the questioning of Dr. Mann during the hearing?

A. I would have to look back and see who the witness sworn in at this time was.

Yes, ma'am, it is.

Q. And can you please read the question that Dr. Pierce asks at the bottom of page 109?

A. "What percentage of your practice is pain management?"

Q. And let's go to 110. Does Dr. Pierce continue questioning?

A. Yes, ma'am. "You said you're in internal medicine?"

Q. What is the witness's response?

A. "I see about 30, 40 percent. I mean, I'm still seeing 20 patients a day at this time."

Q. So at this point in time Dr. Pierce and Dr. Mann are having a conversation?

A. Yes, ma'am.

Q. And can you continue reading down that page for us?

A. "Dr. Pierce: And was that the initial focus of your practice or has it evolved over the last couple of years?

The Witness: No, sir. It wasn't an initial focus.

No, sir. It was not an initial focus. It was just because nobody else would deal with this issue.

Dr. Pierce: Now, were you aware of the overdoses that were occurring in your practice?

The Witness: Like I said, sir, there was two patients of mine, and I'm going to still check on one of them, they have drug levels. I'm going to check and see if those drug levels could have been toxic for that one patient.

The other one, P.C., got 60 Lorcets from me. The next day she was dead.

Dr. Pierce: So, my question, were you aware of the overdoses that occurred prior to this, prior to this investigation?

The Witness: Yes, sir."

Q. Continuing on to the next page.

A. "Dr. Pierce: So, at that time did you examine your practice and your prescribing?

The Witness: Well, like you mentioned previously, sir, you know, you want to decrease the medicine to the lowest dose possible.

Dr. Pierce: Because evidently the police in your area became aware of a potential problem.

The Witness: The police --

Dr. Pierce: Is that correct?

The Witness: The police issue is a very different issue,

sir.

That is, I brought this up in front of the board a year ago. It was brushed aside as being a political issue.

I will have you talk to two people and you will know exactly what this police problem is all about. There is, there is more evidence. I've talked about this with other members of the board. And what the police has done to me" --

MR. HENDRIX: Excuse me, Ms. Whitson. I'm so sorry for interrupting.

Your Honor, can we approach?

THE COURT: You may.

(Bench conference reported as follows:)

MR. HENDRIX: The full record of that, the transcript, is this. That satisfies Rule 1 of 6 as the rule of completeness. It sounds more like what really should be going on in closing argument. The transcript is there. I know putting on a court reporter to emphasize certain aspects of that or certain portions of it, why not do that in closing?

THE COURT: The fact it's in evidence, I mean, they can go through and point out and you can come back on cross and I guess point out the portions of it that are more benign. It's better for depositions. I don't know that there's an objection we can keep out of this discussion other than it's just time-consuming.

MS. WHATLEY: Sorry.

THE COURT: What is the response?

MS. WHATLEY: Your Honor, I believe it's relevant to show that there are portions of this transcript in which Dr. Pierce is specifically questioning Dr. Mann and to show that Dr. Pierce took an active role in the hearing.

THE COURT: And it goes towards motive?

MS. WHATLEY: Yes, sir.

MR. HENDRIX: And I guess it's in evidence, the transcript is in evidence. It's just the unorthodoxy of the court reporter recording regarding other than the actual witness, you know, having the witness on the stand saying, "Did you say this on that date?" At this point it is hearsay, it's bad hearsay.

MS. WHATLEY: I can't put Dr. Mann on the stand.

THE COURT: He's talking about Dr. Pierce. You can bring him in and say, "We had this conversation."

I'll overrule it.

I will say this, Ms. Whatley. I don't know that we need to read through the whole conversation between Dr. Pierce and Dr. Mann.

MS. WHATLEY: That's fine.

(Proceedings continued in open court as follows:)

BY MS. WHATLEY:

Q. If we can just read just a couple more portions of this. Going down to the bottom of page 111, I think where we just

were, can you please read what Dr. Pierce states there?
A. On line 21?
Q. Yes, ma'am.
A. "Dr. Pierce: Aside from the police issue, if you're having multiple overdoses, then there is a problem in your practice with prescribing, or you're an exceptionally unlucky individual.
The Witness: How many out of 5,000 would be a statistically significant number?
Dr. Pierce: Well, I've been in practice 20 years and I've not had one.
Dr. Zini: One.
Dr. Pierce: And I would think one would be enough that would make you re-examine your practice and your prescribing."
Q. Okay. Let me stop you there. And does this conversation continue?
A. Yes, ma'am.
Q. And later in the transcript at page 231, does Dr. Pierce also begin to take an active role in the questioning of a witness?
A. Yes, ma'am.
Q. And was this witness Dr. Ackerman, the board's expert?
A. Yes, ma'am.
Q. In going down to line 17 of page 231, what's the question that Dr. Pierce asks of a witness?

A. "Dr. Pierce: Secondly, if you had two or three overdoses that resulted in death in your 20 -- I don't know how many years.

How many years have you practiced pain management?

The Witness: For 12 years.

Dr. Pierce: Have you had that occur in your practice?

The Witness: No, I haven't."

Q. And going to 232, if you'll read that question and the next part of the next answer.

A. "Dr. Pierce: If you had that occur, what would you do? Would you re-evaluate your prescribing?

The Witness: I would re-evaluate my prescribing. But, again, I'm an interventional pain specialist, so my prescribing habits and my prescriptions are going to be less than the noninterventional pain specialist. But I definitely would, yes."

Q. And then that conversation continues between Dr. Pierce and Dr. Ackerman?

A. Yes.

Q. And going to page 262, does the record close at this point in time?

A. Yes, ma'am.

Q. So after this, any discussions regarding what disciplinary action should be against Dr. Mann is not in the transcript?

A. Correct. They went into deliberations, and they go off

the record when they do that.

MS. WHATLEY: I have no further questions.

THE COURT: Cross examination?

MR. HENDRIX: No cross. Thank you, Ms. Whitson.

THE COURT: Ms. Whatley, did you have one more witness you wanted to get on real quickly or --

MS. WHATLEY: I do have another witness. It's up to the Court.

THE COURT: How quick will that witness be?

MS. WHATLEY: About as long as Ms. Whitson was.

THE COURT: Let's bring that witness in now and let's do that quickly.

MS. WHATLEY: Dennis Pierce.

THE COURT: Mr. Pierce, let's have you turn and raise your right hand and get sworn.

DENNIS PIERCE, GOVERNMENT WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. And have a seat right up there. Would you please state your name?

A. Dennis Leonard Pierce.

Q. What do you do for a living?

A. I'm a court reporter.

Q. And the first question I have to ask you, are you related to Dr. Trent Pierce?

A. No.
Q. Do you know Dr. Pierce?
A. I do know Dr. Pierce.
Q. And how do you know him?
A. I was a court reporter for the review board from about December of '03 on up until a month or so ago.
Q. And why are you no longer the court reporter?
A. I moved back to Michigan and my grandchildren.
Q. Were you the court reporter in July of 2006?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification as Government's Exhibits 94-A and 94-B. What are these?
A. These are transcripts that I produced from the hearing involving Dr. Mann.
Q. And was this a disciplinary hearing?
A. Yes, it was.
Q. And what is the date of the hearing?
A. 6 of July, 2006, and the 7th of July, 2006.
Q. So the hearing ran over a two-day period?
A. Yes, ma'am.
Q. Is your signature on the back of both of those?
A. Yes to the first one, 94-A, and, yes, to 94-B.

Q. And do those two transcripts accurately reflect what happened before the medical board on those two dates?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 94-A and 94-B.
MR. HENDRIX: No objection.
THE COURT: They are received.
(Government's Exhibits 94-A and 94-B received in evidence.)
BY MS. WHATLEY:
Q. We can look at the cover of 94-A, please.
A. Okay.
Q. Was Dr. Pierce present at this hearing?
A. Yes, ma'am.
Q. And if we can go to page 243 of that transcript.
A. Okay.
Q. Line 8, you may have to go back a little bit. But do you know who is doing the questioning at this point in time?
A. Pardon me?
Q. Do you know who is doing the questioning?
A. Mr. Mann.
Q. Mr. Mann meaning Drake Mann?
A. Yes.
Q. Who was Drake Mann?
A. He was Dr. Mann's attorney.

Q. And would you please read the question that Mr. Mann asks?
A. "I -- I think the -- the board would be inclined to agree with you that based on the charges alone they would be happy to dispense with the testimony or hurry up and give Dr. Mann a fair hearing so they can string him up, but --"
Q. Who is the person that's being questioned? Is it Carlos Roman?
A. I believe so.
Q. And who is Carlos Roman?
A. He was the doctor that the board would rely on in overprescribing cases.
Q. And was this an overprescribing case?
A. Yes.
Q. Let's go to page 244. Would you please read the statement that's at line 10?
A. Mr. Drake Mann is speaking and he said, "Well, my comments are based on Dr. Pierce's comments at the close of the last hearing."
Q. And did this hearing continue into the next day?
A. Yes, ma'am.
Q. Do you recall what the atmosphere of these hearings were?
A. Tense, and I say that in regard to Dr. Mann.
Q. How close were you sitting to Dr. Mann at this hearing?
A. We shared the same corner of the table. He was no more than two or three feet away.

Q. Let's go to 94-B.
A. Okay.
Q. Was Dr. Pierce present on this second day of hearings?
A. Yes, ma'am.
Q. Going to page 4 of this transcript, how did the second day begin?
A. I had -- they had started to come up with an agreement.
Q. And on page 6, does Dr. Pierce question that agreement?
A. Yes, ma'am.
Q. And what is stated?
A. Line 1?
Q. Please.
A. Dr. Pierce says, "Now, if we -- so if we agree to this, there is no underlying agreement that we would allow him to reapply for a DEA in the future --"
Q. And what was Mr. Trice's response?
A. "There's no underlying agreement. Any doctor at any time can request anything of the board. I mean we've had physicians who you've revoked for various other offenses. A doctor in south Arkansas years ago was revoked, and after a period of time came and asked for his license to be returned. And you granted that on some sort of stair step provision. But that -- no. This is not that offer. It's just what it is."
Q. Are the deliberations of the board normally transcribed?
A. No.

Q. Why not?
A. I've always been instructed by Mr. Trice that at the end or the close of the proofs, that that's the end of the record that I produce.
Q. Did that happen in this case?
A. No. I believe they -- it turned into more of a consent agreement.
Q. So are some of the deliberations actually in this transcript?
A. You could call them that.
Q. We can go to page 51 of this document.
A. Yes, ma'am.
Q. Is Dr. Mann present in the room while all of this is going on?
A. Oh, yes, ma'am.
Q. We can look at line 19. If you'll please read Dr. Pierce's statement.
A. "I think it's -- I think it is so unfortunate that deaths have occurred, that it's tragic. The whole situation is unfortunate, that Dr. Mann didn't obtain a better understanding until this year from his previous appearance before the board."
Q. And going to page 52?
A. Yes, ma'am.
Q. Line 17, if you'll read the first full sentence.
A. "The resolution is that he's no longer going to be

prescribing narcotics or medicines that should result in further death. And he's admitted to overprescribing. And, as Mr. Trice says, we can't relate their deaths directly to his overprescribing."

Q. And page 58.

A. Yes, ma'am.

Q. Line 12.

A. It's Dr. Pierce speaking. "The only thing we gain by not accepting this offer would be for the board to revoke his license without stay. Okay? I mean not accepting this offer is saying that the board is moving for the total revocation of his license."

Q. Was Dr. Pierce very active in the discussions going on at this point in time?

A. Yes.

Q. And at the end of this hearing, did they ultimately reach a consent order?

A. Yes.

MS. WHATLEY: May I have a moment, Your Honor?

THE COURT: Yes.

BY MS. WHATLEY:

Q. Were there discussions during this hearing regarding what Dr. Mann's patients were doing with the medication?

A. Just the fact that they were using too many.

Q. Did Dr. Mann answer to those allegations?

A. Without reading the specific transcript, I just remember --

MR. HENDRIX: Your Honor, I object. Is the court reporter reading the transcript and what happened? Is he relying on memory? Is he giving his opinions?

THE COURT: That's sustained. He can testify as to what's in the transcript.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. You read a portion of -- I guess it was the second day on page 4. And you described this as a tense atmosphere. But what you were reading were the remarks of the lawyer, Drake Mann; is that correct?

A. Yes, sir.

Q. Okay. And when it got down to resolving this thing, you've led us to believe that Dr. Pierce was just all over this place. There were other board members that were at least, as if not more, active than Dr. Pierce during this; is that correct?

A. Yes.

Q. And when it got down to it, it was Ms. Britton who is a board member that didn't want to go along with the agreement between Dr. Mann and his attorney and the other board members,

right?
A. As I remember it, yes.
Q. It was Dr. Pierce that was on the side of resolving this thing and accepting the offer that Dr. Mann and his attorney had made. It was Ms. Britton that didn't want it, right?
A. She wanted the hearing to go forward.
Q. She wanted it to go forward and therefore reject the settlement offer?
A. Yes.

THE COURT: Redirect?

MS. WHATLEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. WHATLEY:
Q. But Dr. Pierce in the deliberations as you just read also made it clear that he did not want the defendant to have a DEA permit?
A. Absolutely.
Q. And also made it clear that any violation of that would -- the only option was to move for total revocation of a license?
A. Yes, ma'am.

MS. WHATLEY: No further questions.

RECROSS-EXAMINATION

BY MR. HENDRIX:
Q. Again, let's not mischaracterize things. This was a settlement offered by Dr. Mann to give up his DEA permit,

right?

A. Yes.

THE COURT: Anything else?

MS. WHATLEY: No, Your Honor.

THE COURT: Mr. Pierce, you can stand down.

All right. We're going to take our morning recess. Initially I told you that we would take it at 11:45 and come back at 1:00. Since we're getting started 20 minutes late, we'll come back 20 minutes later. Let's take an hour and 15 minutes and come back at 1:20.

You can take the jury out. We're just going to proceed with the hearings.

THE COURT: Now, for counsel, you can leave all of your stuff at your tables, but understand that we have some other lawyers that are coming in, so if you want to guard --

MR. HENDRIX: Which lawyers?

THE COURT: -- if you want to guard your secret papers, I would say put them up.

(Recess at 12:06 p.m.)

C E R T I F I C A T E

I, Judith A. Ammons, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 8, 2011
United States Court Reporter

(Continuing at 1:47 p.m., jury not present.)

THE COURT: Okay. Did you need to make a record or you were going to call your next?

MS. WHATLEY: I believe the defense wants to make a record. I was just coming forward because I knew I'd be called forward, so might as well.

Your Honor, the next witness the United States intends to call is Nell Smith. Ms. Smith used to be a reporter for the *Arkansas Democrat-Gazette*, wrote a number of articles regarding Dr. Mann. The United States intends to introduce four of those. I believe the testimony will be that Ms. Smith actually recorded those and then made some direct quotes that were reported into the newspaper, and Mr. Hendrix has an objection to that.

MR. HENDRIX: Your Honor, it would be a two-leveled objection, and let me start with the first one, the introduction of the newspaper articles as opposed to the witness's testimony. I just am finally able to get up on the internet and access my Westlaw account. February 8, the Court of Appeals decided *Nooner v. Norris*. That was a prisoner litigation over the death penalty protocol. The prisoners wanted to introduce a newspaper article that contained a statement made by Dina Tyler, the ADC spokesman. The Eighth Circuit's quote is, newspapers are, quote, rank hearsay. So the articles themselves, we contend, are rank hearsay.

The second level then of that objection would be the

witness describing a hearing in which she heard, presumably, Dr. Pierce and/or Dr. Mann making comments. Again, I suggest to the Court that that is as well hearsay. It's simply an observer recounting out-of-court statements.

THE COURT: Let me ask you a question, though. Isn't there a distinction -- and I had a debate about this because I knew it was coming. Isn't there a distinction between me hearing a conversation between you and Ms. Whatley and recounting the conversation and me telling somebody else the substance of what you're saying and trying to make that as if that substance is true? Isn't there a distinction here?

If you were coming to me and you said -- and you told me something that was told to you and I recounted that in this proceeding, that would be hearsay if I'm offering it to prove what you told me because I didn't witness it.

But if I see you and Ms. Whatley having an argument and somebody said -- and I'm asked in a courtroom, what are they arguing about, I could explain what you were arguing about without saying whether any of it is true or false. That wouldn't be hearsay, would it?

MR. HENDRIX: I think that it would, Judge, because by definition under 801, it's an out-of-court statement, right, and the basis, of course, for hearsay is the reliability of the declarant, the person on the witness stand relating those accounts and in this case the conversation. It's the

reliability factor. How do we know that if I observe -- to change the analogy, the conversation between judge and prosecutor, how reliable is it for me to take the witness stand and go, this is what I heard those two people talking about. More importantly, it forbids the lawyer from cross-examining you two about the content.

THE COURT: But you can cross-examine the person who told you, "I saw the argument." The point is, if there was an argument between Ms. Whatley and Mr. Hendrix, and here's what they were arguing about, and they were going back and forth, you can cross-examine me as to were they really arguing, how far were you away, what did you hear, how did you know that's what they were talking about?

Now, if I were offering, well, Mr. Hendrix said something to Ms. Whatley and I heard it and I was offering it for the truth of what you said because I'm trying to prove that what you said to Ms. Whatley is something that truly happened, then that's hearsay.

Now, what reason are we offering this witness? Is it to prove the substance of the discussion between the two or is it to show that they had this interaction or interchange?

MS. WHATLEY: To show they had the interaction and interchange. It's to -- this witness goes toward motive. I'm not offering it for the truth that Dr. Pierce -- because what if -- let me back up. Some of what I intend to have her read

are portions of her reports in which she quotes Dr. Pierce. I'm offering it to show that Dr. Pierce is speaking to Dr. Mann during the course of these hearings.

THE COURT: Or that he made that statement.

MS. WHATLEY: And that he made that statement.

THE COURT: It's irrelevant whether the statement is true.

MS. WHATLEY: Correct.

THE COURT: It's he made the statement.

MR. HENDRIX: Here's the way I would analyze that, Judge: Then it becomes a relevancy issue when we get to the truth of the matter asserted. So it is -- if I am relaying -- if I as a witness, the declarant on the stand, am simply relating what I saw about a conversation, sure, my observations are admissible. They seemed to be excited. Someone seemed to be mad. But the actual content of what is said is an entirely different thing.

Second level is, is it being offered for the truth of the matter asserted? If it comes in, Judge, I will tell you we will ask for a limiting instruction and that limiting instruction to be, ladies and gentlemen, this is not being offered for the truth of what is said, and if it's not, frankly, then it has relevance problems. All right?

In other words, turn it on its head. If it doesn't matter what's --

THE COURT: Ms. Couch wanted to weigh in. Did you have something to add?

MS. CASSINELLI COUCH: No, he's saying --

THE COURT: Here's what I see: I will allow the testimony just to show that there's this interchange that took place. I will not allow the admission of the newspaper articles themselves. And I wouldn't want it to be told to the jury that I'm reading my newspaper article. And the reason I said that, the reason I say that is that I don't know that the article itself makes it more meaningful or less meaningful; it's the fact that she witnessed this take place. Plus, we confuse the jury, we're telling them don't read newspaper articles, you should disregard what you've read, because almost every one of them said they had read, seen, or heard things about this case. And if we let her pull out a newspaper article and say I'm taking this from the article, does this cut against what we've been telling them, the whole thing about disregarding everything you've read, heard, and seen in the media? I think that's right.

MS. WHATLEY: Can she read the quote from her newspaper article without telling the jury it's from the newspaper article?

THE COURT: Does she have notes independent of the article? I don't mind her relying on it if that's what she wrote, but I wouldn't want her to have it in her hand and the

jury is looking over trying to see what is it she has in her hand, and she's sitting there for -- who does she work for?

MS. WHATLEY: Used to work for the *Arkansas Democrat-Gazette*.

THE COURT: And she has a *Democrat-Gazette* article and they look and she has a paper in her hand.

MS. WHATLEY: These are what I intend to hand her. They're just white pieces of paper that don't even necessarily appear to be newspaper articles.

THE COURT: I'll let you make a record, of course, but I will not receive the newspaper articles themselves. She can testify about observing this interchange, and I'll let the defendants make more of a record if you want to make that record now.

MS. CASSINELLI COUCH: I just -- are we saying that Ms. Smith is going to be permitted to quote what Dr. Pierce said during the meeting?

THE COURT: I will allow her to testify as to what the argument was about, what they were arguing about. That was what she witnessed. She saw it.

MS. CASSINELLI COUCH: I think Ms. Whatley intends to -- correct me if I'm wrong -- have her quote Dr. Pierce's statements, and I would submit that the quotes themselves are being offered for their content. If he had said, "It's a nice day outside," I don't think this witness would be up here saying

that, and if he -- I believe that the prosecution intends to call him as a witness. Those would be his statements that he can then testify that he made that statement. So for her to just come in here and say I was in the room, and here are some isolated statements that this person said, that to me seems like blatant hearsay.

THE COURT: I understand. I overrule you on that. And I have to look at the reliability of the statement itself or the testimony itself. Hearsay is inadmissible because it's not reliable. You can't test it. She is testifying about a conversation that was not to her. These are two people not speaking to her, giving her information that could then be twisted so she can go tell somebody. She's just sitting there watching two people talk. You know, how reliable is it? I don't know. You can test it to see if she really heard it, how far she was, you know, what was the voice inflection and that type of thing. But I don't think you have the reliability problem you would if I were to tell you something and expect you to go into a courtroom and testify about what I told you.

MS. CASSINELLI COUCH: It seems to me that I will have a hard time cross-examining her about what somebody else said and that -- you know, that would be the reliability issue, that we are unable to cross-examine.

THE COURT: I understand. I understand.

MR. HENDRIX: Would your Honor consider a limiting

instruction that these statements are not being offered for the truth of the matter contained in them?

THE COURT: Do you have -- I just don't have one.

MR. HENDRIX: I just made that up.

THE COURT: And Ms. Whatley. No, no, I think there is an instruction on that. I just don't have it handy. Ms. Whatley has a response to that, because --

MS. WHATLEY: I don't necessarily have a response, because without her being able to see these -- I understand the jury not getting them. Without her being able to see them, she doesn't have any notes with her and I don't know if she could --

THE COURT: She can see them.

MS. WHATLEY: Okay.

THE COURT: I'm not going to receive them into evidence. What I would -- I think the better practice would be for you to probably take them out of the plastic and hand them to her so she can have them in her hands to refer to instead of you walking up and handing them to her, because at that point the jury is going to wonder why am I not going to let them see those.

MR. HENDRIX: And they're just being used, I gather, to refresh her memory.

THE COURT: To refresh her memory.

MS. WHATLEY: Can I go ahead and give them to her?

THE COURT: Yes. I think that would be a better

practice.

Ms. Couch?

MS. CASSINELLI COUCH: I was just going to say, I think that if she is relying on newspaper articles to testify, as part of cross-examination, I should be able to say, you're relying on newspaper articles and not open the door to these being admitted.

THE COURT: She wrote them, though. It's not like she read somebody else's article. It would be akin to her sitting down and writing a personal note and keeping it, a revised and edited personal note, so that's a little different.

MS. CASSINELLI COUCH: That being my point. She doesn't have all of her notes, so she doesn't have the entire -- all of the statements that were made. It would be like me writing a pleading based on the favorable parts that I wanted to present.

THE COURT: I understand. The problem is, you open up a door, Ms. Couch.

MS. CASSINELLI COUCH: That's why I --

THE COURT: If you ask her about aren't those newspaper articles that you wrote and didn't you -- I guess you could ask her do you have your full set of notes with you and how can you refresh your memory if you don't have your notes with you.

MS. CASSINELLI COUCH: We're going to have to tell the

jury who she is.

MR. HENDRIX: The process in memory, her recollection is, "Tell us what you remember." "Oh, I don't remember." "Does this help you remember now?" So the witness may go, "Yeah, I remember what was said," without her memory having to be refreshed.

THE COURT: You can let her see them before she comes in and testifies. Either way, it is fine. I don't mind her referring to the article since she wrote the article.

MR. HENDRIX: Do you want me to try to fashion a limiting instruction? I mean, it's --

MS. CASSINELLI COUCH: I can get them online, so if I could have a moment, I could get it and e-mail it to --

THE COURT: We should have -- do we have one back there?

MR. HENDRIX: It's just really citing the rule, right? This is not being cited for the truth of the matter asserted?

THE COURT: It should be very short. But we don't know, I haven't heard her testimony, so I don't know what testimony she offers is for the truth of the matter and what is not. I guess if she were saying, "I was at the meeting," that would be offered for the truth of the matter asserted. When she goes into the conversations between the two, of course that's -- it's just that I witnessed this confrontation between the two people.

MR. HENDRIX: And at that point, we would just object and ask the Court for the limiting instruction.

THE COURT: Okay. We can handle that.

MR. HENDRIX: And I would say, I guess it's just that portion of Rule 801, Judge, that just says this is not being offered for the truth of the matter asserted.

THE COURT: For the truth of the matter asserted, yeah. And if you want to make more of a record, of course, you'll be allowed to.

MS. CASSINELLI COUCH: I just feel confused because we're all talking. So are we saying it's not hearsay because it's not offered for the truth of the matter asserted? Is that the Court's ruling?

THE COURT: Primarily.

MS. CASSINELLI COUCH: Okay.

THE COURT: Primarily.

MS. WHATLEY: And can I go ahead and give them to her? Do you want me to --

THE COURT: She can look at her notes. I mean, she can look at her newspaper articles so that she can come out here -- she doesn't have to have them in her hands, she can testify this is what I remember from that day and this is what I saw.

MS. WHATLEY: She is scared to death, your Honor. I seriously doubt she is going to remember.

THE COURT: Are we ready?

MS. WHATLEY: Yes.

THE COURT: Do we need a couple minutes first before we bring the jury in?

MS. WHATLEY: I need a couple of minutes to tell her what is going on, and then we have four witnesses, including her, that can be sworn once they get in here.

THE COURT: Okay.

MS. WHATLEY: Okay, your Honor. I think we're ready. We have four witnesses that are available to be sworn.

THE COURT: Okay. Bring them all in.

(Witnesses present in the courtroom sworn in.)

(Jury entered the courtroom.)

MS. WHATLEY: Your Honor, can Ms. Smith go ahead and take the stand?

THE COURT: Yes.

MS. WHATLEY: For purposes of the record, United States calls Nell Smith.

NELL SMITH, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good afternoon.

A. Hi.

Q. Would you please state your name.

A. My name is Nell Smith.

Q. And where are you employed?
A. I work for the Arkansas Bureau of Legislative Research, staff for the General Assembly.
Q. And how long have you worked there?
A. About two and a half years.
Q. And where were you employed prior to that?
A. The *Arkansas Democrat-Gazette*.
Q. And what years did you work at the Arkansas *Democrat-Gazette*?
A. I worked there from mid 2001 to November 2007.
Q. What did you do there?
A. I worked in the Northwest Arkansas newsroom from '01 to the end of '02, and I was the healthcare business reporter, and then I moved to Little Rock news bureau, and I was there from '03 to '07, and I was the healthcare reporter.
Q. What does it mean to be the healthcare reporter?
A. I covered healthcare issues in the state. I covered the Medical Board, I covered the Department of Health, I covered UAMS, and wrote about health issues.
Q. So any health issue, you were the person that would show up?
A. Yes.
Q. And I think you stated you covered meetings at the Arkansas State Medical Board?
A. Yes.

Q. And when did you start covering those meetings?
A. I believe in 2003, when I came to Little Rock.
Q. Were you present at the October 2003 Arkansas State Medical Board hearing?
A. Yes.
Q. And were part of those hearings about Dr. Randeep Mann?
A. Yes.
Q. Do you remember what the allegations were?
A. The main allegations were that he had overprescribed narcotics, and I believe there were allegations of prescribing Adderall without a second opinion.
Q. And do you recall whether or not Dr. Trent Pierce was present at that hearing?
A. Yes. He was.
Q. How long did that hearing last?
A. I believe two days.
Q. In part of that hearing, did it go into the night?
A. Yes. I believe it went until 11 o'clock. Ten or 11.
Q. Did you stay?
A. Yes.
Q. Did you stay for the entire hearing?
A. Yes.
Q. Do you recall any dialogue going on between Dr. Pierce and Dr. Mann in that hearing?
A. Yes.

Q. Can you tell us what you recall about that?
A. I recall at the end of that hearing, Dr. Pierce, after Dr. Mann had -- they had dropped the allegations of overprescribing, Dr. Pierce said that he thought that Dr. Mann had overprescribed and that he was afraid he would be back before the board.
Q. Did anything else happen in that exchange?
A. He shook his finger at him.
Q. Who shook his --
A. Dr. Pierce shook his finger at Dr. Mann.
Q. Did you ever talk to Dr. Mann about what had happened in that hearing?
A. I talked to him after the hearing was over, and --
Q. What did he tell you about the hearing?
A. He thought they were -- he called them a hostile board.
Q. Is it unusual for you to talk to the people that are being disciplined before the board, or was it when you worked at the *Democrat-Gazette*?
A. No. It's very common.
Q. Did you ever have a telephone conversation with Dr. Mann?
A. Yes.
Q. Did you learn anything during that telephone conversation?
A. Yes.
Q. What did you learn? Take a deep breath. What did you learn during that conversation?

A. One thing that I know I didn't know before is that he told me that he had a million-dollar machine gun collection.
Q. Did that surprise you?
A. Yes.
Q. Can you tell this jury what Dr. Mann's reactions were to the allegations that he was overprescribing?
A. He always contended that he had prescribed the proper amounts, but that his patients were misusing his properly prescribed medications.
Q. So it was the patients' fault?
A. Yes.

MR. HENDRIX: Your Honor, I object. That's argumentative.

THE COURT: That's sustained.

BY MS. WHATLEY:
Q. Let's go to, were you present at the July 2006 hearing?
A. Yes.
Q. And do you recall whether or not that was a special hearing?
A. It was a special -- special hearing, you mean --
Q. Was there a specific purpose for the July 2006 hearing?
A. They had temporarily suspended his license for accusations that he had overprescribed again.
Q. And who is "he"?
A. Dr. Mann.

Q. Do you recall whether or not there was any disciplinary action after that hearing?
A. Yes.
Q. And what happened at the end of that hearing, if you recall?
A. There was a settlement agreement, and he agreed to give up his DEA registration.
Q. Were you present at a hearing in August 2007 when Dr. Mann appeared back before the board asking for his DEA to be re -- or to allow him to reapply for his DEA?
A. Yes.
Q. And was there any dialogue between Dr. Mann and Dr. Pierce in that hearing?
A. Yes. Dr. Pierce said that he couldn't believe that Dr. Mann was back before the board to request the ability to reapply for his DEA.

MS. CASSINELLI COUCH: Your Honor, may we approach?

THE COURT:

[Bench conference reported as follows:]

MS. CASSINELLI COUCH: I'm sorry. We're both just sitting here listening to this, and it's exactly what we discussed a minute ago. She is making -- she is saying Dr. Pierce said these things, and they are offered for the truth of what he said.

THE COURT: Let me ask you this, though, Ms. Couch:

Is it offered for the truth in that we're going into finding out Dr. Pierce, questioning what he was doing, or was it the fact that he said it and Dr. Mann said it?

MS. CASSINELLI COUCH: You could argue both things, but clearly the way she is testifying, Dr. Pierce said he was concerned about this, that, and the other, relationships to prescribing and things, to me, if the content wasn't what it was, we wouldn't be here. And she is attributing his thoughts, his beliefs, to him. Why can he not come and testify to his own statements?

THE COURT: Well, I don't know, but I've been sitting here paying close attention because I've been waiting for something to be said that would be really objectionable. It's almost as if, if I said -- if you're being charged with having killed me and somebody is trying to say, well, she had provocation to kill him because I heard him say that he was going to kill her right before she killed him. If I say I'm going to kill you and then I shoot you down, does it matter what my mind-set was or that I said I was going to kill you? I don't think it does. I think it's the fact that you heard it and it caused you to spring into action. I think that's the point of the testimony.

MS. CASSINELLI COUCH: I understand what you're saying, and I understand hearsay, but I think in this situation, though, I think we're getting into situations where transcripts

have been introduced, and I understand some of this didn't make it into the transcript, and we're getting into situations where a ton of board members are talking, a ton of board members are making comments and there are comments made back and forth, and she is here to testify that Dr. Mann was concerned that he was going to be back here because of this overprescribing. Dr. Pierce said that he didn't agree with the board's decision. You know, I mean --

THE COURT: I'm going to overrule it. I think that can all be taken up on cross, you know. There are a lot of ways you can go with it on cross with what the other board members were saying and why are we here focusing on what Dr. Pierce said. I mean, I'll allow you to go -- to take it up on cross, but I'll overrule it.

MS. CASSINELLI COUCH: Okay.

MR. HENDRIX: And, Judge, at this point I would think that the limiting instruction would be appropriate.

THE COURT: Okay. But here's what I've come up with as far as a limiting instruction, and I wrote it down, and tell me whether we can be in agreement on this: The testimony regarding the conversations between Dr. Mann and Dr. Pierce is being admitted for the limited purpose of showing these conversations took place and not being admitted to prove the substance of those conversations.

MS. CASSINELLI COUCH: I don't know if I would

character them as conversations between the two. I think our argument would be that they were just comments made at the board hearing. So maybe just statements made or statements testified to.

MR. HENDRIX: And I think we -- no, that's right.

MS. CASSINELLI COUCH: I just don't want them to be characterized as conversation between the two.

THE COURT: Statements made at the board.

MS. CASSINELLI COUCH: The statements testified to by Ms. Smith are offered for the purpose of, because I don't know what all she is going to testify to.

MS. WHATLEY: She is almost done.

THE COURT: I don't know whether you can say statements made by Ms. Smith. That could go --

MS. CASSINELLI COUCH: Testified to.

THE COURT: Were you even at the hearing? I mean, she can testify, "I was there."

MS. CASSINELLI COUCH: Well, the third-party statements she testified to, or something. I just don't want it to be characterized as the two of them having an exchange.

THE COURT: Regarding the statements made by Dr. Mann and Dr. Pierce at the board meeting?

MS. CASSINELLI COUCH: I'm going to ask her about other people, so --

THE COURT: Okay. The statements made at the board

meeting.

MR. HENDRIX: Yes.

MS. CASSINELLI COUCH: That's fine.

THE COURT: Let me read it for you so we can make sure we're on the same page. Okay. The testimony regarding the statements made at the board meeting is being admitted for the limited purpose of showing those conversations -- those statements, statements --

MS. CASSINELLI COUCH: Were made.

THE COURT: -- were made and are not being offered to prove the substance of those statements.

MR. HENDRIX: Or the truth of those statements.

THE COURT: The truth of those statements or the substance?

MR. HENDRIX: The truth.

THE COURT: The truth. I don't think it matters that Dr. Pierce said, "I don't see why you're back here." I don't think it matters. The provocation for Dr. Mann to take the actions he took -- you understand?

MS. WHATLEY: Yes.

THE COURT: Whether subjectively he really felt that way, I don't think that's relevant, is it?

MS. WHATLEY: I'm just offering it to show that these statements were made during the course of the Medical Board hearings. Dr. Mann was present, and Dr. Pierce was directing

those statements toward Dr. Mann.

MS. CASSINELLI COUCH: I guess my semi issue is, I believe the government's theory of prosecution is that Dr. Mann believed that Dr. Pierce believed those statements and was going to revoke his license. So the content of the statement is central to the government's admission.

THE COURT: I think that's part of it. I also think that part of it is the government's theory that Dr. Mann felt like he was being antagonized by Dr. Pierce, and he felt a motive to then get him. I think that's part of it, too. So I think -- here's what we'll do. Overrule the objection. Limiting instruction: The testimony regarding the statements made at the board meeting is being admitted for the limited purpose of showing those statements were made. They're not being admitted to prove the truth of those statements.

I know you still have your objections, but this is the instruction I'll give.

MR. HENDRIX: That's great. Thanks, Judge.

MS. WHATLEY: Okay.

[Continuing in open court:]

THE COURT: Ladies and gentlemen of the jury, I think when we got started, I told you at times there would be testimony or evidence that would be admitted for one purpose, but not for another purpose, and that I would give you instructions on how to use that evidence. Well, in this case,

we have the same situation, and so I'm going to read an instruction that we have devised at the bench here.

The testimony regarding the statements made at the board meetings is being admitted for the limited purpose of showing those statements were made and are not being admitted to prove the truth of those statements.

So as you listen to this testimony, remember that admonition. And I'll read it to you again.

The testimony regarding the statements made at the board meetings is being admitted for the limited purpose of showing those statements were made and is not being admitted to prove the truth of those statements.

You may continue.

BY MR. GORDON:

Q. At each of these hearings we just discussed, was Dr. Mann present at all of those hearings?

A. Yes.

Q. Was he in the room when Dr. Pierce was making these statements?

A. Yes.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Hi, Ms. Smith.

A. Hi.
Q. I believe you testified on direct that you attended all the hearings related to Dr. Mann before the board; is that right?
A. I believe so.
Q. Tried to, at least?
A. Yes.
Q. As the health reporter.
A. Yes.
Q. At the '03 hearing, I believe you testified, and you'll have to excuse me if I don't get all the hearings and the statements correct, but I believe you testified that there were some statements made at the '03 hearing by Dr. Pierce.
A. Yes.
Q. Is that right? And at the end, do you recall that at the end of that hearing, the board did drop all the charges?
A. Yes.
Q. With the exception of some minor infractions that I believe Dr. Mann agreed to?
A. Yes.
Q. The allegations of overprescribing were dropped; is that right?
A. Yes.
Q. And were you present for testimony at that hearing?
A. Yes.
Q. And that resulted from the board's expert reviewing the

records and saying that his original opinion was incorrect?
A. Right.
Q. At one point -- or during that time, are you aware that there were many doctors who were being -- I guess their prescribing habits were being reviewed?
A. Yes, there were a few.
Q. A few?
A. I covered three or four of their cases. I don't know how many.
Q. In fairness, you don't have all your notes or anything with you, do you?
A. I don't have all my notes.
Q. And if you had previously stated that Dr. Mann was among many others that were accused of the same prescribing habits, would that be accurate?
A. I wouldn't say many others. I would -- I mean, I believe it was less than -- fewer than ten.
Q. How about -- and I did misquote you. A string of doctors. Would that be accurate?
A. Okay.
Q. I'm not trying to trick you. I know you don't have your notes.
You also mentioned, I believe, at some point that you spoke with Dr. Mann; is that right?
A. Yes.

Q. And that he mentioned that the board was hostile?
A. Yes.
Q. He didn't say Dr. Pierce was hostile. He said the board?
A. The board.
Q. And were you present at the '06 hearing as well?
A. Yes.
Q. Do you recall the board discussing the hostile community that Dr. Mann practiced medicine?
A. Do I remember the board discussing it?
Q. Uh-huh.
A. I don't remember what the board members said about it. I remember Dr. Mann talking about the community being hostile.
Q. You don't remember that conversation, the board members having that conversation?
A. No, I don't remember the board members themselves.
Q. That's okay. I realize this was a long time ago, so -- and you did mention that Dr. Mann also mentioned that he had a gun collection?
A. Yes.
Q. He wasn't shy about that, was he?
A. No.
Q. You also mentioned the '06 hearing. I believe there were some statements made at that hearing that you testified to; is that right?
A. Yes.

Q. And at that hearing, I believe you testified that Dr. Pierce made a statement, maybe shook his finger or something to that effect?
A. I think the shaking of the finger was the '03.
Q. That was back in '03?
A. Yes, I believe so.
Q. So not in '06, but back in '03?
A. I believe so.
Q. Did Dr. Mann have any kind of outburst in reaction to that?
A. No.
Q. Or at the '06 hearing?
A. No.
Q. Did he yell at you when you called him?
A. No.
Q. At the '06 hearing, you recall that it was Dr. Mann who suggested that they agree that he surrender his DEA license?
A. Yes.
Q. And everything else? He was agreeable to the terms? Do you remember that?
A. In the '06?
Q. Yes.
A. Yes.
Q. I'm sorry. I'm going back and forth.
Do you recall at the '03 hearing, many board members asked questions. Is that accurate?

A. Yes.
Q. It's kind of a -- they kind of do it in a discussion format.
A. Yes. It's led by Bill Trice, the attorney, but they are all free to ask questions.
Q. Were they at that time seated in a room and everybody is kind of around --
A. In a U shape.
Q. They're across from each other, and they're sort of having a discussion, and everyone is kind of in the room listening?
A. Right, the audience.
Q. And everybody was having a discussion?
A. Yes.
Q. And, in fact, Ms. Britain was quite vocal at the '03 hearing, was she not?
A. Yes.
Q. And at the '06 hearing, Ms. Britain and Dr. Beck were very outspoken. Do you remember that?
A. They were both outspoken members, yes.
Q. Sure.
A. I don't remember specifically what they said, but --
Q. And you haven't reviewed the transcript or your notes or anything? This is all from memory?
A. I've reread my stories, but I haven't read the transcripts. I don't have my notes anymore.

Q. And to be fair, you were there to write a story for people to read and be interested in.
A. Right. Right.
Q. And at the '06 hearing, Dr. Pierce actually encouraged the board to enter into the agreement proposed by Dr. Mann?
A. Yes, yes.
Q. And I would say, and you tell me if you agree, that Ms. Britain and Dr. Beck were the most outspoken members that were against it, that wanted to take it to a full hearing?
A. I don't remember Dr. Beck, but I definitely do remember Ann Britain being very outspoken against it.
Q. Did you have someone with you at the '03 hearing that worked with you?
A. I may have had a photographer.
Q. I mean, did you compile all the information for what you wrote?
A. Yes. There was --
Q. Actually, I did not mean to trick you. I spoke incorrectly. It would have been the '06 hearing.
A. There was another reporter at one point who covered part of the hearing, and I believe I may have covered the other part of that same day, and it was -- I'm not sure if it was my byline or his.
Q. Okay. So what you testified to previously about the '06 hearing, were you present for all of those things?

A. Yes, yes.
Q. But you weren't present for the whole hearing? Or were you? Or do you recall?
A. I don't recall. There was one story that I wrote and -- covering the '03 hearing, and I think there was something in between the '03 hearing and the '06 hearing, and I either shared a byline with another reporter --
Q. And by "shared a byline," somebody else helped you put information together? Is that --
A. Well, when you say shared a byline, it means they wrote part of the story, they were there for part of it and wrote part of the story. I actually think it wasn't part of Dr. Mann's hearing. He covered a -- it was Daniel Nasaw.
Q. And you don't have to -- I just want to be sure that you were there for the statements that you've testified about in court.
A. Yes, I was.
Q. I don't want to ask you about something that you may have heard from somebody else.
A. No.

MS. CASSINELLI COUCH: Okay. Thank you very much.

THE COURT: Any redirect?

MS. WHATLEY: No, your Honor.

THE COURT: Okay. Ms. Smith, you can stand down. Ms. Whatley, call your next.

MR. GORDON: United States called Tony McCutcheon.

MS. WHATLEY: Your Honor, is Ms. Smith excused from the rule? She would like to remain in the courtroom, if possible.

MS. CASSINELLI COUCH: Sure. Yes.

THE COURT: Yes.

TONY MCCUTCHEON, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good afternoon.

A. Good afternoon.

Q. Please state your name for the record.

A. Tony McCutcheon.

Q. Spell your last name for us.

A. M-c-C-u-t-c-h-e-o-n.

Q. Who do you work for?

A. I'm a special agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Q. How long have you worked there?

A. Since 1999.

Q. Where are you assigned to?

A. I'm currently assigned to the Fort Smith site office.

Q. Do you have any other law enforcement experience?

A. Yes. I was a police officer in North Little Rock, and I've been a police officer for the Fort Worth Police Department in

Fort Worth, Texas.
Q. How long did you work for the police in North Little Rock?
A. Approximately six years.
Q. And what kind of work did you do there?
A. I was patrolman and a detective while I was at North Little Rock.
Q. And how long were you in Fort Worth?
A. Two and a half, three years.
Q. What did you do there?
A. I was strictly patrol in Fort Worth.
Q. On February 4 of 2009, tell the jury where you were working and why, please.
A. The morning of February 4 of 2009, I was -- I had arrived in the Little Rock office, ATF office, I was going to assist Agent Norris with a case. So I drove over from Fort Smith that morning, and about mid morning, nine-thirty, I believe, 9:45, I had arrived in the Little Rock office.
Q. Okay. And the case you were there to assist Agent Norris on, it wasn't this case; right?
A. No, it was not.
Q. Had nothing to do with this case?
A. No.
Q. When you got to the office in Little Rock, were there many people around?
A. There was no one in the office except for the secretary.

Q. And did you find out why no one else was around?
A. Yes. I asked the secretary where everyone was, and she said that they were in West Memphis, Arkansas, at a bombing. And so I immediately called our supervisor to see essentially what he wanted me to do since I was already in Little Rock, if he wanted me to drive on over and assist, just essentially see what he needed me to do. And he asked me just to stay there in the Little Rock office here and just kind of wait and see what needed to be done.
Q. And were you eventually asked to help out with the West Memphis bombing?
A. Yes. Later that afternoon, they told me that I -- for me to go ahead and I could go home to Fort Smith, but asked if I would, on my way to Fort Smith, if I'd stop in Russellville and interview a doctor on my way.
Q. Who was it that asked you to stop and interview Dr. Mann?
A. It was Special Agent Glen Cook.
Q. About what time did he ask you to do that?
A. I'm not real sure. I know it was in the afternoon. Could have been two, three, something like that.
Q. Did you know Dr. Randeep Mann?
A. Before these dates, no.
Q. Or anyone in his family?
A. No, I did not.
Q. When you were asked to go interview Dr. Mann, did you have

any information about the bombing?
A. Not really, just that there had been a bombing in West Memphis. It was essentially all I knew.
Q. And do you know why they wanted you to go talk to Dr. Mann?
A. They asked me just to go talk to Dr. Mann to see what he had been doing the day before the bombing and the morning of the bombing.
Q. Did you go by Dr. Mann's house?
A. Yes, I did.
Q. What was the address, please?
A. The address was 313 Milky Way in London, Arkansas.
Q. Did you go by yourself or with somebody?
A. With someone.
Q. Who went with you?
A. Special Agent Stacie Rhoads with the Arkansas State Police.
Q. And why did Agent Rhoads go with you?
A. Just kind of standard operating procedure, to go with someone, to have two people go do an interview. And a call was made and she was available, and so she went with me.
Q. Did you call Dr. Mann or the house before you arrived there?
A. No, we did not.
Q. Why not?
A. When interviewing someone, you like to see what their initial response is when you talk to them, just kind of see how

they respond, and so we didn't call before we arrived.
Q. When you got there, was anybody home?
A. Yes.
Q. Who was there?
A. Dr. Randeep Mann and his wife, Sue, were both at the residence.
Q. Were any of their kids there?
A. Not that I know of. I didn't see any. The only two people that I saw were Dr. Mann and his wife.
Q. When you met with Dr. Mann and his wife, did you introduce yourself?
A. Yes. I'm not sure which one came to the door, but whoever came to the door, myself and Agent Rhoads both showed our government-issued identification, explained who we were, that I was with the ATF and she was with the state police, and asked if we could speak to them for a minute. They said yes and invited us inside the residence.
Q. Did either Dr. Mann or his wife ask you why you were there?
A. No, they did not.
Q. Do you find that unusual?
A. Yes, it is.
Q. Were you and Agent Rhoads invited in?
A. Yes, we were.
Q. What happened inside?
A. Once we entered the residence, essentially just some small

talk at first. The house and where it was located. It sits on the lake, Lake Dardanelle, just kind of pretty scenery and stuff, and we kind of small talked about that. Then we sat at the dining room table. I sat down, Dr. Mann sat straight across from me, and Sue sat to my right, and Agent Rhoads was to my left. And so we sit down at the dining room table to do the -- to conduct the interview.

Q. Who were you there to talk to?

A. To Dr. Mann.

Q. Did you want to talk to Mrs. Mann?

A. Not really, but it was kind of one of those that she was -- it was kind of evident that she was going to sit along with us, and so we didn't push the issue. We went ahead and let her stay in.

Q. Okay. And just to make sure we are all clear here, do you see Dr. Mann present in the courtroom here today?

A. Yes, I do.

Q. And if you would, please point to him and identify some clothing that he's wearing.

A. It's the gentleman that just stood up with the black suit and kind of the tan tie.

MR. GORDON: Your Honor, may the record reflect he has identified the defendant.

THE COURT: So reflect.

BY MR. GORDON:

Q. And Dr. Mann's wife, do you see her present in the courtroom?
A. Yes. She is the lady that just stood up to Dr. Mann's right.
MR. GORDON: May the record reflect he has just identified Mrs. Mann.
THE COURT: It will so reflect.
BY MR. GORDON:
Q. As we're talking here, you sometimes say Sue. When you say Sue, are you referring to Dr. Mann's wife?
A. Yes, I am.
Q. And where did y'all conduct the interview?
A. It was in their house in the dining room.
Q. And did you make note of what time the interview started?
A. Yes, I did.
Q. And what time was that?
A. At about 5:20, is what I wrote down, 5:20 p.m.
Q. How did you start the interview off?
A. I always start my interviews just getting their general information, name, date of birth, their address, where do they work, their phone numbers, and such just general information.
Q. Where did Dr. Mann tell you that he worked?
A. He stated that he worked at the Skyline Medical Clinic at 111 Skyline in Russellville, Arkansas.
Q. And did he or his wife indicate that she worked there as

well?
A. Yes. They said that she kind of ran the office-type deal, is what she did.
Q. And did Dr. Mann explain to you what his normal day was?
A. Yes, he did.
Q. Tell us about that.
A. He stated that he -- he normally gets up and goes to work at approximately 8:45 a.m. and that he would get off at about four or five. It just depended on how many patients he had that day on what time he left the office.
Q. And then after work?
A. After work he just said he normally would go home, and then usually in the evening, he would go to a fitness center there in town and work out and then go home after that, and that was usually at about ten o'clock. That was his normal day.
Q. And did you specifically ask Dr. Mann about the night before the bombing and the morning of the bombing?
A. Yes, I did.
Q. What information did he tell you?
A. He stated that the day before the bombing, that he went to work about that normal time. He stated that he left the office that day and went to Lowe's after he got off work, and he said he left the office at 4:48 p.m. the day before the bombing. Dr. Mann and his wife went to the Lowe's there in Russellville, purchased some plastic sheeting for his garden, using a purchase

card, kind of like a gift card, from Lowe's, using that gift card, purchased the plastic sheeting.

From there, they went home, and then stated that -- again, that evening at about 8:45, that Dr. Mann and his wife both went to the fitness center to work out. And he said shortly after ten, when they closed, is when he then went home.

He stated that once he was home, his wife went to bed, and he stayed up for a little while working on the files from the office, watching a little bit of TV, listening to a little bit of music. I asked him if he remembered what he watched on TV. He couldn't remember. He said maybe Jay Leno or something, but he said he went to bed then at about midnight.

So I asked him about the next morning.

Q. Hang on, Agent McCutcheon.

A. Okay.

Q. Just one second. Dr. Mann said he left work at 4:48 the day before the bombing?

A. That is correct.

Q. That's a pretty precise time. Do you know how come we have a number like that?

A. I don't remember on that one, no.

Q. Okay. And he said that after work, he and Mrs. Mann went to Lowe's?

A. Yes.

Q. Bought some plastic sheeting?

A. Yes.
Q. What did he say that was for?
A. He said it was for his garden that he had there. He also, when he said that, he pointed to the counter that was to my right, just a counter that kind of breaks off the kitchen from the dining room, and there in the center of that counter was a roll of plastic sheeting, just sitting there in the middle. It was the only thing that was on the counter, which I thought was kind of odd. It was a very clean house. But he pointed to it and showed it to me.
Q. Why did you think that was odd?
A. It was just -- he's got two very large garages that they obviously walked through before getting to the house. From where I was sitting you could see the utility room, and I would just assume they would place it in there. Being very clean, that's something for the garage or the utility room, it's not something for the kitchen, and it was the only thing that was sitting on the counter. And it was directly in the center of the counter.
Q. And how many rolls were there?
A. Just one.
Q. Did he mention anything about going to Lowe's and buying -- that he had bought plastic the day before as well?
A. I don't -- I don't think he did.
MR. GORDON: May I approach the witness, your Honor?

THE COURT: Yes, you may.

BY MR. GORDON:

Q. Showing you what's been marked as Government Exhibit 97-C, do you recognize that?

A. Yes.

Q. Is that similar to the roll that you saw there at Dr. Mann's house when you interviewed him?

A. Very similar.

MR. GORDON: Your Honor, at this time I'd like to offer Government Exhibit 97-C.

MR. HENDRIX: Judge, no objection, but just so that the record is clear, this was not something that was seized. This is a representation of plastic that you can buy at Lowe's; right?

MR. GORDON: Yeah, and I'll clear that up through a later witness.

THE COURT: It's received.

MR. GORDON: Thank you, your Honor.

(Government's Exhibit 97-C received in evidence.)

BY MR. GORDON:

Q. Did Dr. Mann also tell you about the morning of the bombing?

A. Yes, he did.

Q. What information did you get?

A. I asked about what time that he got up that morning. He

wasn't sure. Mrs. Mann stated that she had got up first and that she had left the residence at about 8:30 a.m. and went to the office to prepare the office and such to get it ready for patients that day. She said that she called him from her cell phone, and so she was able to check her cell phone, and it showed that she had made a call at 8:55 a.m., and she said that that was the call she made to him to wake him up that morning of the bombing, for him to go to work. And so he got up and went to work at that time.

Q. Okay. So as you're getting this information, are you getting it from both Dr. Mann and from Mrs. Mann?

A. Yes.

Q. And during the interview, what was Dr. Mann like?

A. From the very beginning -- most people usually when dealing with agents or police officers, it's been my experience that people are a little apprehensive, maybe even a little scared. Mrs. Mann was this way. She was sitting with her shoulders slumped, her head was down, and she would look up to answer, but over time, she became more comfortable with us there.

Dr. Mann sat up very straight, very proud, almost confident. While he was sitting there, he answered questions very slowly, methodically, and that was his appearance up to this point, anyway.

Q. Now, after you got out information about the night before and the morning of the bombing, what happened next?

A. Then Dr. Mann stated that he knew why we were at his house. So I asked him, "Well, why are we here?" And he stated that a patient of his had called the office and told them that Dr. Trent Pierce had been shot. And then he turned on the TV, I believe it was the TV, and found out from the news essentially what had happened in West Memphis.

Q. And I want to make sure, are you misspeaking or -- because you said Dr. Pierce had been shot. Dr. Mann told you that Dr. Pierce had been shot?

A. That's what the person who called their office had told them.

Q. Okay.

A. And then they turned on the news and found out what had really happened.

Q. I just wanted to make sure that we're all clear that you're not misspeaking.

A. Right.

Q. Okay. Did you talk to Dr. Mann about Dr. Pierce and the Medical Board?

A. Yes. I asked him if he had been before the Medical Board, and he stated that he had. He told me that in 2003, the Medical Board had pulled his license to be able to practice medicine in Arkansas, and he stated that in April -- on April 24 of 2006, he stated that he had sued the Medical Board, but the suit was thrown out. He said the judge had told him he couldn't sue a

whole board. He had to sue each individual, and so he said he didn't do that.

But I asked him to explain to me what had happened, and he said that the board had told him to go ahead and plead guilty to the charge and that they would restrict his license. And so, therefore, he could still practice medicine, but he couldn't write prescriptions. And he stated that's what he was doing at that time. He was still practicing medicine, but he wasn't able to write prescriptions.

He stated that he had written Dr. Pierce in December of 2008 asking to have a hearing for him to be reinstated, to get his license reinstated, and he stated that Peggy Cryer had sent him a letter stating that the Medical Board is going to have a hearing with him on June of 2009.

He told me that he saw this as Dr. Pierce was going to help him to get his license back. But also talking about his appearance, while he was talking about this, which I'm sure it is an emotional deal, you could -- he -- his voice was raised, he got a little louder, a little more animated with his hand motions and such while talking about it. So you could tell this was sort of an emotional deal for him, talking about the issues that he had with the Medical Board.

Q. But he, Dr. Mann, told you that he, Dr. Mann, thought that Dr. Pierce was helping him get his DEA permit back?

A. Yes.

Q. Did you get any other information during the interview?
A. Yes. Since he mentioned the fitness center, I asked him who at the fitness center would have seen him while he was there. He stated that a Herb Swanson was there, and as far as the employees, he couldn't remember their names, but he said it was a bald guy and then there was a young guy who likes his cars. So I had noticed a few cars out in the parking lot, so I asked him at that time, you know, if he -- what cars he did own. And he gave me a list of his cars.
Q. Okay. Why did you ask about the cars?
A. The one thing I did know about, I guess, the bombing, the only thing, was that a Nissan vehicle was involved, and to see if there was a Nissan vehicle there.
Q. Did you make a list of Dr. Mann's cars?
A. Yes, I did.
Q. Do you have that list with you?
A. Yes, I do.
Q. Will you read it for us?
A. This is the list that --
MR. HENDRIX: Your Honor, I'm sorry. Can we approach for a second?
THE COURT: Yes.
[Bench conference reported as follows:]
MR. HENDRIX: I'm not sure what the purpose of this is, of asking him this list of cars. I suspect it's because he

has many, many new, nice cars, and for some reason that somehow makes him guilty, I suppose, is what the point is. The question is, does he have a Nissan or not?

MR. GORDON: One of the cars is a Nissan, and we're going to use that to tie in later.

THE COURT: I guess the objection is to the relevance of asking about all the other cars. What is your response to that? You didn't --

MR. GORDON: There is going to be -- there's been questions asked about how the checks and the items removed from the office, that they weren't even relevant to the investigation. This will tie into that eventually. This list of cars will tie into the relevance of the items that were removed from the office.

THE COURT: Mr. Dudley --

MR. DUDLEY: I'm sorry. Evidence of what? I didn't catch the end of it.

THE COURT: Of the checks being removed from the office. This is what the inquiry regarding the cars is going to --

MR. DUDLEY: No question the checks were removed from the office.

MR. GORDON: No, but everyone's been arguing this has nothing to do with the bombs or the grenade case, and this starts showing the relevance of how it --

THE COURT: Overruled.

MR. GORDON: Thank you, your Honor.

[Continuing in open court:]

BY MR. GORDON:

Q. Agent McCutcheon, would you read the list of cars for us, please.

A. Yes. And this was the list that Dr. Mann gave me. He stated that he had two Dodge Vipers, a Ford GT, a Shelby kit car, a Porsche, a Corvette, two Lexuses, a BMW, a Toyota van, a Mazda, another Lexus, and a Maxima.

Q. And the Maxima is a Nissan?

A. Yes, it is.

Q. Did he tell you who the Nissan Maxima belonged to?

A. He stated that his son who goes to the University of Arkansas in Fayetteville was driving that vehicle at the time.

Q. Did he ever mention his son Dan?

A. I don't believe he did.

Q. Did Dr. Mann provide you with his cell phone number?

A. Yes, he did.

Q. What was that cell phone number, please?

A. He stated that his cell phone number is 479-857-3586.

Q. And did Mrs. Mann give you her cell phone number?

A. Yes. She stated that it was 479-264-3116.

Q. During the interview, did Dr. Mann mention that he had a federal firearms license?

A. Yes. He mentioned that he does have a federal firearms license. He stated that it is a Class 3, which means that he can purchase and sell firearms of a type of machine guns, silencers, sawed-off shotguns, short-barreled rifles, firearms of that kind, that nature.

Q. And how did that topic come up?

A. I don't really remember how it came up, but it came up during the interview. He also asked me, and it was kind of during the middle of the interview, he stated that -- asked me if I wanted -- or I should say, first of all, we talked about it and I asked him if he had his business elsewhere or if he had it in his house. I know there are some people who have a federal firearms license and they actually have it at their house, a different -- you know, maybe an office or something in their house. And he stated that he had all the guns there in his house and asked me if I wanted to see his guns. Which I told him, yes, I would love to, but we would finish the interview first, and then if we could do it afterwards. He said that was fine.

Q. Did you go see Dr. Mann's guns?

A. Yes. After we -- after the interview was finished, we had gotten up from the table, and I asked Dr. Mann, I said, "Well, can I see your guns?" And he said, "Yes, sure."

And so we -- at that point, he led us down some stairs into what I would kind of call a fitness room. It had some weights

and such, and we go down the stairs into kind of a rather large room. From there, we turned to the right, and there's another small room off of the fitness room where there's several gun safes. Also in --

Q. Go ahead.

A. I was going to say, in the fitness room, though, on our way to that room, I noticed a .50 caliber machine gun, which is a very large-type machine gun, sitting on a small tripod over in the corner, which caught my eye when we were in the room. And then, like I say, going to that other little room, then we entered the little room and that's where the gun safes were.

MR. GORDON: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to show you Government's Exhibit 100-MM. Do you recognize that picture?

A. Yes. This is what I would call the fitness room.

Q. Is it a fair and accurate depiction of what the fitness room looked like when you were there for the interview?

A. Yes.

Q. I'm going to show you Government Exhibit 100-NN. Do you recognize that?

A. Yes. That appears to be the .50 caliber machine gun on the tripod sitting in the fitness room.

Q. Is that how it appeared when you were there for the

interview?
A. Yes.
MR. GORDON: Your Honor, I'd like to offer Government Exhibits 100-MM and NN.
MR. HENDRIX: No objection, your Honor.
THE COURT: Received.
(Government's Exhibits 100-MM and 100-NN received in evidence.)
BY MR. GORDON:
Q. Agent McCutcheon, let's look at Government's Exhibit 100-MM. What are we looking at here?
A. This is a picture of the fitness room looking toward where the small room that has the gun safes. To the right, you can see the railing from the stairs where you come down from the living room into the fitness room.
Q. Okay. And go ahead and circle the doorway to the room where all the guns were.
A. (Witness complies.)
Q. For the record, it's a doorway kind of just off center to the right of the picture.
And if you would, also, show us where you saw the .50 caliber machine gun.
Let me do this.
A. (Witness drawing on diagram.)
Q. Instead, let's look at Government Exhibit 100-NN. Is that

the machine gun?
A. Yes, it is.
Q. Okay. That was somewhere in the other room?
A. Yes.
Q. Describe for us what you saw when you walked into the gun room.
A. When you walk into the gun room, immediately to the left along the wall, there's just several items just stacked up, but directly in front of you, as soon as you enter, there's several gun safes. I believe there was four, four or five gun safes lined up across from the large gun safes. There was some items also placed on top of them.

Dr. Mann began opening each one of the gun safes and opening them for me to be able to see what firearms he had in these. Each gun safe was what I would call fully loaded gun safes. They had numerous guns in them stacked just one on top of the other, almost. The ones standing up were just one right after the other. It took a lot of effort to get the guns in there, I would think.

Immediately, it was either -- we talked a little bit about the guns, and then in the first or second, I believe it was the first gun safe, I noticed an M-16 with a grenade launcher attached to it, and I believe it's called an M-203 grenade launcher.
Q. Agent McCutcheon, before we go there, in the gun safes that

you saw, what kind of guns did you see?
A. Machine guns, almost every one of them were machine guns. I believe there were maybe a few handguns here and there, but in particular, they were all machine guns.
Q. And were there a lot?
A. Yes.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked Government's Exhibits 100-00 through RR. Do those pictures fairly and accurately represent the way the gun room looked when you were there for the interview?
A. Yes.
MR. GORDON: Your Honor, I'd like to offer Government Exhibits 100-OO, PP, QQ, and RR.
MR. HENDRIX: No objection, Judge.
THE COURT: They're received.
(Government's Exhibits 100-OO, 100-PP, 100-QQ, and 100-RR received in evidence.)
BY MR. GORDON:
Q. Agent McCutcheon, what are we looking at in Government Exhibit 100-OO?
A. This is what I would call the -- directly in front is what I would call the first gun. As soon as you enter into that

little room, that's the first one you come to, and moving to the left, and this is just one of the -- and you can see one of the other gun safes there with the firearms in them.

Q. What are some of the items there on top?

A. Just several different things. As you see, a helmet, there were binoculars, I believe there were some night visions as well. A model airplane.

Q. Let's look at 100-PP. What are we looking at right here?

A. Again, here you can see all the gun safes, you can see there's four. It's four gun safes with the doors open.

Q. 100-QQ.

A. Again, you're looking at what I would call the last three gun safes, and you can see another machine gun on another tripod there on the left, on the floor.

Q. 100-RR.

A. It's just a better picture of the gun there on the floor with the safes on the right.

Q. Now, you started to talk about an M-16 that you saw in one of the gun safes.

A. Yes. I noticed an M-16 that had a grenade launcher attached to it. I believe it's called an M-203 grenade launcher.

Q. How are you familiar with that grenade launcher?

A. I was involved in a case over in Logan County, which is a county over there in the district that I work, and in that case,

we had a machine gun with an M-203, M-203 grenade launcher attached to it that was involved in that case. So I kind of made myself familiar with what it looked like and such at that time.

Q. Did you see one of those in one of these gun safes?

A. Yes, I did.

Q. Let's look at Government Exhibit 100-PP, please. Can you see the grenade launcher in this picture?

A. Yes, I can.

Q. All right. Very carefully, please draw a circle around it.

A. (Witness complies.)

Q. Okay. Now, for the record, the gun safe on the far right of the picture, it's the gun a couple guns over from the one with the green tag on it.

In this picture, describe which part of the gun is actually the grenade launcher.

A. You can see that the actual M-16 is the part on the left, the taller part, and the grenade launcher is on the bottom of the M-16.

Q. What color is it?

A. They're both black. Obviously, the grenade launcher and the M-16.

Q. And what kind of grenade launcher did you say that was?

A. I believe it's called an M-203 grenade launcher.

Q. And do you know what sort of grenade is fired from that

launcher?
A. A 40-millimeter grenade.
Q. Did you ask Dr. Mann about the grenade launcher?
A. Yes. Even though I knew a 40-millimeter grenade is what's normally fired from them, to have something to ask him, I asked him if that was a 40-millimeter grenade launcher, and he quickly said yes. And so then I asked him, I said, "Well, that's kind of cool. Do you have any grenades to go with it?"

And he immediately, his voice was a little bit higher pitched at this point, and he quickly said, "No, no, no, no, no." So I let it go.

We went through the rest, you know, looked at the other safes, just kind of looking at the guns, talking about them. And then if you'll see on the top there, where it says danger, black powder, I used that to come back, kind of come back and ask another question. So I asked him, "Well, you've got this sign on your safes. Do you have any explosives in your safe? Or do you have" -- I just asked him, "Do you have any explosives?"

Again, his voice, like I said, was a little higher pitched, and he quickly, you know, was saying, "No, no, no. I don't have any of that. I just have that up there kind of for show."

I said, "Okay. "

At that point, we -- at that point it was essentially we were through looking at the gun safes and it's -- kind of got

the idea, you're done now, let's go. He didn't come out and say it, but you can sense it when somebody is ready for you to leave. We went ahead and left at that time.

I wanted to leave the interview with Dr. Mann to where if somebody needed to go back again later to interview him, we could, and so I didn't push the issue, but it was obvious that for some reason that that had kind of pushed his buttons.

Q. Before you left, did Mrs. Mann ask you for something?

A. Yes. Before we left upstairs, before even coming down to look at the guns, she had asked if she could make a copy of my notes and Investigator Rhoads's notes that we had made during the interview. During all my years of being in law enforcement, I've never had that question before. But, you know, we both said yes, handed her our notes, and she made a copy of our notes and brought our originals back to us.

Q. Did you see those notes again later?

A. Yes, I saw my notes later.

Q. Where?

A. In Dr. Mann's -- in his office on Skyline Drive.

Q. The medical clinic?

A. Yes, the medical clinic.

Q. What were you doing in the clinic?

A. We were serving a search warrant at the medical clinic, and I noticed my notes there.

Q. And how much later from the interview, how much time had

passed until you were --
A. It was a little over a month, I would say, from the interview till then.
Q. Do you know what time the interview ended?
A. I didn't write the exact time.
Q. How long do you think you talked to them?
A. Probably a little over an hour, hour and 15, hour and 20 minutes, maybe, is how long it took. Maybe an hour and a half.
Q. After the interview, did you follow up on any of the information that you'd learned?
A. Yes. Investigator Rhoads and myself, we then went to the St. Mary's Fitness Center to follow up about where Dr. Mann and his wife had been the night before. Since he had said he had been at the fitness center, we went by there to verify that.
Q. Who did you talk to there?
A. I talked to Jared Mosher.
Q. And was a grand jury subpoena issued to obtain records from the St. Mary Fitness Center?
A. Yes.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm handing you Government's Exhibit 96. Are those the records from the fitness center?
A. Yes, they are.

MR. GORDON: At this time I'd like to offer Government Exhibit 96.

MR. HENDRIX: No objection.

THE COURT: They're received.

(Government's Exhibit 96 received in evidence.)

BY MR. GORDON:

Q. Agent McCutcheon, if you would, let's look at the first page of this exhibit. Do these records pertain to Dr. Mann?

A. Yes, they do.

Q. What's the member name listed on the exhibit?

A. It says Randy Mann instead of Randeep. It's Randy.

Q. Okay. And does it show that Dr. Mann was present on the evening of February 3 of 2009?

A. Yes, it does.

Q. What time does it show him checking in?

A. It shows that he checked in at 9:14 p.m.

Q. And it's clear from all these dates, there is no checkout time?

A. That is correct. They said that that was normal procedures. They would check people in. They mainly wanted to know who came to the fitness center, what time they left. It was -- for them, they just didn't keep up with that.

Q. What time was closing time?

A. Closing time is 10 p.m., and they said that normally with Dr. Mann, almost every evening, they have to go and tell him

it's ten o'clock and that he needs to leave.
Q. Government Exhibit 96, does this also contain records for Mrs. Mann?
A. I believe it did, yes.
Q. All right. Let's look at the first page of her records. What did they list as the member name?
A. I'm afraid I would mispronounce that, but it's S-a-n-g-e-e-t-a. That's her name. But she said that everybody just calls her Sue.
Q. Okay. And do these records indicate that Mrs. Mann checked in on February 3 of 2009?
A. Yes, it does.
Q. At what time?
A. At 9:14 p.m.
Q. Did you follow up on anything else?
A. Yes. I also went to Lowe's to -- an attempt to verify that they had gone and purchased the plastic sheeting the day before the bombing.
Q. And when you went by Lowe's, do you remember who you talked to?
A. With a Ray Black was one of the individuals I spoke to, and he is the manager at the Lowe's in Russellville.
Q. And did Mr. Black verify that he had information that you would like to have?
A. Yes, they did verify that for me.

Q. And was he willing to provide it to you?
A. Yes. As long as we were able to give them a subpoena, he was more than glad to give us the information.
Q. And I'd just like to have you identify for the record --
MR. GORDON: May I approach, your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. I'm going to hand you what's been marked as Government Exhibit 97-A. Are those the records that Mr. Black provided to you?
A. Yes.
Q. And Government Exhibit 97-B, did Mr. Black provide that to you as well?
A. Yes. It's a CD. Yes.
Q. Thank you. Agent McCutcheon, did you interview someone named Thakor Patel?
A. Yes, I did.
Q. Who is Mr. Patel?
A. He is a hotel owner in Russellville.
Q. Is he also a friend of Dr. Mann?
A. Yes, he is, and Dr. Mann is his family's physician as well.
Q. And why did you interview Mr. Patel? Who asked you to?
A. I'm not sure. It was either Glen Cook or David Oliver. One of those agents asked me if I would.
Q. And did you interview Mr. Patel?

A. Yes, I did.
Q. Did you also obtain his DNA and fingerprints?
A. Yes, I did.
MR. GORDON: Thank you, sir. No further questions.
THE COURT: How long do you expect cross to go?
MR. HENDRIX: It will be a little bit.
THE COURT: Okay. Let's take about 15 minutes. Let's come back at a little after 3:30. We'll be in recess. Well, let's come back at 3:35. We'll be in recess until 3:35.
(Recess from 3:19 p.m. until 3:37 p.m.; jury present.)
THE COURT: Mr. Hendrix.
MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:
Q. Agent, several areas to start off with. Were you guys at the office and followed Dr. Mann home?
A. Which -- what day are you talking about?
Q. On February 4.
A. No.
Q. You did not go to his office and then followed him home, then came to the front door?
A. No, we did not.
Q. When you got to his home, remind me what time it was.
A. It was approximately 5:20 p.m.
Q. About 5:20. And he invited you into his home; is that

correct?
A. That is correct.
Q. He didn't shut the door in your face; correct?
A. Correct.
Q. He was nothing but inviting you into his home; is that right?
A. That is correct.
Q. Okay. Sat you down at the dinner table?
A. Yes.
Q. And it was you and Stacie Rhoads; is that right?
A. That's correct.
Q. Is that R-o-s-e or R-h-o-a-d-s?
A. I don't know. I think I misspelled it.
Q. That's why I was asking you because I was confused, too. She's a state police officer; right?
A. Yes.
Q. Now, when you all got there and sat down and he invited you into his home, you went over the day before, is that right, what he'd done the day before?
A. Yes.
Q. And he said he'd worked and he'd left at 4:48; is that right?
A. Yes.
Q. Later on, you went to the medical clinic; right?
A. Not that evening. It was, like, a month or so later.

Q. You've been to the medical clinic?
A. Yes.
Q. And you're aware that there's an alarm at the medical clinic?
A. Yes, I believe there was.
Q. And when you log out, there's a digital readout for what time you're logging out; is that right?
A. That I don't know.
Q. You said he said he went to Lowe's sometime that evening the evening before; is that right?
A. Yes.
Q. And you after the interview go to Lowe's and check that out; is that right?
A. Yes.
Q. And that was the truth?
A. That he went to Lowe's the evening before the bombing? Yes.
Q. And he also told you that he went to the gym later on that evening; is that right?
A. That is correct.
Q. And so to follow up, y'all went to the gym that night; right?
A. Yes.
Q. And you interviewed people?
A. Yes.

Q. And somebody said, yeah, he was, in fact, here?
A. Yes, and gave us documentation showing that.
Q. And, in fact, backed it up with the documents proving it, so he told you the truth about that; right?
A. About that, yes.
Q. Now, the next thing I think y'all talked about is, you went through talking about the State Medical Board; is that right?
A. About what?
Q. The State Medical Board?
A. Yes.
Q. And he had told you that he had resolved problems with them, that it had been settled; is that right?
A. No.
Q. What did he tell you?
A. He stated that he did not -- he was not able to write prescriptions at that time, and he was still trying to resolve that.
Q. Right. Okay. And that's true; correct?
A. I'm assuming it's true.
Q. Yeah. Have you looked at any of the Medical Board records, talked to them with your fellow officers and determined that that subsequently was the truth?
A. No, I have not.
Q. You don't have any reason to disbelieve it, and if all the evidence in this case shows this occurred, it's true; right?

A. No.
Q. And he told you, in fact, he had been invited back before the board for June 2009; right?
A. Yes.
Q. And are you aware that that is, in fact, true as well?
A. I never verified that, so I do not know.
Q. If all the evidence shows us that that's true, he was telling you the truth; right?
A. Yes.
Q. And he also told you that he had an FFL, a federal firearms license; right?
A. That is correct.
Q. And you have determined that that is, in fact, true as well; right?
A. I believe that is true, yes.
Q. Well, and, in fact, at that point, he is -- he invites you to come down into what's that semi basement in his house where his gun collection is; right?
A. Yes.
Q. And invites you to look at his gun collection; right?
A. Yes, he did.
Q. And was more than open about it.
A. Yes.
Q. And you didn't see anything illegal?
A. Not that I knew of, no.

Q. Right. And with an FFL, you assume that he was in lawful possession of these things; right?
A. Yes, I assumed that he was, yes.
Q. And you looked at them, we looked at the pictures, and did you see -- let me talk about those pictures. You did not take those pictures; right?
A. No, I did not.
Q. You didn't take any pictures that night; right?
A. That night, no.
Q. Okay. Those pictures I think were taken about a month later. Is that your understanding?
A. I believe so.
Q. Okay. Back when you originally saw his gun collection when he invited you down, did you notice on the pictures and at the same time that you were there see the tags on them and stuff?
A. On the firearms?
Q. Right.
A. Yes. There was tags on -- I don't think that they were on every gun, but they were at least on most of the guns.
Q. And does that tell you that he was -- he inventories these weapons, they're properly tagged?
A. It's something that's common with somebody who has a federal firearms license, to have tags on the firearms.
Q. And had them properly stored in big safes; right?
A. Yes.

Q. And when you went down to look at them, did he open the safes up for you?
A. He did, yes.
Q. So, in other words, they weren't just open, the doors open like they are in the pictures. That came later; right?
A. That is correct. They were -- all the doors were shut, and he had to do the combinations on each safe and open the doors for me.
Q. Okay. So, again, he invites you into his home, he's telling you the truth about what's going on with the Medical Board, about his FFL license, you checked out the gym, going to Lowe's, and he's told you all the truth on all that. The next thing I want to talk to you about is, you've offered up several opinions to the jury today, and I want to talk to you about your opinions. The first one that I wrote down is, you found that it was unusual that he didn't ask you why you were there. Is that right?
A. That is correct.
Q. And that's an opinion; correct?
A. It's how I felt and --
Q. Right. You found that unusual?
A. Yes. I found that unusual.
Q. And you found it unusual why?
A. It's been my experience when I go to someone's door and show them my credentials and tell them who I am, they want to

know why I'm there.
Q. Well, we know one thing. You're an ATF agent; right?
A. That is correct.
Q. And we know that holders of a federal firearms license are subject to annual audits and reviews by ATF; right?
A. By ATF inspectors, yes, regulatory side. Which is a different --
Q. Understand from you, but you're an ATF agent; right?
A. Right.
Q. Two, those are not scheduled. They're drop-in audits; right?
A. They're supposed to be, yes.
Q. Right. Two is, we're at the evening of February 4. The bombing of Dr. Pierce happened at around 8 a.m. that morning; right?
A. I don't know when it happened.
Q. You were aware of it when you went out to Dr. Mann's; right?
A. Yes.
Q. And, in fact, it was all over the news; right?
A. I don't know. I assume it was, but I don't know.
Q. You didn't see any media reports?
A. No. I was in the ATF office. I was not watching the news.
Q. There's a lot of media reports about this trial, aren't there?

A. I assume so.
Q. It's a big deal?
A. I assume so.
Q. The bombing of the head of the Medical Board is a big deal and word gets around quick, doesn't it?
A. Yeah.
Q. And, in fact, the medical profession is a fairly small community, I guess, sort of like lawyers or something else, and word travels pretty quick; right?
A. It usually does.
Q. Yeah. And, in fact, there at this point in time that evening, there were ATF agents out in the field interviewing a lot of doctors; right?
A. I believe there were, but I don't know for sure, yes.
Q. And will it surprise you to know that several of the doctors when approached by ATF agents went, "I know why you're here. You want to talk about this car bombing." Are you aware of that?
A. No.
Q. Okay. Another opinion that you told the jury is about this plastic sheeting. Now, you walked in, and you might have to explain that a little bit better for me, Agent McCutcheon. You found it odd that this plastic, this roll of plastic sheeting was sitting on the counter? Tell me why you found that odd.
A. I found it odd that something that he said he had for his

garden, he had two very large garages, I would say four-door -- or four-car garage and a three-car garage or maybe two four-car garages, and obviously they enter in through the garages. The utility room was between the door and the counter. The kitchen was very clean. I just found it odd that something for the garden would be in the kitchen.

Q. Okay. Well, all right. Let's work through that. First of all, you know that the plastic sheeting was submitted for forensic analysis to be compared to plastic sheeting that was found at the crime scene and on some grenades that were later found; right?

A. I assume so. I didn't do any of that, so -- but I believe there were.

Q. In the context of this case, you've learned that, haven't you?

A. I believe there had been some plastic sheeting, yes.

Q. And as an agent working on this case, you've also learned that there came back no match; right?

A. I never followed up and I don't know.

Q. Okay. If as you say he knew somebody eventually was going to come talk to many doctors, including him, if this is some piece of evidence that's incriminating and he knew you were coming, why would he have it sitting out? Does that make sense at all to you?

A. No, it doesn't.

Q. Okay. You have your report of investigation in front of you?
A. Mine?
Q. Yes, sir.
A. Yes.
Q. Okay. And when it got to your opinion about I found it odd about the plastic sheeting sitting on the counter, that's not written in your report anywhere, is it?
A. No, it's not.
Q. The next opinion that you wanted to give to the jury is, I think you said it was I think odd again, correct me if I'm wrong if that's not the adjective that you used, but that he was confident and sitting up straight, and you found that unusual for some reason?
A. Yeah, just a little unusual because, like I said, normally, you know, it's been my experience as a police officer making traffic stops, people are a little nervous. As a special agent going to someone's home, people are a little nervous, a little apprehensive while we're there, and it usually takes a little bit of time before they're able to settle down and get comfortable with us.
Q. And when you've come into contact with somebody like that that you say sounds normal, nervous and so forth, how many times in your past have you been on the witness stand telling a jury that in your opinion that because they're nervous, that's odd

and unusual to me?
A. I never have.
Q. You've never said --
A. No.
Q. Because they're nervous, I think there's something odd about that behavior?
A. No, because I've always -- I consider that to be normal for someone to be a little apprehensive and a little nervous.
Q. You think that if Dr. Mann had lacked confidence and instead of sitting up in his seat was slumped over, would you be telling this jury you found it odd that the man didn't have confidence and was slumped over in his seat?
A. No.
Q. Okay. Next opinion you gave -- well, let me get back. You've got your report; right?
A. Yes.
Q. Anywhere you mention I found it odd, one, do you even say that he was sitting up straight, that he was confident?
A. No.
Q. Is that anywhere in your report?
A. No, it is not.
Q. And that your opinion that that is unusual is obviously not contained in your report, is it?
A. No, it is not.
Q. I think the next opinion you gave to the jury, you found

him when he got to the discussion about the Medical Board, that he got animated; is that right?

A. Just a little bit. I mean, his movements became a little bigger, I guess you would say, not more animated, but -- I mean, when he would talk with his hands, they came up a little bigger than what they were before.

Q. By saying that and testifying to that, are you trying to create for the jury an inference that there's something unusual, that he must be guilty because he was animated the way he was talking about that?

A. No, it was just something that I noticed -- obviously dealing with the Medical Board and what he's went through, that was probably a very emotional time for him, so it was something that, like I said, emotional probably for him to bring it up. And it's something to notice, that his voice got a little louder, and it was just that I noticed that it was something that he was emotional about, which I found that to be very normal.

Q. Yeah. And let me ask you, did you have any trouble communicating with him? I mean, he has an Indian accent.

A. He does. There was just a little bit, but, you know, if you just listen very closely. There might have been a few times when I had to ask him again to just say what he said.

Q. Correct.

A. Just to understand him.

Q. Maybe I'm making these things up, but I also thought you were trying to infer to the jury that you found it odd that Sue Mann, his wife, was sitting there at the table with him.
A. It's not odd that she was there, but we don't -- you know, if we go to just interview somebody, you know, we ask, well, can we talk to him, and then they come and sit with us. They don't always do that. It wasn't odd, but it doesn't always happen.
Q. Right. And she does not speak with an Indian accent; right?
A. She does a little bit, I believe.
Q. She is easier to understand than Dr. Mann is?
A. I believe she is.
Q. Okay. And when he started talking about the Medical Board, did he express any hostility to you at all regarding Dr. Pierce?
A. He did not.
Q. And, in fact, it was just the opposite; right?
A. I wouldn't say it was just the opposite, but he -- he stated that he thought from this last letter that he had received that Dr. Pierce was going to help him resolve his issues.
Q. Understood. Now, let's go back downstairs and one of the pictures that was shown that you circled was of these grenade launchers; right?
A. One grenade launcher.
Q. Just one. And it's attached to an M-16; right?

A. Yes.
Q. As an undercarriage, I think. Is that right?
A. Yeah.
Q. And you testified that that's what you noticed. That was for some reason predominant to you; is that right?
A. Well, it was just, like in the picture, it was up front in the safe, in the first safe. So it was very easy, very easy to see.
Q. Were you looking for that?
A. No.
Q. You had no prior information about that?
A. I just happened to see it sitting right there. I did not know any of the items that he had.
Q. So the answer is, no, you didn't have any prior knowledge?
A. I don't believe so, no.
Q. Okay. In your testimony regarding that grenade launcher, again, you gave an opinion that -- I think you said his -- you asked him were there matching grenades, 40-millimeter grenades; right?
A. I asked him if he had grenades, you know, that he could shoot from that grenade launcher, yes.
Q. And he said no.
A. That is correct.
Q. But you implied to the jury that his voice became high-pitched and he said, like, "No, no, no, no." "No, no, no, no."

Is that right?
A. That is correct.
Q. Are you again trying to imply something to the jury about that?
A. Just stating what I saw, you know, what I heard. He obviously was acting different than what he was before when talking to him.
Q. Well, and so if he's acting different, that seems to be maybe an important factor; right?
A. Yes.
Q. Okay. Tell me where that's contained in your statement.
A. It is not.
Q. And your statement is designed to lay out all the important facts from an interview; correct?
A. Yes.
Q. And the reason is because you're going to rely on that report in the future. You want your facts to be accurate; right?
A. Yes.
Q. You know the prosecutors are going to rely upon that report later on, and so you need to be accurate and set forth in detail important facts; right?
A. Yes.
Q. And this apparently is not an important fact because it's not contained in your statement; correct?

A. It is an important fact.
Q. But you left it out?
A. Yeah.
Q. Okay. I suppose what you didn't do is tape-record this so we could all come to our own conclusions and opinions instead of just having to rely on yours; right?
A. No. There was no tape-recorder.
MR. HENDRIX: Okay. I'll pass the witness.
THE COURT: Mr. Dudley?
MR. DUDLEY: Surprise, your Honor.

CROSS-EXAMINATION

BY MR. DUDLEY:
Q. Agent McCutcheon, how long have you been with ATF?
A. Since 1999.
Q. Okay. So 11 years now.
A. Yes. Going on 11 years.
Q. And I assume that over 11 years as an ATF agent, you have interviewed hundreds of people?
A. Yes.
Q. Is it part of your job, to go interview folks?
A. Yes, sir.
Q. And the interview process is designed to uncover facts; correct?
A. That is correct.
Q. And also to gather evidence; correct?

A. Correct.
Q. And the evidence that you gathered, you know might well be used in a courtroom like we're here today; correct?
A. That is correct.
Q. And your job as a law enforcement officer is not to be on the prosecution team. Would you agree with that?
A. My job is to collect the facts.
Q. Sure. And your job is to be objective when you're gathering facts; correct?
A. Correct.
Q. And you want to gather the evidence in as accurate a manner as you can?
A. That is correct.
Q. And certainly by the time you get here to testify, you want the evidence documented in the most accurate fashion possible to present to the jury. Would you agree with that?
A. That is correct.
Q. Okay. Now, in conducting an interview, what would be the most accurate method that you could use to show the jury what was said and how a subject acted when you were interviewing them?
A. Probably a videotape of them.
Q. Okay. Videotape would certainly show body language; correct?
A. Yes.

Q. And you would agree body language says a lot about a person being interviewed.
A. That is correct.
Q. It would also show voice inflection?
A. Yes.
Q. Okay. But you didn't videotape this?
A. No, we did not.
Q. So you agree that you certainly don't have the most accurate evidence of the interview with Dr. Mann and Sue Mann; correct?
A. No, we do not have a videotape.
Q. And the second, probably the second most accurate way to present that evidence would have been to tape-record?
A. That is correct.
Q. Tape-recording wouldn't show body language.
A. No.
Q. But it would show a change in voice inflection?
A. Yes, it would.
Q. And certainly voice inflection tells you a lot about whether -- about how a person says something and maybe about whether they're telling the truth or not?
A. Yes.
Q. Do you have access to a tape-recorder?
A. Do I? Yes.
Q. Is there anything to prevent you from tape-recording an

interview?
A. No.
Q. You can actually get a little old tape-recorder that you can carry in your pocket; right?
A. I believe so, yes.
Q. Is the ATF part of the Justice Department?
A. Justice, yes.
Q. Actually, there is a reason you didn't tape-record the interview, is there not, Agent?
A. Just -- no.
Q. Let me ask you this: Have you ever since you've been with the ATF tape-recorded an interview?
A. Yes.
Q. Did you do that in the field?
A. No.
Q. At the office?
A. It was at a sheriff's office, I believe.
Q. Isn't it true the Justice Department has a policy that you are not to tape-record interviews?
A. I don't know.
Q. You don't know?
A. I know that the FBI does not, but, I mean, I just know that it has just kind of been our policy that, you know, if we have the equipment available to us and we're there if someone is in custody, then, I mean, we may actually tape it.

Q. Okay. So it's your testimony then there was nothing that would have prevented you from tape-recording this interview?
A. The fact that we weren't, you know, in the office. This person wasn't in custody. We were at his residence.
Q. Nothing to prevent you from taking a hand tape-recorder there and tape-recording the interview?
A. No.
Q. And you agree that would have been a much more accurate version of that interview than you getting up here and testifying about what happened?
A. Yes.
Q. And you agree that your reason for being out there is to get the most accurate version of evidence you can to present to a jury?
A. Yes.
Q. So you're telling the jury, I intentionally am presenting evidence that's not as accurate as it could be because nothing prevented me from tape-recording that interview; is that right?
A. I'm presenting it as accurate as I have.
Q. Okay. Now, what you do and what you did on this interview is, you, as you're interviewing, you take notes; right?
A. Yes.
Q. And when you take notes, you take notes of things you think are important in the interview; right?
A. I take notes of details that I know I won't be able to

remember. Specifically, like dates, times, their dates of birth, things like that.

Q. Well, let's go back then and talk about the hundreds of interviews you've done as a law enforcement agent. Can you tell the jury the details of those -- each of those hundreds of interviews you've done?

A. If I look at my notes, I probably could, yes.

Q. Okay. I understand if you look at your notes, and that's my point. Without looking at notes, can you tell the jury the details of each of the hundreds of interviews you've conducted as a law enforcement agent?

A. Without reviewing them, probably not.

Q. Okay. So the reason for taking the notes is so you can use those notes to refresh your memory if you have to testify in court as you're doing today; right?

A. That is correct.

Q. And to do that, you have to take down the important details of the interview, do you not?

A. The ones that I know that I need help remembering. I learned a long time ago in college that you're going to miss hearing a lot of things if you sit there and write every word down. Try to, I should say. Because you'll never be able to write every word down of what's being said, and so therefore you're going to miss something. So I learned a long time ago to keep the notes as short as possible, but also as accurate and to

put down the items that I need to know to help me remember the other things, and the things that I know I won't be able to remember, I obviously will write down in my notes.

Q. All right. Your notes are a memory aid for if you have to testify or if you have to prepare a report or whatever; correct?

A. To make the report. Correct.

Q. All right. After you take the notes, you prepare a report of the interview, do you not?

A. Yes, I do.

Q. The notes you took when you were at Dr. Mann and Mrs. Mann's house, are these it?

A. I would have to see them to --

MR. DUDLEY: May I approach, your Honor?

THE COURT: You may.

THE WITNESS: Yes. These are a copy of my notes, yes.

BY MR. DUDLEY:

Q. And are those all of the notes you took?

A. Yes.

Q. So we've got two handwritten pages of notes you took during this interview; correct?

A. That is correct.

Q. And you wrote down what you thought you needed to write down to remember what happened during the interview.

A. That is correct.

Q. Now, you told the jury, if my notes are correct, you told

the jury that Mrs. Mann went to Lowe's with Dr. Mann the evening of February 3. Is that what you told the jury?

A. That's what they told me. Yes.

Q. Now, you have your report of the interview in front of you, do you not?

A. Yes, I do.

Q. Your report doesn't say that, does it?

A. No, it does not.

Q. In fact, your report says Dr. Mann went to Lowe's, does it not?

A. Yes, it does.

Q. So is this one of those times when your memory fails, your note's wrong, or you're just inaccurate when you testify to the jury?

A. I just failed to put that in the report, I guess.

Q. Pardon?

A. I said I just failed to place that in my ROI, my report.

Q. Well, you did put that in the report, except you said it was Dr. Mann that went; right?

A. Yes.

Q. You didn't say Sue went with him?

A. No, I did not.

Q. And that's not in the notes you took either; correct?

A. No, it is not.

Q. So are you telling the jury your memory today is better

than the notes you took during the interview and the notes you prepared right after the interview?
A. No.
Q. Are you telling the jury that you were just incorrect when you said Sue Mann went to Lowe's with Dr. Mann on the evening of February 3?
A. I know that I have reviewed the tape when I received it and saw that she was at Lowe's that day.
Q. Okay. So now what we have is your report is inaccurate, but you know your report is inaccurate because of something else you've seen; is that right?
A. It might have been that they just said that Dr. Mann went and I reviewed the video and I know that they were both there.
Q. Okay. All I'm asking you to do, Agent, is admit to this jury that your report of that interview is incorrect. Is that right?
A. For that, like I said, it might have been that they just said that and I remembered that I saw her there. So it might have been that the evening that they said this, that they just said Dr. Mann. I'm not sure. Or it could have been that it was just incorrect.
Q. All right. You also told the jury that during this interview, there was this roll of black plastic sitting on the bar; right?
A. Sitting on the bar?

Q. Well --
A. The counter.
Q. The bar? The counter. I'm sorry.
A. Yes.
Q. A roll of black plastic sitting on the counter, and you thought that was significant.
A. I thought it was odd.
Q. And you've already told Mr. Hendrix that that's not in your report either; correct?
A. What's not in my report?
Q. This deal with this roll of black plastic sitting on the counter.
A. No, I did not --
Q. It's not in your report?
A. That it was on the counter, no.
Q. Well, your report doesn't even mention a roll of black plastic, does it?
A. It mentions that they said they went and got some, yes.
Q. All right. It doesn't mention you saw a roll of black plastic in the house.
A. No, it does not.
Q. And your notes from the interview don't mention that you saw a roll of black plastic in the house.
A. No, they do not.
Q. That's something that you're testifying to from memory

today?
A. Yes.
Q. Did you know when you went and conducted this interview that a roll of black plastic might become important somehow in this case?
A. No.
Q. And you've learned that since then?
A. Yes.
Q. And you've added a fact to your testimony that's not in your report after you learned that a roll of black plastic might be important in this case?
A. It is important and I did see it, yes.
Q. That didn't answer my question. You added something in your testimony today that's not in your report and not in your notes after you learned that a roll of black plastic might be important in this case. Isn't that true?
A. I added what I saw, yes.
Q. Isn't that true? Isn't my statement true? Agent, I understand you're trying not to answer my question, but would you do it? Let me try one more time.
A. I said I did add it, and I added what I saw. I was asked what I saw there, and that's what I saw.
Q. Okay. And you added it in your testimony after you learned it might be important?
A. Yes.

Q. Okay. You said on direct that Dr. Mann's voice inflection changed at times, that his demeanor changed at times during the interview; correct?
A. A couple of times, yes.
Q. And that's not in your report.
A. No, it's not.
Q. And if that was important, there wasn't anything in the world that would prevent you from putting that in your report?
A. No.
Q. You said at one time in your testimony, another opinion you gave was it was obvious that something had pushed his buttons, talking about Dr. Mann; correct?
A. I don't know if I said obvious, but yes.
Q. And my notes may be wrong. You said something to the effect --
A. I might have, yes.
Q. -- something pushed his buttons; right?
A. It seemed to have, yes.
Q. That's pretty important, wouldn't you think?
A. It's fairly important, yeah.
Q. And when you were talking about something pushing his button, you were talking about something that happened while you were down in the gun room; right?
A. Yes, when I had asked him about if he had 40-millimeter grenades for the grenade launcher.

Q. And that's what you thought pushed his button.
A. Something about that had, yes.
Q. Right. And at the time you conducted this interview, you were conducting the interview about events that concerned the bombing in West Memphis; correct?
A. That is correct.
Q. And at the time you conducted this interview, you didn't have any idea that there might be some firearm violation charge brought against Dr. Mann in the future; correct?
A. That is correct.
Q. And when you conducted the interview and you took notes from the interview and you wrote your report, you didn't say anything in there about asking him about grenades pushing his button; is that right?
A. Pushing his buttons, no.
Q. In fact -- well, you don't say anything in there about him reacting when you asked about 40-millimeter grenades, do you?
A. No.
Q. Not in your notes. Right?
A. No.
Q. Not in your report?
A. No.
Q. You added that to your testimony today after you learned that firearms charges were being brought against him. Something's not in your notes, not in your report, first time

it's brought out is in your testimony today; correct?
A. Yes.
Q. You also put in your report -- by the way, the things you do put in your report, you try to get right; right?
A. Yes.
Q. You try to make your report as accurate as you can; correct?
A. That is correct.
Q. And if you use your report to refresh your memory to testify, then your testimony is only as good as your report; right?
A. Not necessarily, but for the most part.
Q. Okay. And you've told us you use your report and your notes to recall what happened during an interview.
A. That is correct.
Q. All right. In your report, you say when you went down into the gun room, several of the gun safes had a small sign on them -- you're welcome to -- I'm on the second page. I'm sorry. You've got your report in front of you; right?
A. Yes.
Q. You say several of the gun safes had a small sign on them saying something to the effect of, open quote, danger, explosives, period, close quote; correct?
A. That is correct.
Q. And we know today that there's no such sign on those safes,

don't we?
A. That is correct.
Q. We know that's incorrect when you said the signs said something to the effect of "danger, explosives"; correct?
A. No. I would say that saying danger, black powder, is something to the effect of that.
Q. You think black powder is an explosive?
A. Yes.
Q. Okay. So you equate a sign that says danger, black powder, with a sign that says danger, explosives?
A. Yes.
Q. Okay. When you put something in quotes, what does that mean?
A. It just means that that's what was said or that's what was -- in this case, what was shown.
Q. When you put something in quotes, you're saying this is exactly what it said; isn't that right? When you quote what somebody says, you put quotation marks around it to show that you're quoting exactly what they said; correct?
A. Yes.
Q. And you put danger, explosives, in quotes, did you not?
A. Yes, I did.
Q. But the sign doesn't say that, does it?
A. No, it does not.
MR. DUDLEY: Thank you, sir.

THE COURT: Mr. Gordon, redirect?

MR. GORDON: No, your Honor.

THE COURT: Okay. Officer, you can stand down. Call your next.

MR. GORDON: Jason Smith.

JASON SMITH, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good afternoon.

A. Good afternoon.

Q. Would you please state your name.

A. Jason Smith.

Q. And where are you employed?

A. Pope County Sheriff's Office.

Q. How long have you been with the Pope County Sheriff's Office?

A. Ten years.

Q. What do you do with Pope County?

A. I'm an investigator.

Q. How long have you been an investigator?

A. Two years.

Q. What did you do before that?

A. I was a patrolman.

Q. How long were you a patrolman?

A. Four years.

Q. And what did you do before that?
A. I worked in the jail as a jail sergeant.
Q. And all of these have been with the Pope County Sheriff's Office?
A. That is correct.
Q. Were you on duty on March 3, 2009?
A. Yes, I was.
Q. Did you get a call that night?
A. Yes, I did.
Q. When was the call?
A. It was around 5 p.m.
Q. And who did you get that call from?
A. From dispatch.
Q. And based on what you were told from dispatch, where did you go?
A. I went to Galaxy Lane in London.
Q. And what part of the county is Galaxy Lane in London?
A. In the western part of Pope County.
Q. Is it near anything, a lake or anything?
A. Yes. It's near Lake Dardanelle.
Q. Did you know how to get to Galaxy Lane?
A. Yes, I did.
Q. How many ways into and out of this area are there?
A. One way.
Q. How do you get to Galaxy Lane? What route would you take?

A. From Flatwood Drive.
Q. Okay. I'm not from that area, so can you give me some highways and --
A. You can take Highway 64 to Highway 333, and that would take you to Flatwood Drive.
Q. And then where do you turn off of Flatwood Drive to get to --
A. You turn off Flatwood Drive on to Milky Way Lane.
Q. And then Galaxy Lane, is that off Milky Way?
A. Yes, that's correct.
MS. WHATLEY: May I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. Showing you what's been marked for identification purposes as Government Exhibit 101-A.
A. Yes, I'm familiar with that.
Q. Can you tell me what this is?
A. It's an aerial photo of the Flatwood Drive and Galaxy Lane and Milky Way.
Q. And does this fairly and accurately represent the way in and all the area of that?
A. Yes, it does.
Q. And is this a peninsula?
A. Yes.
Q. And what is this area all around here?

A. That is Lake Dardanelle.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 101-A.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 101-A received in evidence.)

MS. WHATLEY: Can I have the officer step down and answer some questions?

THE COURT: Yes. Do we have that portable microphone?

MS. WHATLEY: That's what I was about to look for.

THE COURT: You can step down, Officer.

BY MS. WHATLEY:

Q. You hold that.

Can you tell us -- can you tell us or show us the route to get to where you were going. How about that?

A. Okay. When I was talking earlier about Highway 333, it comes in through here, and it's cut off here at the bottom, but here's the Flatwood Drive that crosses --

THE COURT: Ms. Whatley?

MS. WHATLEY: Yes, your Honor.

THE COURT: You know what I'm going to say.

MS. WHATLEY: Yes, your Honor.

BY MS. WHATLEY:

Q. When you're talking about on the bottom, can you be a little bit more specific so that the record is clear as to what

we're looking at.
A. On the bottom of the photograph, the Highway 333 comes around to the bottom of the picture here, and it's cut off and then it picks back up at the bottom of the picture on Flatwood Drive.
Q. Is this about the middle of the picture?
A. Right at the center.
Q. Kind of at the center, bottom?
A. That's correct.
Q. The road that begins at the bottom center of the picture goes up through kind of the middle until it curves off to the left. This is Flatwood Drive?
A. That's correct.
Q. And if you will show the jury how Flatwood -- where Flatwood Drive goes to.
A. On the Flatwood Drive, it curves back around here to the left of the photograph and continues on up to the top of the photograph, which up at the top of the photograph, Milky Way Lane turns off to the right. Milky Way -- do you want me to stop there?
Q. So Milky Way is about a fifth of the way down the picture of 101-A; is that correct?
A. That's correct.
Q. And it goes -- I'm looking at this upside down. North is actually facing down. So this is south. This is west?

A. That's correct.
Q. So Milky Way Lane goes west, and how long is -- can you run your finger around Milky Way Lane?
A. Yes. Milky Way Lane goes to the west, which is to the right of the photograph, and it continues all the way around to the -- I guess to the top right of the photograph.
Q. Are there any roads off of Milky Way Lane?
A. Yes, there are -- one.
Q. How many?
A. One.
Q. And what is that street called?
A. Galaxy.
Q. And can you please point that out.
A. Galaxy Lane here runs off -- it's almost at the very top of Milky Way Lane here at the top of the photograph, which turns back to the -- it would be to the east, into a cul-de-sac.
Q. You said almost at the top. Is this a hilly area?
A. Yes.
Q. And where did you go that night?
A. To the end of Galaxy Lane, right here, at the top on the photograph.

MS. WHATLEY: Your Honor, if he can just stand here for a minute, I have another one for him.

BY MS. WHATLEY:
Q. Showing you what's been marked as Government Exhibit 101-B,

can you identify this for us?
A. Yes. That's another aerial photograph of the area.
Q. Is this just a closer-in view?
A. That's correct.
Q. Which streets are depicted in this photograph?
A. Milky Way Lane and Galaxy Lane.
Q. And does this fairly and accurately represent the area of Milky Way and Galaxy Lane?
A. Yes, it does.
MS. WHATLEY: Your Honor, at this time we'd move for the admission of Government Exhibit 101-B.
MR. HENDRIX: Can I have just two questions, voir dire the witness?
THE COURT: You may.
MR. HENDRIX: Not to be unorthodox.

VOIR DIRE EXAMINATION

BY MR. HENDRIX:
Q. Did you take the picture?
A. No, I did not.
Q. Do you know when it was taken?
A. No, I do not.
MR. HENDRIX: I don't have any objection.
THE COURT: Anything? It's received.
(Government's Exhibit 101-B received in evidence.)

DIRECT EXAMINATION [Continuing]

BY MS. WHATLEY:

Q. How many houses are on Milky Way Lane?

A. Three.

Q. Can you please point them out, and be as descriptive as possible for the record.

A. The first house is on the left, which would be the bottom left corner of the picture, the first residence on Milky Way Lane. The second residence would be to the left of Milky Way Lane, also in the middle of the photograph, and the third would be in the top left of the photograph.

Q. And I also see another building right to the right of the house you just discussed. Does that building belong with that house?

A. Yes. It's a detached garage.

Q. And the one street that comes off of Milky Way Lane is Galaxy Lane; correct?

A. That is correct.

Q. And how many houses are on Galaxy Lane?

A. One.

Q. Does it sit off the road a little bit?

A. Yes, it does.

Q. Where did you go the evening of March 3, 2009?

A. I went on Galaxy Lane, which would be at the end of the -- down here.

Q. So Galaxy Lane ends at a cul-de-sac, and it went down here

to the very end of the cul-de-sac?
A. Yeah, the far right side of the picture.
Q. Can I get you to hold the picture real quick? I'm about to swap sides with you.
A. Yes, ma'am.
Q. And if you can place a red dot to the -- where you went that night.
A. (Witness complies.) I placed the dot at the end of the cul-de-sac, which is on the right side of the photograph.
MS. WHATLEY: Your Honor, may I approach the witness?
THE COURT: Yes, you may.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government Exhibit 101-C. Have you ever seen this before?
A. Yes, I have.
Q. And what is this?
A. It's a video of the area of Milky Way Lane and Galaxy Lane.
Q. And are there actually three videos contained on this CD?
A. That's correct.
Q. And do these videos fairly and accurately represent the area of Milky Way and Galaxy Lane?
A. Yes, they do.
Q. Do you think they would assist the jury in showing kind of the lay of the land?

A. Yes, they would.

MS. WHATLEY: Your Honor, at this time I move for the admission of Government Exhibit 101-C.

THE COURT: Any objection to the DVD of Milky Way Lane?

MS. CASSINELLI COUCH: No objection.

MR. DUDLEY: No, your Honor.

MR. HENDRIX: No.

THE COURT: It's received.

(Government's Exhibit 101-C received in evidence.)

BY MS. WHATLEY:

Q. If we can, let's watch the first part of that video and kind of narrate as we go along.

A. Okay.

Q. What street is this that's being shown in the video?

A. Flatwood Drive.

Q. And what is the road that is coming up to the right?

A. Milky Way.

Q. About how long is Milky Way Lane?

A. I'd say around maybe half a mile, a little bit less.

Q. And there was a -- if we can keep going. There's another road to the left of Flatwood. Where does that road go to?

A. It's a dead-end road. It's called Star Harbor.

Q. Does that actually go down by the lake?

A. Yes, it does.

Q. So Milky Way Lane, I believe you testified earlier, is up a hill?
A. That's correct.
Q. Are there houses below on Star Harbor?
A. Yes, there are residents on Star Harbor.
Q. Can those residences be accessed from Milky Way Lane?
A. No, they cannot.
MS. WHATLEY: Your Honor, I know this is a little tedious, but it does have a point.
BY MS. WHATLEY:
Q. When we were looking at the overviews, there were four houses up in this area, three on Milky Way and one on Galaxy.
A. That's correct.
Q. Can the house that's on Galaxy actually be seen from Milky Way as you're coming up from this direction on the right?
A. Yes, it can.
Q. Coming up from the middle of the picture, there appears to be a house. Is that the house that we saw on 101-A and 101-B?
A. On Milky Way? Yes.
Q. Is this the second house that was on the overviews of 101-A and 101-B?
A. Yes, it is.
Q. And do you know whose residence this is?
A. Yes, I do.
Q. Whose residence is it?

A. That's Dr. Mann's residence.
Q. What is the road to the right in this picture?
A. That's Galaxy Lane.
Q. Is this that detached garage that you were discussing?
A. Yes, ma'am.
Q. Does Milky Way Lane end in a cul-de-sac as well?
A. Yes, it does.
Q. And is that the house that's coming up on the -- wow, it just flew past in that picture -- that goes with the detached garage?
A. That's correct.
Q. And is this the Manns' residence?
A. That is correct.
Q. What street is the camera turning on now?
A. Galaxy Lane.
Q. About how -- what's the length of Galaxy Lane?
A. Less than a quarter of a mile.
Q. I'm sorry?
A. Less than a quarter of a mile.
Q. And coming up on the right in the picture, is this the residence that can be seen from 101-A and 101-B?
A. Yes, it is.
Q. And is this the cul-de-sac?
A. Yes.
Q. Is there a clearing at the end of this cul-de-sac?

A. On the right-hand side, there is.
Q. And is this the area that you went to on the evening of March 3, 2009?
A. Yes, it is.
Q. Does this area also sit up on a hill?
A. Yes, it does.
MS. WHATLEY: I think we can stop that one.
BY MS. WHATLEY:
Q. When you got to the end of Galaxy Lane, was anybody there?
A. Yes.
Q. Who was there?
A. There was two individuals there. Their names were Ryan Kimbell and Mark Rinke.
Q. Do you know who they work for?
A. Yes. They worked for the City of London.
Q. Once you got there, did they show you anything?
A. Yes, they did.
Q. What did they show you?
A. They showed me a green cannister they had found in the ground.
Q. When you got there, where was the cannister?
A. It was in the woods on top of the ground.
Q. Did you take pictures once you got there?
A. Yes, I did.
MS. WHATLEY: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government Exhibit 98-A through 98-J. Are these the pictures you took that day?

A. Yes, they are.

Q. And do these pictures fairly and accurately represent what you saw that day?

A. Yes, they do.

MS. WHATLEY: Your Honor, at this time I move for the admission of Government Exhibits 98-A through 98-J.

MS. CASSINELLI COUCH: No objection.

THE COURT: They're received.

(Government's Exhibits 98-A through 98-J received in evidence.)

BY MS. WHATLEY:

Q. Let's look at Government Exhibit 98-A. What is this?

A. That's the green cannister.

Q. And is this the condition it was in when you arrived?

A. Yes.

Q. About how far off the road was this cannister?

A. Approximately 20 yards.

Q. And in Government Exhibit 101-C, which you have in front of you, is there also a part of that video that shows from the road to where the cannister was located?

A. Yes.

MS. WHATLEY: Your Honor, at this time we'd like to watch the second portion of 101-C.

BY MS. WHATLEY:

Q. Is this how the area looked when you were out there on March 3, 2009?

A. Yes.

Q. Is this the hole where the cannister was buried?

A. Yes, it is.

Q. And does this show the distance from the hole to where the -- to the street?

A. Yes, it does.

MS. WHATLEY: We can stop it.

BY MS. WHATLEY:

Q. If we can go back to Government Exhibit 98-B. What is this?

A. That is the cannister.

Q. And 98-C?

A. That's the hole with the trash bag.

Q. 98-D?

A. That's the cannister and trash bag.

Q. Had you moved the cannister at this point in time or are you still taking pictures based on how it was when you arrived?

A. I'm still taking pictures on how it was when I arrived.

Q. Let's go to 98-E. Did you open the lid of the cannister?

A. Yes, I did.
Q. Were you wearing gloves when you did that?
A. Yes, I was.
Q. What is inside the cannister?
A. Green satchels with ammo rounds.
Q. Did you know what type of ammo rounds those were when you saw them?
A. No, I did not.
Q. What did they look like to you?
A. They were oversized ammo to me when I seen them.
Q. You say oversized ammo. What kind of ammo?
A. I don't even know caliber, I don't even know what caliber they would be.
Q. They looked like large bullets?
A. Yes, that's correct.
Q. Did you touch the ammunition?
A. Yes, I did.
Q. And did you touch the green satchels?
A. Yes, I did.
Q. Did you have gloves on when you did that?
A. Yes, I did.
Q. Let's look at 98-F. Is this just a closer view of what was located inside the cannister?
A. Yes.
Q. And let's go to 98-G. Did you put these two items laying

on the top of the satchels?
A. Yes, I did.
Q. Were you wearing gloves when you did that?
A. Yes.
Q. And why did you take this picture?
A. There was two different colored -- two different kinds in there, and I just wanted to take a picture of each kind that was in the cannister.
MS. WHATLEY: Your Honor, may we approach?
THE COURT: Yes.
BY MS. WHATLEY:
Q. Mr. Robles is showing you what's been marked for identification purposes as Government Exhibit 99-A. Have you ever seen this before?
A. Yes, I have.
Q. And what is this?
A. That is the cannister that I found in the ground.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 99-A.
THE COURT: Any objection?
MS. CASSINELLI COUCH: No objection.
THE COURT: It's received.
(Government's Exhibit 99-A received in evidence.)
BY MS. WHATLEY:
Q. You may have to stand up to do this, but can you look

inside the cannister? And for the record, the ammunition is not in here, but are the satchels that you -- that are shown in that picture in here?

A. Yes, they are.

Q. And are they marked as Government Exhibit 99-A1?

A. That is correct.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 99-A1.

THE COURT: Any objection?

MS. CASSINELLI COUCH: No objection.

THE COURT: Received.

(Government's Exhibit 99-A1 received in evidence.)

BY MS. WHATLEY:

Q. In the picture there is black plastic; correct?

A. That's correct.

Q. And how was that black plastic -- let me back up. Is this how the black plastic was lying when you got there?

A. Yes.

Q. There also appears to be duct tape involved?

A. Yes.

Q. Did you collect that black plastic and that duct tape?

A. Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government Exhibits 99-B, 99-C, 99-D, 99-E, and 99-F. Have you looked at these items today?
A. Yes, I have.
Q. And are these the black plastic and duct tape that you recovered from the scene at the end of Galaxy Lane?
A. Yes, they are.
MS. WHATLEY: Your Honor, at this time we move for the admission of 99-B through 99-F.
MS. CASSINELLI COUCH: No objection.
THE COURT: Received.
(Government's Exhibits 99-B through 99-F received in evidence.)
BY MS. WHATLEY:
Q. What did you do with the cannister?
A. I collected it and transported it to the sheriff's office.
Q. If we can look at 98-H. Is this how the area looked after you removed the cannister?
A. Yes.
Q. And these pieces of duct tape and black plastic, is that what is contained in Government Exhibits 99-C through F?
A. Yes, it is.
Q. And I'm looking at 98-I. Can you please tell us what that is?
A. That is just a different angle of the area.

Q. Does that show the hole kind of in the middle of the picture?
A. Yes.
Q. Can we please circle the hole where the cannister was located? You can touch the screen and do it.
A. (Witness complies.)
Q. Okay. And let's go to 98-J. Can you please point out on this picture where the cannister was located.
A. Can we get a closer view of it? Can we zoom in any?
Q. Can you tell where the cannister was located based on this picture?
A. It's hard on this here.
Q. But are you confident that this is another picture of that area?
A. Yes, it is.
Q. Okay. And was there a -- you said you took it to the sheriff's office.
A. That is correct.
Q. And do you recall who you handed it over to?
A. Yes.
Q. Who?
A. My lieutenant.
Q. Who is that?
A. Rowdy Sweet.
Q. Is there one more video on Government Exhibit 101-C?

A. Yes.
Q. What is that of?
A. It's a video of the area where the cannister was located.
MS. WHATLEY: If we can watch the third video located on 101-C, please.
BY MS. WHATLEY:
Q. Coming up on the left, is this that same house that was seen coming in?
A. Yes.
Q. Coming to the end of Galaxy Lane, let me ask, is the video coming to the end of Galaxy Lane?
A. That is correct.
Q. And whose house is that in the middle of the picture?
A. That's Dr. Mann's.
MS. WHATLEY: No further questions.
THE COURT: Cross?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:
Q. Hi, Officer.
A. Hello.
Q. You're with Pope County Sheriff's Office; is that right?
A. Yes, ma'am.
Q. Two years? Is that what you said? How long have you been with the sheriff's office?
A. Ten years.

Q. Ten. Okay. I thought you said two earlier. And I think you went through this on direct, but what's your assignment? What's your --

A. Investigator.

Q. How long have you been an investigator?

A. Two years.

Q. Okay. That's where I got the two. Okay.

I'm going to go a little backwards here. We've looked at, I think, three parts of a video. Did you take that video?

A. No, I did not.

Q. Who took the video?

A. I do not know who took the video.

Q. Do you know when it was taken?

A. There's a date on the video.

Q. You don't know who took it, so you probably don't know when they took it?

A. No, I don't.

Q. And you also did not take either one of these; is that right?

A. That is correct.

Q. But you're familiar with the area?

A. Yes, ma'am, I am.

Q. Okay. Looking at Government's Exhibit 101-B, and I kind of had a hard time looking over here, so on this exhibit, let me move it back here a little bit, you've marked right here where

you found the grenades in the box?
A. That's correct.
Q. Okay. And there are three houses on Milky Way Lane; right?
A. That's right.
Q. And there's one house on Galaxy Lane?
A. That's correct.
Q. Did you take any measurements when you went to the scene? You were the first one to get there and meet the two guys who originally located the box; right?
A. That's correct.
Q. Did you take any measurements at that time?
A. No, I did not.
Q. Kind of eyeballed it at the time?
A. Yes.
Q. Did you do any interviews with anybody in the neighborhood?
A. Personally myself, no.
Q. And just to be clear, this is the lake over here; is that right?
A. That's correct.
Q. Over here on the right side of the -- on the right side of the exhibit? My right side?
A. On your right side, yes.
Q. Thanks. Okay. And we don't know when this photograph was taken; is that correct?
A. That's correct.

Q. But generally it's accurate as to the area?
A. Yes.
Q. Over here where you located the box, it looked on the video like it was a little bit of a clearing?
A. That's correct.
Q. And all around here is pretty -- around the cul-de-sac on the other side is pretty dense woods; is that right?
A. That's correct.
Q. And it's kind of hard to tell from this, but when you're in the area where the box was found, it's pretty close to Milky Way Lane, is it not?
A. I'm not sure how close it would be.
Q. Did you walk out in here at all?
A. Yes, I did.
Q. Could you see the road if you walked maybe twice as far as where this is?
A. No, I could not.
Q. You couldn't. Let's look at Government's Exhibit 101-A. I haven't had as much practice as Ms. Whatley with these, so pardon me. On Government's -- on 101-A, this is Galaxy Lane; is that right? Can you see? Galaxy Lane kind of top center?
A. That is correct.
Q. That's --
A. That's it.
Q. Okay. And this is Milky Way Lane; right? Also top center,

right above where we just pointed for Galaxy?
A. That is correct.
Q. So right here?
A. Yes.
Q. I believe you said that you responded to just a call-in.
A. That's correct.
Q. Concerning some property somebody had found.
A. Found property, yes.
Q. You didn't know what you were going to, did you?
A. No, I didn't.
Q. Had no idea that you'd be here today?
A. That's correct.
Q. Back then.
A. That's correct.
Q. When you arrived, there were two gentlemen there?
A. That is correct.
Q. And they -- did you ask them when they found it or why they were there?
A. Yes, I did.
Q. And I'm not going to ask you to tell us what they said, but you questioned them about the circumstances.
A. That's correct.
Q. And they said they had found it.
A. That is correct.
Q. Have you spoken to either one of them since that day? You

personally.
A. Not until while ago this evening.
Q. Oh, were they out in the hall?
A. That is correct.
Q. You all were reunited?
A. If you -- I don't know how to answer that.
Q. You don't have to answer that. That's just a Friday afternoon joke for you. Also, after you met with them, were they present when you pulled it up and took the photographs?
A. It had already been pulled up.
Q. They had pulled it up.
A. That is correct.
Q. Did they tell you that it was all the way buried or halfway buried or not buried at all?
A. They said that it was buried, partially. I think that -- it was partially buried.
Q. I'm not trying to trick you. If your report said partially buried, that would be accurate?
A. The report says that he tripped on it, so --
Q. So partially buried is fair?
A. That is correct.
Q. And so were they -- I'm so sorry. Were they present for all the photographs and things or did they go on and leave? Or do you recall?
A. I recall them leaving. I'm not for sure if they left

before I finished photographing or not.
Q. You were there the longest.
A. That is correct.
Q. And at some point, you took them back to the sheriff's office and handed them over to Lieutenant Sweet?
A. We're talking about the cannisters.
Q. Well, you tell me. Did you split it up? What happened to the evidence, the cannisters and the --
A. Yes. I transported it to the sheriff's office, that's correct.
Q. And the photographs I assume were on a camera.
A. That's correct.
Q. And you developed it and provided it to whom?
A. To my lieutenant.
Q. You also spoke with two ATF agents that day?
A. That is correct.
Q. And those were?
A. Glen Cook and Warren Newman.

MS. CASSINELLI COUCH: Thank you.

THE WITNESS: Thank you.

MR. DUDLEY: No questions, your Honor.

MS. WHATLEY: Nothing further, your Honor.

THE COURT: You may stand down. How many did you have remaining that you need to get on this afternoon?

MR. GORDON: We have one witness we need to call out

of turn because he is gone all of next week.

THE COURT: Okay.

MR. GORDON: And I'll be short.

THE COURT: Ladies and gentlemen of the jury, that means we have another two hours.

MR. GORDON: The United States calls Ben Cross.

THE COURT: Has Mr. Cross been sworn in?

MR. GORDON: He has not.

MS. WHATLEY: I believe he has, your Honor.

MR. GORDON: Yes, he has, your Honor.

THE COURT: Okay.

MS. CASSINELLI COUCH: May we approach, Judge?

THE COURT: You may.

[Bench conference reported as follows:]

MR. HENDRIX: The next witness was involved in the search of the home; is that right?

MR. GORDON: State search warrant.

MR. HENDRIX: And part of that was finding alleged pornography, and I think the government wants to try to introduce it, and we would ask to exclude it, that it's too prejudicial and irrelevant.

THE COURT: Why the pornography?

MS. WHATLEY: His witness, my argument.

MR. GORDON: We're not introducing the pornography, but he's going to talk about it.

MS. CASSINELLI COUCH: They're introducing the fact of having found it.

MS. WHATLEY: Yes.

MR. HENDRIX: I would ask the same thing, that he not be allowed to testify to that.

THE COURT: This witness was -- who is this, again?

MS. WHATLEY: Ben Cross with the Arkansas State Police.

THE COURT: And he went out to perform an investigation and found pornography?

MS. WHATLEY: That was part of what they found during the course of the search warrant at the house. It's relevant because when they go out and search the storage unit a week later, not exactly -- my mind is dead. But about a week later, they find a suitcase full of porn in the storage unit.

THE COURT: So the link between the two.

MS. WHATLEY: Part of link between the two.

MR. DUDLEY: Excuse me, your Honor. Can we get the white noise? The voices are carrying.

MS. WHATLEY: There's also another link because on one of the telephone calls, Dr. Mann tells Mrs. Mann that the reason the porn was in the storage unit was so it wouldn't be in the house. But there's porn in the house, so it kind of negates --

THE COURT: Are we going to get into a lot of testimony about the porn?

MS. WHATLEY: No. We found a drawer full of porn. Period, the end.

MS. CASSINELLI COUCH: Is it the same as what was found in the storage unit?

THE COURT: The same character and type, or are you talking about --

MS. CASSINELLI COUCH: Have you looked at it and determined that it was the same?

MS. WHATLEY: It's not --

MS. CASSINELLI COUCH: I'm innocent. I don't know.

MS. WHATLEY: The porn at the house --

THE COURT: I was in the Navy, so I can go down the list of the types of porn and catalog it for you if you want me to.

MS. CASSINELLI COUCH: We've already objected and Blake has already objected to not having been provided it in discovery.

Okay. Do you know if it's the same as what was in the storage unit?

MS. WHATLEY: No, it's different because nobody goes back to the storage unit from the time of the state search warrant to the time of the search warrant on the storage unit. So there's porn at the house and there's porn in the storage unit.

MR. DUDLEY: So what?

MS. CASSINELLI COUCH: Yeah. I don't know that that makes any difference because you --

MS. WHATLEY: It makes --

THE COURT: Mr. Dudley, jump in here, objection to relevance. Normally if this was not going to link two things together, it would be objectionable, it would be irrelevant. What would be the need except to prejudice the jury? In this case where the prosecution is saying we found porn in a storage unit and we found it at some other point at the house, it would show that the same person is possessing both. What is the argument in -- it's one of several things that links those two things together.

MS. CASSINELLI COUCH: If you have porn in one place, you have porn in all the places?

MR. DUDLEY: Okay, Judge, if I accept that proposition, so what? So he possessed porn in two places. That's still not relevant to anything else here.

MS. WHATLEY: But, your Honor, there's a telephone call in which he tells Mrs. Mann the whole reason he had the storage unit is so that "I can keep Sunny's porn there," which kind of -- when you find porn at the house, it's not the purpose of keeping the storage unit. That was the point that the United States is making. This witness is only going to say we found a drawer to a drawer and a half of porn in a bedroom. We're not going into the porn. I don't care what porn it is. I don't

want to know what kind of porn it is.

MR. DUDLEY: Judge, even if it's relevant, I think it's 403 and you ought to exclude it. I mean, we've got guns and bombs and now they want to talk about porn, and that just -- any relevance is so marginal that I think it's prejudicial.

MS. CASSINELLI COUCH: Particularly in light of the fact that they did find the pornography in the storage unit that was discussed. I mean, I don't know that it really proves any fact in issue because they did actually find porn in the storage unit.

THE COURT: What would be the purpose of introducing this porn as compared to the porn that was found in the storage unit?

MS. WHATLEY: It shows Dr. Mann is lying when he says that the whole reason he is keeping the storage unit is to store all the porn because he doesn't want to keep the porn in the house.

MS. CASSINELLI COUCH: That's not what you just said. You said he was storing Sunny's porn, and I think it was more than just a little porn, so he could actually be storing Sunny's porn and have a little porn in the house. It's very, very prejudicial at this point when we've got, like, guns and bombs and stuff, and it's one minor thing that doesn't really connect to anything.

THE COURT: It depends on how you view porn. Guns

would indicate aggression. Porn might indicate less aggression, depending on the character of the porn. Now, that's --

MS. WHATLEY: They didn't view the porn. We're not going to talk about what kind of porn it was. We'll deal with other porn next week when we're dealing with the storage unit.

MS. CASSINELLI COUCH: That makes a good point, and I don't know anything about this enough to know if you can even link those things together or not, like if it's --

THE COURT: I'm going to overrule it. I can understand where -- we interview these jurors very thoroughly. My impression is that you might have one or two who may be truly upset about porn. My impression is that the jurors we have in this case, if you just disclose it and keep moving, are not going to spend a whole lot of time focusing on pornography. That's just my impression as the judge. If the porn was only being introduced to show that he has a propensity for porn, I would exclude it all day. But they're trying to introduce it to show that there is a link here between items that were found in one spot and items that were found in another, and you can't discount certain items out of hand because they found similar items somewhere else.

MS. CASSINELLI COUCH: I think -- I hate to say this, but -- I really hate to say this, or I might not, but I think we need to know more information about it to know if we can separate those two things. It's my understanding that there was

more than just some run-of-the-mill porn in the storage unit.

MS. WHATLEY: I'm not going to get into the type of porn.

MS. CASSINELLI COUCH: But it might actually matter to us because the only connection would be the -- I believe that there was some homemade -- wait, that was wrong. There was some equipment, and so I would want to know if it was the same type of videos.

THE COURT: Let's not -- you've just said a couple different things in one sentence. You've said homemade porn.

MS. CASSINELLI COUCH: No. I object to myself.

THE COURT: And there's not going to be anything dealing with homemade porn. The second thing is, you started talking about equipment, which is totally inappropriate. And so I think it's about time that we end this bench conference. I think you've made your record.

MS. CASSINELLI COUCH: Well, in all seriousness, did you not find equipment? Not that kind of equipment, but to videotape things on television or something?

MS. WHATLEY: What are you talking about? I think you're getting my cases mixed up.

MS. CASSINELLI COUCH: Yeah, that's in the report.

THE COURT: Enough about that. We're not hearing evidence about video equipment.

MS. CASSINELLI COUCH: Can you make sure you elicit

testimony that --

MS. WHATLEY: It's real brief, I promise.

MS. CASSINELLI COUCH: We have another issue, too, on the medication. I don't know how you want to handle that, but that's a pretty serious one.

THE COURT: This witness?

MS. CASSINELLI COUCH: Mike said it was. Is it? We need to address that.

MS. WHATLEY: That's Mike's issue.

MS. CASSINELLI COUCH: And I filed a brief on some of that.

THE COURT: What's the issue?

MS. CASSINELLI COUCH: Do you want me to go?

MS. WHATLEY: The medication. I'm the porn. He's the medication.

MS. CASSINELLI COUCH: That's really odd.

I believe, and I'm not exactly sure who found what medication because I can't tell from your reports, but the government's prior 404(b) response indicated that they were going to admit medications found in the house that were in prescription bottles with family members' names on them as well as some samples. Some of them were in a medicine closet, some of them were locked up in the safes with other valuable things. They linked it up with, they said that they had a witness who was going to say that he was giving this witness some of those

drugs. Our most --

THE COURT: Let's make sure our record is clear. That Dr. Mann was giving this witness some of those drugs?

MS. CASSINELLI COUCH: Mr. Gordon, they allege that Dr. Mann was giving one of the government's witnesses some of these medications. The Court has already --

THE COURT: What would be the relevance of that testimony, the fact that he had some prescriptions in the house for a family member and he was giving some of those to the --

MR. GORDON: These are several prescription pills found in the gun safes, and it's bottles of them, and they are prescription bottles where various family members' names on them. Some of them are from as early as 2001, all the way up to the present, 2009. Then there is a paper bag full of pills and plastic baggies with stuff written on them in pen. Again, the relevance is, it all goes back to motive. We're going to have a witness who is going to say that Dr. Mann was giving her prescription pills and she didn't know where he was getting them from, but it shows that he had access to them. Also the types of pills.

THE COURT: How does that affect motive? I mean, he could have gotten those from anywhere, and he wasn't supposed to prescribe them. She can testify that he was getting pills and he wasn't supposed to, but as far as where they came from --

MR. GORDON: Your Honor, I anticipate they're going to

light up the girl that is coming in here saying he was giving her pills.

THE COURT: Do what?

MR. GORDON: Light her up.

THE COURT: Aggressively cross-examine.

MS. CASSINELLI COUCH: You may be giving me too much credit.

MR. GORDON: This will corroborate that she had the same access to the pills.

THE COURT: This witness cannot come back.

MR. GORDON: He cannot come back. Or he can come back in a week, but we may be done.

MS. CASSINELLI COUCH: You can call him in rebuttal.

THE COURT: Let's hold up on the pills until we hear from the other witness and call him in rebuttal if you need to. Again, if they don't put on a case, he won't have that rebuttal testimony. That could create a dilemma if you're trying to prove your case -- if you just rest and they don't put on a case, then he won't get the opportunity to get that witness. What's his testimony going to be?

MR. GORDON: His testimony will be that during the execution of the state search warrant, one of the things he did was search the gun safes, and the gun safes, he found this paper bag full of these pills and there were all these prescription pills in there. All the pills were photographed, and it's

clear -- you will see what's on each bottle. The whole point is just to prove --

THE COURT: All the pills were prescribed to other people?

MR. GORDON: There are some of Dr. Mann's and some of family members.

MS. CASSINELLI COUCH: Let me add this: The great majority of these medications don't have anything to do with this witness or any other witness. They're just medications for the family. And they were in the safe. The ones that were controlled, if my memory serves, were in the safe with the other valuables. It's not like they were loaded up next to a --

THE COURT: Here's what I'm going to do: I'm going to sustain the objection. However, I'm going to permit you to recall him after your other witness who -- and you can make a determination at that point, Mr. Gordon, about whether you need to recall him to substantiate that the witness is going to say that they gave me pills. I'm going to permit you to recall him even if the defendant chooses -- if we need to, even if the defendant chooses not to put on a case. So essentially you'll get a rebuttal with this witness.

MR. GORDON: If we rest and they rest right behind us.

THE COURT: And you can recall him if they do. I'm going to sustain the objection as to him testifying about that right now. Let's see what happens with the cross-examination of

the other witness.

MR. GORDON: Can I just consult to see if there's anything relevant we need to put on with him at this point, anything else?

THE COURT: You can. Is this the witness who is going to testify about finding the porn?

MR. GORDON: Porn and pills.

THE COURT: So there was an objection to the pornography.

MS. CASSINELLI COUCH: He just wants to hear the pornography testimony here today.

THE COURT: No, I really don't. I really don't. I've seen enough of it in my life. Like I say, I'm a Navy guy. I've seen more than you can ever imagine.

MR. GORDON: Can the record reflect that Erin's face is really red?

MS. CASSINELLI COUCH: Y'all are -- you know --

MR. GORDON: Can we have just a moment, Judge?

THE COURT: Yes.

[Continuing in open court:]

THE COURT: Just so you understand what we're doing, we might have one witness who probably can't be here next week, and I don't know yet, so we're going to try to get him on and get him off pretty quickly. I'm so sorry. But sometimes when you have people who have vacation and have other things

scheduled, you have to grab them while you can.

MR. GORDON: Your Honor, can we approach one more time?

THE COURT: Yes, you may.

[Bench conference reported as follows:]

MR. GORDON: What I'd like to do is, just so the Court knows what we're talking about, I'll hand you Government Exhibit 100-NNN through TTTT. Those are the prescription bottles.

MS. CASSINELLI COUCH: We're all really tired. Is this a proffer?

MR. GORDON: And I'd also like to show the Court Government Exhibit 100-UUUU, and those are the pills that were found in the paper bag.

THE COURT: Okay.

MR. GORDON: And the Court already knows they were all in the gun safe. I didn't know if the pills from the bag would be treated any differently? He could testify about those and not prescription bottles.

MS. CASSINELLI COUCH: I mean --

THE COURT: Are you thinking he might not be able to come back if you need him? Is there a question about that?

MR. GORDON: He'll be back in a week. He's gone all next week. It's just we're trying to present it in a way where the case makes sense to the jury, just --

MS. WHATLEY: Your Honor, if I may interject, some of

these items are controlled substances, which he is not allowed to possess without his DEA permit unless they are in a prescription bottle. We have a DEA diversion agent who can testify to that, that she has looked at these, that that is controlled, and these are not properly --

THE COURT: I understand. The issue is, though, that he's not charged with that and that that's not an issue in the case, and if we start showing other illegal acts he committed, which apparently this would be one, then, you know, we're essentially having him on trial for one thing, but we're showing other bad things he's doing, and that could prejudice the jury. I don't know what the relevance of this would be.

MS. WHATLEY: The relevance is that he was in possession of substances he should not be in possession of, and it goes back to what Ms. Cryer testified to today: If he was in violation of his consent order, then he loses his medical license.

THE COURT: I understand that. I understand that.

MR. GORDON: And for me, again, it backs up the lady who will testify that she was selling him pills, she was getting pills from him, and this, again, shows that he had access to the stuff that he was giving this lady.

THE COURT: I will stick with my previous ruling. I'm not going to -- we're not going to exclude this. What I'm saying is, right now I sustain the objection. Depending on what

happens with this lady's cross-examination or with her testimony, I'll permit you to recall this guy.

MS. CASSINELLI COUCH: It's not been rendered relevant at this point.

THE COURT: I just don't know that it's relevant right now. There may be a time in this trial when it becomes relevant and you have to be given an opportunity to meet your burden, to satisfy the problem. But I don't know that right now, I don't believe that right now it is.

MR. GORDON: I understand.

THE COURT: If she were to testify that he was selling me drugs illegally, or after he lost his license, then there's no cross-examination, there's no controversy on that issue, then we don't need all of this. Do you understand what I'm saying?

MR. GORDON: Yes, sir.

THE COURT: If there's a vigorous cross and she starts looking shaky, that opens the door to you to then make that point.

MR. GORDON: In our original plan he was coming after her, but in light of his vacation --

THE COURT: I understand.

MS. CASSINELLI COUCH: Just for clarity's sake, all those medications don't involve that witness; right?

MR. GORDON: I don't know what that means.

MS. CASSINELLI COUCH: Well, I think her -- I think

you represented to me that there were a few medications at issue, maybe, but not all of them. I listed in the motions. I just wanted to make sure I was clear on that.

THE COURT: And I think that's the case. But if she's vigorously questioning, and I can't stop you from questioning because you have to do your job, but if she says he was selling me medication even after his license was suspended and then she was crossed and she looks shaky on it and the position that's being put to the jury is, well, no, he wasn't doing this, then they have to be given an opportunity to show --

MS. CASSINELLI COUCH: Sure.

THE COURT: -- here's all the stuff we found which would indicate that he was doing it.

MS. CASSINELLI COUCH: Sure. No, I understand. I just want to be certain that I'm clear that the family members' medications have no involvement in that. They're not the same medications or anything. And I think I briefed that, and we can discuss. I just want to be clear there are kind of two different things going on there.

THE COURT: All right.

MS. CASSINELLI COUCH: Thank you.

MR. GORDON: In light of that, we're not going to call him at this time, your Honor.

THE COURT: Do you have anybody else to call?

MR. GORDON: No, sir.

THE COURT: Okay.

[Continuing in open court:]

THE COURT: After our discussion at the bench, we have determined that now is probably a good time to end for the week. I will say -- and I thank all of you and I thank the lawyers. The lawyers have been working hard all of last week, they've been working really hard this week. And I thank all of you. What I've noticed during this trial, when anybody makes a movement, your eyes follow, so that means you're staying awake and paying attention. There are a number of cases I've had where I'll look over and I have to do that [claps hands] to wake you up. This is not one of those cases, apparently.

We have our first weekend break. You know what that means? What that means is, you are going to have two days and end of today and -- almost two and a half days to go and have people tell you what you need to do. You're going to have people who weren't in the courtroom who are going to tell you what happened in the courtroom. Let me tell you, they'll do it.

I think I told some of you when we were here going through selection that I was in New Orleans a couple weeks ago and I met a guy who didn't know I was a federal judge telling me all about federal law, what you can and cannot do, and I started asking him, "Well, now, can you really do this?"

"Oh, yeah. I know. My cousin is a lawyer."

And I said, "Okay," and I never told him what I did for a

living.

So you'll face that all the time, people who know everything about everything and they haven't sat here one day.

So you know why I told you all that, to lead me to the point that I made over and over again: Don't listen to them. Don't pay attention to them. Don't read any accounts of it. Don't look at it on the news. Don't listen to it on the radio. If it starts coming on, turn it off. If your family members want to know what's going on up at the courthouse, tell them they're more than welcome to come up and listen. You know, they can come and sit and listen to the proceedings. You know, they're not prohibited from doing that.

Also, remember that at the end of the case, I'm going to give you instructions and then you're going to go back in the jury room, and at that time, all of you are going to start talking about the case and giving your points of view and choosing a foreperson and going through that whole process. So until you do that, don't get a firm opinion in your mind that you can't shake. You have to wait until you listen to all of the witnesses before you know what the full story is. You understand that?

Okay. Finally, and you all have been doing this, I noticed this: You have not been talking to the lawyers, you have not been talking to the parties, you have not been talking to the witnesses. And that's a wonderful thing. Because what it does

is, it shows not only that we are fair, but it also appears to be, what, fair. And sometimes when you're fair and you don't -- and you don't look right, people don't realize you're fair. Am I right? You can be fair all day, but if you don't look fair, being fair doesn't matter. So we have to have both.

All right. With that, have a great weekend, and I look forward to seeing you back here on Monday morning at nine o'clock, and we'll be in recess until then.

(Jury exited the courtroom.)

(Weekend recess at 5:22 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: March 10, 2011

/s/ Christa R. Newburg, RDR, CRR, CCR
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

July 19, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 9:18 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 6
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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MS. KAREN D. WHATLEY, Assistant U.S. Attorney
MR. JOSH ROBLES, Law Clerk
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On Behalf of Defendant Randeep Mann (1):

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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - Volume 6 (July 19, 2010)

WITNESSES FOR GOVERNMENT:	Direct	Cross	Redirect	Recross
JEANICE BROWN	983	998	1005	1007
RITA BARTHELME	1008	1025	1050	1052
RAY BLACK	1056	1065	1068	
MARK RINKE	1069	1078	1091	
RYAN KIMBELL	1092	1100		
CURLAN McCRAY	1106	1112	1126	
ROWDY SWEET	1129			

* * * * * * *

EXHIBITS: **RECEIVED**

Government's Exhibit 95-B and 95-C.....P. 996

Government's Exhibit 95-A.....P. 997

Government's Exhibit 97-A.....P. 1058

Government's Exhibit 97-B.....P. 1065

Government's Exhibit 100-QQQ, 100-RRR, 100-YYY, 100-ZZZ, 100-UUUU, and 100-VVVV.....P. 1153

Government's Exhibit 102-A, 102-B, 102-C, 102-D, and 102-E.....P. 1163

Government's Exhibit 103.....P. 1164

Government's Exhibit 104.....P. 1165

Government's Exhibit 105.....P. 1166

Government's Exhibit 106.....P. 1168

Government's Exhibit 108-A and 108-B.....P. 1172

[CONTINUED]

(EXHIBITS CONTINUED)

Government's Exhibit 107, 109-A, 110-B through 110-D, 110-G, 110-I, 110-J, and 112.....P. 1177

Government's Exhibit 110-M.....P. 1178

Government's Exhibit 111.....P. 1178

Government's Exhibit 110-H.....P. 1179

Government's Exhibit 110-P.....P. 1180

Government's Exhibit 110-L.....P. 1180

Government's Exhibit 110-K.....P. 1180

Government's Exhibit 110-A.....P. 1181

Government's Exhibit 110-E.....P. 1181

Government's Exhibit 110-F.....P. 1181

Government's Exhibit 110-N.....P. 1182

Government's Exhibit 109-B.....P. 1182

Government's Exhibit 113.....P. 1184

Government's Exhibit 100-YYYY, 100-ZZZZ, 100-AAA THROUGH -D.....P. 1191

Government's Exhibit 100-EEEEE, 100-FFFFF and 100-GGGGG.....P. 1192

Defendant's Exhibit 6.....P. 1116

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(Proceedings resuming in open court, jury not present.)

THE COURT: We have a couple of issues we need to take up. I am sure you have been wondering why we haven't gotten started. Well, we don't have all of our jurors this morning, and we have an issue that I want to take up with the lawyers. We have had -- well, we have one alternate who has not shown up and who we have called on two different numbers and is not answering. We don't know if he is on the way, but we just haven't heard from him. Normally, we would just proceed and say we will drop that person as an alternate, but I received notice this morning that one of our jurors has a death in the family and doesn't know when she may have to go to a funeral.

So the question I have for the lawyers is, if we just were losing -- we will be down one alternate if we proceed right now. My suggestion is that we drop the alternate who has not appeared -- and I can get the name for you so we can look and see -- and that we proceed and that if this juror who has a death in the family needs to take -- from what I understand, she says she wants to remain on the jury. She is not looking to get out of her service. But if that person needs a half day or something to go to a funeral, we just accommodate her for the funeral and let her go to the funeral and come back. That way we keep our original jury intact.

Now, does either side have any -- anything that they want to be heard on or have any suggestions?

MR. HENDRIX: The only thing I can think of is if it's important to us to keep that juror, if it's the same one that I think that it is, I am wondering if 9:30 might be a better time to start to accommodate.

THE COURT: Let's do this.

MR. HENDRIX: I don't know where he is from.

THE COURT: Which juror is the juror who has the death in the family? What's her name?

THE COURTROOM SECURITY OFFICER: Kxxxx Jxxxx.

THE COURT: So that's Juror No. 3 who has a death in the family, and she might -- and I see here she is from Lonoke. So I am not sure where the funeral will be, but if she has to go to a funeral in the next couple of days, we might have to take a half day to allow her to go to a funeral. That will put us off a half day.

And then the juror who --

THE COURTROOM SECURITY OFFICER: Jxxxx Hxxxxx Pxxxx.

THE COURT: And Jxxxx Hxxxxx Pxxxx, who is our second alternate, is the person who has not shown up this morning.

MR. HENDRIX: Where is he from, Judge?

THE COURT: He is from Greenbrier.

MR. HENDRIX: That's a good lick for him to travel.

THE COURT: So you are thinking he might be on the way and just be out-of-pocket?

MR. HENDRIX: That's my experience. Greenbrier, you

have to come down -- I forget what that road is, but it has gotten congested over the years.

THE COURT: So do you-all want to hold up a little while to see, at least until 9:30?

MR. HENDRIX: That's fine with me.

THE COURT: I would rather not start losing jurors if I can avoid it. It seems like once you lose one, then it's like dominoes. We will be sitting in here looking at each other without a jury. Let's just hold up a few minutes.

MR. HENDRIX: Do you want us to be back here at 9:30?

THE COURT: We can. I am not going to leave. I am going to stay here and pull up some stuff on the computer. As soon as the jury gets here, we can get started.

MR. HENDRIX: Is it okay if we take a break?

THE COURT: No. I would rather you stay in your seats and look at me.

You can take a break. Of course you can.

(Recess at 9:22 a.m., until 9:33 a.m., jury not present.)

(Bench conference reported as follows:)

THE COURT: We just found out that our second alternate, Jxxxx Hxxxxx Pxxxx, III, from Greenbrier was arrested last night. He didn't call in. I think the jury coordinator contacted him. I was going to get the position of the lawyers as to whether we want to keep him. I will say that we just received a phone call -- or Betty Tyree just spoke with the

coordinator, who says that he was not coming in; although, he will come if we want him to come. And so that's where we are, and so I just want to see what the positions of the lawyers are. At the same time, we have Kxxxx Jxxxxxx Jxxxx from Lonoke, as we said earlier, who is Juror No. 3, who has a death in the family. I think her sister-in-law. And so her brother is making arrangements for the funeral, and we will know that in the next few days, when the funeral would be.

If we remove Jxxxx Hxxxxx Pxxxx, then we probably need to make accommodations for Ms. Jxxxx so that we are not down to one alternate, but I would like to hear from the lawyers.

First from the prosecution, what is the position of the government?

MR. GORDON: We ask that we proceed without Mr. Pxxxx, and then we -- we have no problems accommodating Ms. Jxxxx.

THE COURT: Okay.

MR. LASSITER: We're not asking to excuse him.

THE COURT: What will -- I don't know what he was arrested for and, you know, now -- and I know that sounds goofy, but -- and I know "goofy" isn't a word that federal judges should use, but I know that was strange. But if he was picked up for not paying a ticket and he was held until he could post bond, that's different than if he was dealing meth or whatever. Right now, we don't know what the situation was.

Mr. Gordon mentioned when we were at the bench a little

while ago that there are some other reasons why Mr. Pxxxx probably should be allowed to -- or should be released. One being that he slept through the first day of testimony. I didn't notice it.

Are there any other reasons?

MR. GORDON: No. But I can tell the Court that it's true. He sits right next to our table, and he was out cold, head sideways and everything.

THE COURT: Other than the position that the defense would not release him, is there anything else that the defense wants to add?

MR. HENDRIX: No. Other than sleeping is not so far terribly uncommon with some of the folks on this jury. I don't think he is the only one I have seen nod for a moment.

MS. CASSINELLI COUCH: And he perked up after the Court told everybody to stretch.

THE COURT: Look. In the interest of time, I am going to excuse Mr. Pxxxx. If we were down to one alternate, I probably would call and do some investigating to figure out why he was arrested, to see if it was something that would prohibit him from serving. As of right now, I don't know that his arrest would prohibit him from serving. But I am going to excuse him and we can call the jury in and we can get started.

Is there anything else we need to take up before we bring the jury in?

MR. GORDON: No, Your Honor.

THE COURT: I will have all the witnesses come in and get them sworn in.

(Return to open court, jury not present.)

THE COURT: Okay. Let's get you sworn in.

(Witnesses Jeanice Brown, Rita Barthelme, Ray Black, Mark Rinke, and Ryan Kimbell were sworn.)

(Jury enters the courtroom.)

THE COURT: Ladies and gentlemen of the jury, I guess you figured out that we have lost one of our alternates. He was Alternate No. 2. So that means that our Alternate No. 1, Ms. Jxxxxxx, and our Alternate No. 3, now becomes our Alternate No. 2, Ms. xxxxxx Axx Bxxxxx.

So, Ms. Bxxxxx, you might get called into action. What I mean is, as people ahead of you drop out -- hopefully, we will have no other to drop out, but as people ahead of you drop out, that means you just move up the list. So that means it's even more important that you listen to everything that's going on and take notes and stay engaged. Do you understand that?

ALTERNATE JUROR 3: Yes, sir.

THE COURT: I appreciate all of you. As I noticed last week, I have noticed you writing notes. I have noticed when certain points are made, all heads go down and start writing. I really appreciate that. Sometimes these cases go one and two and three weeks, and it becomes very easy to all just start

glossing over and running together. But I notice that that's not happening, and so I thank you.

Now, we have a full morning of testimony, so we can go on and get started.

Mr. Gordon?

MR. GORDON: Thank you, Your Honor. United States calls Jeanice Brown.

JEANICE BROWN, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON

Q Good morning, ma'am.

A Good morning.

Q Please state your name for the record.

A Jeanice Anne Brown.

Q How do you spell your first name?

A J-E-A-N-I-C-E.

Q Where do you live, ma'am?

A Bakersfield, California.

Q How long have you lived in California?

A Most of my life.

Q Have you ever lived in Arkansas?

A No.

Q Do you have family that lives here in Arkansas?

A Yes.

Q Tell us who in your family lives here in Arkansas.

A My mom, two sisters, my grandma, and nieces and nephews.
Q And what part of Arkansas do they live in?
A Russellville.
Q Do you work?
A No, I do not.
Q You have three boys?
A Yes.
Q So you stay at home with them?
A Yes.
Q And what are the names of your sisters that live here in Arkansas?
A Rita Barthelme and Cindy Robertson.
Q Who is the oldest of your sisters?
A Rita.
Q Where do you fall in the mix?
A I am a year younger than Rita.
Q Does Rita have any kids?
A Yes.
Q How many?
A Four.
Q What are their names?
A Andrea, Billy, Candace, and Dustin.
Q And is Rita married?
A Yes.
Q What's her husband's name?

A Bill.
Q Where do they live?
A They live in London, Russellville.
Q How would you describe your relationship with your sister Rita?
A Rocky.
Q Is there one main issue that's come between you and Rita?
A Yes.
Q What's that issue?
A Drug abuse.
Q Rita's drug abuse?
A Yes.
Q What kind of drugs?
A Pills.
Q Prescription pills?
A Prescription pills.
Q How long has Rita had this problem?
A I believe it started in 2003.
Q Where was she living at that time?
A Russellville.
Q Have you been fighting for Rita?
A Yes.
Q Trying to get her off prescription pills?
A Yes.
Q Has Rita ever overdosed on prescription pills?

A Yes.
Q How many times that you are aware of?
A Two.
Q When was the most recent one?
A January 4 of 2009.
Q And before that overdose of January 2009, how far back was the one before that?
A Approximately six months.
Q And when Rita overdosed on the earlier one, did you do something?
A Yes.
Q Did you call somebody?
A Yes.
Q Who did you call?
A Dr. Mann.
Q Do you know who Dr. Mann is?
A Yes.
Q Who is he?
A He is my sister's doctor.
Q Have you ever met him personally?
A No.
Q But you have spoken to him on the phone?
A Yes, I have.
Q Why did you call Dr. Mann after Rita's earlier overdose?
A Because I told him that he needed to stop giving my sister

drugs or she was going to die.
Q And how did Dr. Mann respond to that?
A He was very rude to me and said, "Well, where are you? Why aren't you here to help her?"
Q And then six months later Rita overdosed again?
A Yes, she did.
Q You said that was on January 4, 2009?
A Yes.
Q Okay. After that January 2009 overdose, did you call Dr. Mann again?
A No.
Q Did you call anybody?
A Rita.
Q Okay. Who else did you call?
A And the medical board, the DEA, and the Arkansas State Police.
Q Why did you call all of those people?
A Because she continued to get pills from Dr. Mann, and somebody needed to stop it.
MS. CASSINELLI COUCH: Your Honor, may we approach?
THE COURT: Yes.
(Bench conference reported as follows:)
MS. CASSINELLI COUCH: Your Honor, we just -- we're going to object to the hearsay. I think she is going to testify to what other people told her, so we would object to it on the

basis of hearsay.

MR. GORDON: I haven't asked any questions yet. All that she said -- I will tell you that one of my questions will be, when she called the boards, what did they tell her. And the reason I am asking that is they told her she needed to write down her complaint and so she will explain that she later wrote it down and that's why she wrote it down.

THE COURT: That would be fine, to let us know why she took the course of action that she took.

Okay. She just testified that there was an overdose the first time, and the second time she -- well, I won't get into that. I don't think she should be allowed -- as a matter of fact, I know she shouldn't be allowed to testify as to what other people were telling her. She can testify as to what Dr. Mann said, her telephone calls with him, and what he said and did, but as to what anybody else told her, that would be sustained.

MR. GORDON: And I have no intention of doing that except for the one phone call to the board.

MS. CASSINELLI COUCH: I think the next question was something that was going to elicit a hearsay response, and I didn't want that to be out.

MR. DUDLEY: Your Honor, the problem was: "She kept getting pills from Dr. Mann." There is no personal knowledge of that.

THE COURT: That's what I was about to say, and there was no objection to that.

What was your response to that, Mr. Gordon? She testified that her sister kept getting pills from Dr. Mann. How does she know that?

MR. GORDON: I can go back, and that will explain why she called Dr. Mann because Rita told her she was getting the pills from Dr. Mann.

THE COURT: Rita is coming in, and you can ask her that question as to, you know, if she told her sister what she was doing. But I don't think this one -- this witness I don't think should be allowed to tell or speak about what her sister told her. Her sister will be able to testify to that next, and she can get into all of that, how she got her pills and all of that. But I think it would be sustained as to her explaining what her sister told her. That's hearsay.

MS. CASSINELLI COUCH: Your Honor, I think we would move to strike the testimony that she just gave that was based on the hearsay.

THE COURT: I can strike it now, but if I were to tell the jury to strike that testimony and then have Rita come in and just say the same thing, I don't know that it would --

MS. CASSINELLI COUCH: It would still be hearsay.

MR. GORDON: Your Honor --

THE COURT: It would call attention to the fact that it

was said, and Rita will just come in and say it again. I don't know that you meant to do that.

MR. HENDRIX: I would vote to do that regardless of what Rita says because it gets the jury understanding what is not admissible as hearsay.

MR. GORDON: Your Honor, I think actually, since they have brought all this up, I think I am allowed to go back and ask her: Why did you call Dr. Mann? How did you know it was him? Why him? Out of all the doctors in the area, why him?

THE COURT: I think that would still be hearsay, course of action in writing the letter, and all of that. Yes, you can ask her those, but asking her: How did you know it was Dr. Mann who gave her sister the pills? Well, my sister told me --

MR. GORDON: I didn't ask her that, Your Honor.

THE COURT: But the question is: Why did you call Dr. Mann? "Because my sister told me" is hearsay.

MR. GORDON: It would be offered to show why she called Dr. Mann and why she called the board and Dr. Mann.

MR. HENDRIX: May I offer this as an analogy? It is sort of like when you put a law enforcement officer on the stand and say, "Why did you arrest the defendant?" And he says, "Well, because I found out this and that and that." At some point it becomes hearsay.

THE COURT: I understand that. I sustain the objection on the hearsay. The question is whether I should tell the jury

to strike or disregard the last testimony, and what I am saying is, if I tell them that, I think I just point out even more what she just said. And I think that would be inappropriate. And when you have another witness who is coming in to say the same thing, who says "I am the one who told her," I don't know that that exercise is very useful.

MS. CASSINELLI COUCH: We don't know what that witness will say because she hasn't testified yet.

MR. GORDON: I guess my question would be -- or my statement would be we need to go back and look at the last few questions, because, I mean, if they're objecting to hearsay, if it's appropriate, it should have been done a long time ago. I think we're several questions beyond that point. To instruct them to --

MS. CASSINELLI COUCH: We had a conversation prior because we must have missed each other on that because I understood that we -- it seems to me that this is the bolstering of later testimony, and we had that issue last week.

THE COURT: Just to bring this to a close, I will strike the last "because she continued to get pills from Dr. Mann and somebody needed to stop it." We'll strike that. Mr. Gordon is going to call Ms. Barthelme here to say the same thing though, and we will be right back where we are now, except that won't be --

MR. GORDON: That's fine.

THE COURT: Okay.

(Return to open court.)

THE COURT: Ladies and gentlemen, I told you there would be times lawyers make certain objections on hearsay and other types of objections that our rules call for. The last question from Mr. Gordon was, "Why did you call those people?" And the answer was, "Because she continued to get pills from Dr. Mann, and somebody needed to stop it." Well, that statement is based on conversations she had with other people and, therefore, it violates our hearsay rules. So I am going to ask you to disregard that last statement.

You may proceed, Mr. Gordon.

BY MR. GORDON

Q When you called the Arkansas State Police, who did you call to complain about?

A Can you say that one more time?

Q Sure. When you called the Arkansas State Police, who did you call to complain about?

A Dr. Mann.

Q And you called DEA. Who did you call to complain about?

A Dr. Mann.

Q And when you called the Arkansas State Medical Board, who did you call to complain about?

A Dr. Mann.

Q When you called the state medical board, do you recall who

you spoke to?
A Peggy.
Q And what did Peggy tell you to do about your complaint?
A She told me to put it in writing.
Q And did you eventually do that?
A Yes.
Q Did you write out a letter later on?
A Yes.
Q What was the date of that letter?
A January 13, 2009.
Q What did you do with that letter?
A I e-mailed it to the medical board and also to James Myatt.
Q Who is James Myatt?
A I don't remember exactly who he is, but I believe he was with the Arkansas police department if I am correct.
Q Is he an investigator for the department of health?
A Yes.
Q Do you know that or --
A I am -- I don't know for sure.
Q All right. And this letter that you e-mailed, who was it complaining about?
A Dr. Mann.
Q Did you tell your sister, Rita, that you had called the board and complained about Dr. Mann?
A Yes.

Q When did you tell her?
A Sometime between the 5th of January and the 8th of January of 2009.
Q Okay. What happened on January 8th, 2009?
A My sister was court ordered to the Freedom House.
Q What is the Freedom House?
A It's a rehab facility.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON
Q I am going to show you what has been marked as Government Exhibit 95-C. Do you recognize that?
A Yes.
Q Is that a court order ordering your sister Rita into drug treatment?
A Yes.
Q I am going to show you Exhibit 95-B. Do you recognize that?
A Yes.
Q Is that a court order mandating that she report for treatment on January 8 of 2009?
A Yes.
MR. GORDON: Your Honor, I would like to offer 95-C and 95-B into evidence. These are certified copies.
MS. CASSINELLI COUCH: May we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: Your Honor, we would object. These contain hearsay, and I know that there is an exception for certified records. However, this is hearsay within hearsay, and Ms. Brown is not the affiant here. And the affiant has made representations within this document that are hearsay, and I don't believe there is another exception that gets over the hearsay rule.

Are you just doing these two?

MR. GORDON: So far.

MS. CASSINELLI COUCH: Are you going to offer that?

MR. GORDON: If the Judge will let me, that's where I am going next.

THE COURT: I am going to overrule it.

MS. CASSINELLI COUCH: Your Honor, he is moving to offer just the last two at this point, so I would just note for the record that we have a separate objection to the petition.

THE COURT: I believe he is going to offer that. I think I heard him just say that.

MR. GORDON: I am going to offer 95-A.

THE COURT: What is the objection?

MS. CASSINELLI COUCH: Same. Hearsay within hearsay. The petitioner and -- the affiant is someone who is different from the witness, Ms. Brown?

MR. GORDON: Correct. And the petition has his handwriting and his own statements.

THE COURT: That's overruled.

(Return to open court.)

MR. GORDON: Your Honor, may I publish Exhibit 95-C to the jury, please?

THE COURT: Yes.

MR. GORDON: Thank you.

(Government's Exhibits 95-B and 95-C received in evidence.)

BY MR. GORDON

Q Ms. Brown, we are looking at Government Exhibit 95-C. Is this the court order directing that your sister, Rita, attend drug treatment?

A Yes.

Q Is this the order that put her in the Freedom House?

A Yes.

Q How long was she there for?

A 21 days.

MR. GORDON: Let's look at 95-B.

BY MR. GORDON

Q Is this the order for your sister, Rita, to report for treatment by January 8 or on January 8th?

A Yes.

Q And your testimony was that you told Rita about calling the board about Dr. Mann between January 5 and January 8th?

A Yes.
Q So after her overdose, but before she went to Freedom House?
A Yes.
Q And who was it that petitioned the Court for Rita to be ordered into drug treatment?
A My mom, Phil, and Rita's adult children.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON
Q I show you what is marked as Government's Exhibit 95-A. Is that the paperwork that Phil, Rita's husband, filed with the Court?
A Yes.
Q Thank you.
MR. GORDON: Your Honor, we would like to offer Government Exhibit 95-A, which is a certified copy.
THE COURT: It's received over the objections of the defendant.
(Government's Exhibit 95-A received in evidence.)
BY MR. GORDON
Q Is this exhibit signed by Rita's husband, Phil?
A Yes.
Q Where it says witnesses and addresses?
A Yes.

Q If you would, let's look at page 2 as well. Is that also Phil's signature?
A Yes.
Q Thank you, Ms. Brown.
MR. GORDON: Pass the witness.
THE COURT: Cross-examination?
CROSS-EXAMINATION
BY MS. CASSINELLI COUCH
Q Good morning, Ms. Brown.
A Good morning.
Q I believe you testified on direct that you live in California; is that right?
A Yes.
Q And you -- you haven't ever lived in Arkansas?
A No.
Q But you have other family members in Arkansas?
A Yes.
Q You testified that your sister is Rita Barthelme; is that right?
A Yes.
Q Her husband is Phil?
A Yes.
Q And they have got several children?
A They have four.
Q Four, okay.

On direct you testified about your concern for your sister. She had a drug problem.
A Yes.
Q And I believe you testified that she overdosed in January of '09; is that correct?
A Yes.
Q And about six months before that?
A Approximately.
Q Okay. Was she admitted to St. Mary's six months prior to the January overdose?
A Yes.
Q Do you know what she was admitted for?
A Attempted overdose.
Q Attempted overdose? Do you think that -- do you think it could have been longer than six months prior or are you pretty sure it was in the middle of '08?
A You know, I -- to my memory -- it could have happened before then as well, more than twice, but I for sure remembered two times.
Q Rita also had a cocaine and amphetamine problem, did she not?
A No. She did -- she would use anything that she could get.
Q So she did -- she overdosed on cocaine and amphetamines awhile back?
A I don't know what was in her system. I just know that she

took a lot of pills.
Q You don't know the specifics of the overdoses?
A Right.
Q But you wrote a letter asserting that you did know all the specifics, right?
A Yes.
Q And in fairness, out of concern. That's not the first letter that you have written, is it?
A I believe so.
Q Family members have written letters before?
A Yes.
Q In your letter, you reference things that happened four years prior to when you wrote the letter; is that right?
A Yes.
Q Things that had been covered before by other people?
A I don't understand the question.
Q Well, your family had made complaints, had they not?
A I know they -- the family did make complaints, yes.
Q And then you called Dr. Mann, right, to talk to him about it?
A Yes.
Q So he knew that you were upset?
A Yes.
Q And he knew that you intended to do something about it?
A Yes.

Q And he told you that he couldn't discuss too much of a patient's medical history. That's the law, right?
A No, he did not tell me that.
Q He didn't tell you that?
A No.
Q Did he tell you -- well, you talked in your letter about some shots. You were upset about her getting some shots from him that you believe to be pain shots, right?
A Yes.
Q Are you aware that she was getting cortisone shots, Toradol shots for pain?
A Yes.
Q That are nonnarcotic?
A Both, pain shots and -- pain shots and non-pain shots.
Q Are you a doctor?
A No.
Q So you wouldn't know if they were narcotic or not. You were just concerned that there was some shot that you thought might be; is that right?
A Yes.
Q But if in fact it wasn't, it wasn't, right?
A Yes.
Q Ms. Barthelme, Rita, was also seeing other doctors; isn't that right?
A You know, I don't have any firsthand knowledge of that, so

I can't say one way or the other.
Q You testified, I believe, that you called the medical board, DEA, state police prior to writing the letter; is that accurate?
A Yes.
Q And you wrote the letter, I think you said, on January 1?
A Yes, I did.
Q Your letter is not dated. Do you remember when you called, about when you called all those agencies? Pretty soon before the letter, do you think?
A Yes. It was after the last overdose on January 4 and before she went to Freedom House.
Q About that overdose, looks to me like your family kind of got -- there was -- you have a sister named Judy as well?
A Yes.
Q And Rita wasn't telling you-all the same thing; is that right? She told you-all that she didn't overdose; is that right?
A No, she didn't tell us that.
Q She didn't tell you that?
A No.
Q Did she tell your sister, Judy, that?
A No.
Q Well, in your letter she said that she was threatening to, but doesn't say -- and then she told her that she did and then

she told her that she didn't. Did she tell the police that she didn't overdose?
A Are you asking me if Rita told the police that she didn't? In the beginning, she was denying taking too many pills.
Q Are you aware that when they showed up to the house, they didn't find any pills and they found her not to be intoxicated?
A Yes, I am completely aware of that.
Q They in fact left, right?
A Yes.
Q And then when she was admitted, are you aware that the doctor's admission report says that she was alert and oriented?
A No.
Q But either way, you are not aware of what doctor she was seeing, right?
A She was seeing Dr. Mann.
Q But you don't know who else she was seeing?
A No.
Q And you don't know what other drug she may have been taking?
A No.
Q And you don't know for a fact what drugs Dr. Mann had or had not in fact prescribed for her?
A All I know is what she told me.
Q But you don't know, right?
A No.

Q And admittedly, Rita had a drug problem in the past at least?
A It started when she met him.
Q You don't know when their first visit was, do you?
A No.
Q So you don't really know that. That may be what you believe, but you don't know that; is that right?
A I believe that 100 percent.
Q But that's not what you know. That's what you believe.

Rita has suffered from back problems, hip problems, some ankle breaks, I think, blood pressure, anxiety, depression. Is that all accurate?
A Yes.
Q She has needed a doctor's care one way or another.

I assume when you called Dr. Mann six months prior, you were fairly strong in what you said?
A Yes.
Q I mean, I -- you seem like a strong woman. You called him and told him what you thought and what you wanted him to do and what you were going to do about it if he didn't?
A Exactly.

MS. CASSINELLI COUCH: May I have a moment, Your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH

Q Are you aware of Rita's problems, overdosing way, way back

in '02 or '03 maybe?
A Not that I recall.
Q Not aware of that? How about since January? Since January or February of last year, she has still had problems, has she not?
A Yes.
MS. CASSINELLI COUCH: Thank you.
THE COURT: Redirect?
MR. GORDON: Yes, Your Honor. Thank you.
REDIRECT EXAMINATION
BY MR. GORDON
Q Has Rita overdosed since January of '09 that you are aware of?
A No.
Q Okay. When you say she has had problems, what do you mean?
A I mean she will always be an addict.
Q Okay. Is she doing better than she was?
A A lot -- she looks a lot better, and she is a lot better.
Q Have you ever seen Rita with pills?
A Yes.
Q Is there one in particular that just stands out in your mind?
A One or several.
Q Okay. Tell us about some.
A Morphine, I know for sure. Vicodin, Lorazepam, Oxycontin,

Xanax, and several others. I just don't remember what they were.

Q Without saying what Rita said, did she ever tell you who she was getting her pills from?

A Yes.

Q And was there a particular incident you were asked about, that you talked about in your letter that happened some four years ago? Was there one sentence in your letter where you talk about seeing your sister with a bag full of prescriptions four years ago?

A Yes.

Q Other than that, is that the only old news in the letter?

A Yes.

Q Now, there is no specific date on this letter, but if you would, let's look on page 2. And in your letter you have two spots underlined.

A Yes.

Q And in that second sentence, do you say the date you are writing the letter? It says, "Well, today" -- and it gives the date?

A Yes.

Q January 13, 2009?

A Yes.

Q Are you the only person in your family that called Dr. Mann to complain about -- to talk to him?

A No.
Q Are you the only person in your family who wrote the medical board?
A No.
MR. GORDON: No further questions.
RECROSS-EXAMINATION
BY MS. CASSINELLI COUCH
Q You testified that you saw her with pills, and then you listed a whole bunch of pills.
A Yes.
Q Again, are you a doctor?
A No.
Q You don't know what pills you saw. Can you look at a pill and say, "That is Vicodin"?
A Yes.
Q You can?
A On a Vicodin I can, yes.
Q How about all the drugs you listed? Would you know all those by sight?
A No.
Q And also, you don't know Rita's medical history, do you?
A Not completely, no.
Q And you don't know what doctors she was seeing?
A I know that she was seeing Dr. Mann.
Q But you don't know the other doctors, and you don't recall

her seeing another doctor and overdosing years and years ago?
A No.
Q You said that you had one sentence about something happening four years ago, but is it fair to say that your letter is fairly comprehensive? You reference different things that other people may or may not have told you, and it appears to me to be a letter about over time, which would be appropriate.
A Can you rephrase that?
Q Yeah. Sorry. That one got away from me a little bit.
Your letter is comprehensive, meaning you reference several things that you believe were inappropriate over a period of time.
A Yes.
Q And you said Rita is still an addict?
A An addict will always be an addict.
Q As an addict, did she always tell you the truth?
A No.
Q Thank you.
THE COURT: Anything else, Mr. Gordon?
MR. GORDON: No, Your Honor.
THE COURT: Ms. Brown, you may stand down.
Call your next.
MR. GORDON: The United States calls Rita Barthelme.
RITA BARTHELME, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN
DIRECT EXAMINATION

BY MR. GORDON

Q Good morning, ma'am.

A Good morning.

Q Please state your name for the record.

A Rita Barthelme.

Q Spell your last name for us.

A B-A-R-T-H-E-L-M-E.

Q Do you mind if I call you Rita?

A That's fine.

Q Okay. Where do you live, Rita?

A Russellville, Arkansas.

Q How long have you lived there?

A 16 years.

Q Are you married?

A Yes.

Q What's your husband's name?

A Phillip Barthelme.

Q How long have you-all been married?

A 21 years.

Q What does Phil do for a living?

A Construction.

Q How about you?

A I don't work.

Q Do you have any kids?

A I have four.

Q What are their ages?
A 29, 23, 16, and 13.
Q Do you know Randeep Mann?
A Yes.
Q Do you know Sangeeta or Sue Mann?
A Yes.
Q How do you know them?
A Patient and friends.
Q How long have you known them?
A Approximately ten years.
Q Do you see Dr. Randeep in the courtroom here today?
A (Nodding head.)
Q If you would, please point to him and identify some clothing that he is wearing.
A (Indicating.)
Q Can you see what he is wearing?
A Huh? Yes.
MR. GORDON: Your Honor, may the record reflect that she identified the defendant?
THE COURT: I don't know that she --
THE WITNESS: Right there in the glasses.
THE COURT: It will so reflect.
BY MR. GORDON
Q I am sorry, Rita.
Do you see Sangeeta Mann in the courtroom?

A Yes.
Q Okay. Will you point to her?
A Right here.
Q And what is she wearing?
A Glasses and a white shirt.
MR. GORDON: Your Honor, may the record reflect she has identified the defendant?
THE COURT: It will so reflect.
MR. GORDON: Thank you.
BY MR. GORDON
Q How would you characterize your relationship with Dr. Mann?
A We were good friends.
Q And how about his wife?
A We were friends.
Q Good friends?
A Yeah.
Q Close friends?
A Well, we were friends. Close, but not close close.
Q And Dr. Mann was also your doctor?
A Yes.
Q Do you know their kids?
A Yes.
Q Have you been to their house before?
A Yes.
Q On several occasions?

A Yes.
Q How, has -- how is your husband's relationship with Dr. Mann?
A He mows the home yard and the office yard.
Q All right. Is it more than that? Are they also friends?
A Yeah, they're friends.
Q Good friends as well?
A Yeah. They're good friends, but they don't -- they never talked as much as we did.
Q So you are closer to Dr. Mann --
A Yes.
Q -- than your husband?
A Yeah.
Q And Dr. Mann was more than just your doctor, correct?
A Yes.
Q How did you-all get to be more than just doctor/patient?
A Start talking and -- just talking.
Q How was it that your husband, Phil, came to work for Dr. Mann?
A Dr. Mann was looking for somebody to do the yards, and my husband said he would do it. So he has been doing it for, I don't know, probably three years now maybe.
Q All right. Is there -- did Dr. Mann give Phil the equipment to mow the yards?
A He didn't give it to him. They worked out a deal where my

husband would do the yards and he was buying the equipment from Dr. Mann. So my husband would, instead of giving him money, he would just mow the yards.

Q He was working it off?

A Yeah.

Q Is he still working it off?

A He is.

Q What kind of medical clinic did Dr. Mann run?

A Pain clinic.

Q Was he the only doctor that worked there?

A Yes.

Q Did his wife work there?

A Yes.

Q What did she do?

A She -- receptionist, answered the phones, and -- she was a receptionist. She works in the office.

Q Are there any nurses or medical staff that work there?

A No.

Q Why did you first go see Dr. Mann?

A Because I had been to a couple of other doctors and I was having stomach problems and Dr. Mann is the only one that sent me for tests and found that I needed a hysterectomy.

Q He referred you out to another doctor?

A To get testing and then referred me to the OB-GYN.

Q Any other reasons?

A No. Well, my knees and stuff, yeah. Just my stomach and knees.
Q What's wrong with your knees?
A I had to have knee surgery on both of them.
Q And your back as well?
A Yes, my back as well.
Q Did Dr. Mann perform those surgeries?
A No.
Q Did he refer you out for them?
A Yes.
Q Did you use Dr. Mann for pain management?
A I did.
Q Pain from what?
A For my knees and my back.
Q Did Dr. Mann prescribe you medication for your pain?
A He did.
Q What kind?
A Lorcet.
Q What is Lorcet?
A Pain medication, codeine.
Q Anything else?
A That was prescribed to me? Xanax.
Q What is Xanax?
A I think it's for nerves.
Q Does it have another name that you know of?

A No.
Q What else?
A Robaxin.
Q What's that?
A I think that's a -- I think it's a muscle relaxer. I think.
Q Okay. Anything else?
A No.
Q And how often was Dr. Mann prescribing you pills?
A Once a month.
Q And about when did he start prescribing you pills?
A About nine or ten years ago.
Q And did you eventually get addicted to pain pills?
A I did.
Q And whose care were you under when that happened?
A Dr. Mann's.
Q Were you seeing any other doctors then?
A I went to one. No, I did not. I'm sorry, no.
Q When would you say you got addicted to pills?
A Probably after the first few years.
Q How bad did it get?
A At the end it was really bad.
Q Tell us about that.
A I overdosed a couple of times and -- it just got to the point where I didn't care.

Q Didn't care about what?
A Didn't care about anything.
Q Did you almost lose your house?
A I almost lost my house. I almost lost my family. I almost lost my life.
Q At some point while you were under Dr. Mann's care, did he lose his DEA permit?
A Yes.
Q How do you know that?
A Because he told me that.
Q After Dr. Mann lost his DEA permit, did he continue to give you prescription pills?
A Yes.
Q What kind of pills?
A Lorcet, Xanax, and morphine.
Q Morphine?
A Yes.
Q How did you get those pills from him?
A I would go to the office or go to the gym.
Q Okay.
A I went to his house a time or two.
Q Okay. When you say you would go to the office, explain that to us.
A I would just go to the office and get medication from him out of the back, on the Sea-Doos or milk crate or car window

or --
Q But how did it work? Would you call --
A Yeah.
Q -- and ask for it?
A Yes.
Q What number would you call?
A His cell phone number.
Q You had his cell phone number?
A Yes.
Q Would you pay him for the pills?
A Yes.
Q What would you do with the money?
A What?
Q What did you do with the money?
A I would sit it on the vehicle or wherever or hand it to him.
Q So when you got the pills from him, it wasn't always face to face?
A No.
Q Okay. You said that he would leave it on the Sea-doos or on the car?
A Yeah.
Q And then you would get the pills and leave the money behind?
A Yes.

Q You said something about the gym?
A Yeah.
Q Tell us about that.
A And his cars a couple of times. I would go and get it out of his cars on two different occasions, I believe.
Q While he was at the gym?
A Yeah.
Q How often were you getting pills from him after he lost his DEA permit?
A Probably I would spend at least $300 a month, at least, a couple of times a month.
Q Do you know where Dr. Mann was getting the drugs from?
A I have no idea.
Q He didn't tell you?
A No.
Q How many times have you overdosed on prescription pills?
A Twice.
Q Do you remember the dates?
A I do not. I know --
Q Why not?
A Because I was so wasted.
Q Do you remember being placed in Freedom House about a year ago?
A I do.
Q Was that the last overdose?

A Yes.
Q How long were you in the Freedom House?
A 21 days.
Q When you overdosed that time, who were you getting the pills from?
A Dr. Mann.
Q Anybody else?
A No.
Q You testified or you mentioned earlier -- you said before Dr. Mann lost his permit, you were only getting pills from him. What about after he lost his permit?
A I went to Dr. Johnson a couple of times.
Q Okay. And he would prescribe you medication?
A He would, but it was -- yeah, very minimal.
Q Okay. And then the rest you got from Dr. Mann?
A I did.
Q Do you have any brothers and sisters?
A I do. I have three sisters and one brother.
Q You have a sister named Janice?
A I do.
Q Has she been trying to get you to come clean?
A Yes.
Q Has your whole family?
A Yes.
Q Did your sister, Rita, tell you that after your last, your

most recent overdose, did your sister Jeanice tell you that she had called the state board about Dr. Mann?

A She did.

Q Did you pass that information along to Dr. Mann.

A I did.

Q When did you tell Dr. Mann?

A It was during the time I was in the Freedom House.

Q During the time you were in the Freedom House?

A Yes.

Q Do you remember the exact date?

A I couldn't tell you the exact date.

Q All right. When you were in the Freedom House, were you allowed out to go see Dr. Mann?

A I was.

Q What was that about?

A I had fallen and hurt -- I hurt my ankle.

Q And so they allowed you to go see him for that?

A They did.

Q When you told Dr. Mann that he had been referred, that your sister had called the board on him, what was his reaction?

A "Why?"

Q I'm sorry?

A "Why?"

Q "Why?" Before you went to Freedom House, did your husband, Phil, take a trip with Dr. Mann to Memphis?

A He did.
Q What was the purpose of that trip?
A Dr. Mann and -- they had a motel together and they needed some work done to it. So my husband went up there with him to see if they wanted to do the work.
Q Dr. Mann and who?
A Pete. I don't know who Pete is, but I have heard of him.
Q How have you heard of Pete?
A I heard he was in copartnership in the hotel.
Q With Dr. Mann?
A Yeah.
Q Have you ever met Pete?
A I have not.
Q Do you know Pete's real name?
A I do not.
Q How many trips did your husband, Phil, and Dr. Mann make to Memphis?
A Two.
Q Did your husband, Phil, ever go to Memphis and do work for Pete?
A He did.
Q Do you recall how long he was gone?
A Approximately a week, I am going to say.
Q Do you remember hearing about the bombing in West Memphis?
A I do.

Q How did you find out about that?
A It was on the news. It was everywhere.
Q Do you remember hearing about Dr. Mann's arrest?
A I do.
Q How did you find out about that?
A That was on the news and everything too.
Q After you were arrested -- or, I'm sorry, after Dr. Mann was arrested, did you get a phone call from his wife?
A I did.
Q And did she ask you to come do something for her?
A She did.
Q What did she want you to do?
A To take some stuff to Marva.
Q What is Marva?
A It's a secondhand store. They use the money for disability, I think.
Q Okay. And you had known Sue at that point about ten years?
A Yes.
Q Had she ever called before to ask you to do that?
A No.
Q Do you remember how soon it was after Dr. Mann's arrest that she called you?
A I know the media was there the following day, so real shortly afterward.
Q The media was at their house?

A The following day, yes.
Q Did Mrs. Mann tell you why she wanted you to come get stuff?
A She was spring cleaning.
Q Did you go by her house?
A I did.
Q And that's when the media was there?
A They were there the next day when my husband went.
Q Okay. When you went, did you go by yourself?
A I think so, yes.
Q Who was at the house?
A Sue.
Q Were any of the kids there?
A I seen Dan, but he was just on his way out, I believe.
Q You saw who?
A Dan.
Q Is that one of their sons?
A Yeah.
Q And when you got to the Manns' house, did Mrs. Mann already have a pile of stuff for you to take away?
A She did.
Q Could you fit it all in your car?
A No.
Q What were you driving?
A A 2004 Chevy Impala.

Q Did you fill up your car with the stuff?
A I did.
Q What kind of stuff was it?
A It was National Geographic books, CDs, sheets, posters, VCRs and DVD players, basically just junk.
Q Well, okay. To you it was junk?
A Yeah.
Q What did you do with the stuff?
A You know, we -- my husband was going to take it to Marva and we never had time and so my husband sat it outside and eventually burned it. My son went through and got a couple of posters, I think.
Q When you left the Manns' house with the stuff, did you get all of it?
A No.
Q Okay. Did someone eventually go and get the rest of it?
A My husband did.
Q Phil?
A Yes.
Q When did he go?
A I believe it was the following day.
Q In his truck?
A Yes.
Q Do you remember him bringing a truckful back?
A Yes.

Q And you said it -- the stuff did not end up going to Marva's. What happened to it?
A He set it outside and eventually just burned it.
Q At your house?
A Yes.
MR. GORDON: Thank you, ma'am.
Pass the witness.
THE COURT: Cross-examination?
MS. CASSINELLI COUCH: May we have a short break?
THE COURT: We may.
Let's take ten minutes. We will come back at 10:50. We will be in recess until 10:50.
(Recess at 10:40 a.m., until 10:53 a.m.)

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH
Q Hi, Ms. Barthelme.
A Hi.
Q Am I saying that correctly?
A Yeah.
Q You previously testified that you have been a patient of Dr. Mann's for quite a while; is that right?
A Yes.
Q And over the years you have had back problems, maybe a back surgery?
A No surgery. Back problems, yes.

Q You have had MRIs?
A Yes.
Q And you have had some knee problems?
A Yes.
Q A couple of sprained or broken ankles and ankle problems?
A Yes.
Q You had blood pressure problems?
A Yes.
Q Took quite a few medicines for that?
A I took one for that. For the blood pressure or for all in general?
Q Well, I guess you have blood pressure, you have -- you took quite a few nonnarcotic medicines for various issues; is that right?
A Yes.
Q And Mr. Gordon asked you to list some medications. And you didn't list those, but there were several?
A Yeah. I didn't list them.
Q Dr. Mann treated you, and I believe some of your family members not just for pain, but for your everyday issues, right?
A Right.
Q He was your general practitioner?
A Right.
Q But he was also licensed in pain management?
A Yes.

Q So he also did that?
A Right.
Q And you believed him to be a good doctor, did you not?
A I did.
Q Sounds like he really helped, did a good job for you in the beginning?
A (Nodding head.)
Q And you thought he was a good doctor?
A I did.
Q And a good friend?
A Yeah.
Q When were you first approached by law enforcement with regard to Dr. Mann?
A Probably six months ago, I guess.
Q So early this year?
A Yeah.
Q After you got out of the hospital in January or before?
A After.
Q And how many times have they spoken to you since then?
A You mean the sheriff's department or --
Q Any law enforcement officer or the prosecuting attorney or anybody associated with this case talking to you about Dr. Mann.
A Six months ago was the first time.
Q And how many times since then, if you can recall?
A Just a couple.

Q A couple?
A Yeah.
Q Can you kind of give me -- did they come to you? Did you go to them? Did they call you?
A They came to me.
Q At home?
A Yeah.
Q Can you remember any other times?
A They came to my home a couple -- twice maybe.
Q Do you know about when that was?
A I cannot sit here and tell you an exact date, no.
Q A few months back?
A Yeah.
Q When they came to your house twice, were those close in time to each other or spread out, if you recall?
A Spread out. Within a few months apart, I guess.
Q So there were a couple of times they came to your house. Any other times? Did you speak to anybody over the phone?
A Yeah. I spoke -- but, you know, they wanted directions to my home or wanted to know if I was home or whatever.
Q Just to get to your house, but not anything of substance about this?
A No.
Q Anymore after the two times they came to your house?
A No. Not that I recall, no.

Q Not until today?
A Right.
Q Did you come here last week?
A I was in Little Rock, yeah. I was up here Thursday, but I didn't --
Q Did you meet with anybody in law enforcement?
A I did.
Q At the end of last week or anytime in the past couple of weeks?
A Yeah.
Q And did you ever write out a statement or give a taped statement that you know of?
A I did.
Q Which one, taped or written?
A Written, I believe.
Q Do you remember which meeting?
A The first one.
Q The first time they came to your house?
A Uh-huh.
Q Okay. Did you actually write it?
A No.
Q Do you know who wrote it for you?
A I do not remember.
Q One of the agents?
A Yes.

Q Over the past -- let me see what month we are in -- six or seven months, is it fair to say you have had several contacts with law enforcement about this issue, about Dr. Mann --
A I wouldn't say several. I would say probably three or four.
Q Three or four?
A In my home and up here.
Q Did you always tell them the same thing?
A No.
Q It took a bit of finagling to get you to say what you said here today, didn't it?
A Yeah, because I didn't want to do it.
Q Sure. You kind of felt like they were after you, didn't you?
A I didn't feel like they were after me. I just felt like I didn't know what was going on.
Q You felt you would get in trouble if you didn't tell them what they wanted to hear?
A I didn't tell them what they wanted to hear.
Q Do you remember making the statement, "The Feds won't leave us alone"?
A I remember that.
Q Is that a fair statement, an accurate statement?
A It is.
Q When they get the pressure on, you really feel pressure,

don't you? When you have officers coming to your house multiple times and you have to come up here and meet with lawyers and law enforcement officers, it's pretty stressful, isn't it?
A Pretty stressful, yeah.
Q And you have anxiety problems, don't you?
A I do.
Q It caused you some pretty serious anxiety probably the first time they came?
A Oh, yeah. I was not a happy camper.
Q Sure. You testified that you had been to the Manns' house before. How frequently did you say that you had been there?
A Maybe once a month.
Q And you had been inside and seen the gun collection and all of that?
A No, I have not seen a gun collection.
Q So have you seen guns at the house?
A I have seen two.
Q Maybe you didn't see the whole thing, but you have -- did you know Dr. Mann collected guns?
A I did.
Q He wasn't shy about that, was he?
A No.
Q And it was a hobby?
A Yeah.
Q And he also liked cars?

A Oh, yeah.
Q You have never seen any grenades?
A No.
Q Over time when you have been going to Dr. Mann, whether he had his permit to prescribe controlled substances or not, he did treat you for pain with some shots?
A Yes.
Q Is that right?
A Uh-huh.
Q Those were nonnarcotic shots --
A Right.
Q -- for your knees and your back, I think, and your hips?
A Right.
Q But they are for pain?
A Right.
Q And he also gave you some other nonnarcotic medications for pain?
A Right.
Q When he would give you some of those shots, he did not charge you every time he gave you one of those cortizone or Toradol shots, did he?
A No.
Q You didn't have insurance?
A I did not.
Q And he knew you were under some financial pressure?

A Yes.
Q And so when you needed them, occasionally he would not charge you?
A Right.
Q You also had his cell phone number?
A I did.
Q That wasn't unusual for his patients, was it?
A No.
Q Because he and Sue were running the clinic, right?
A Right.
Q There wasn't an emergency doctor to call to come in and help somebody in need at 9:00 o'clock at night?
A No.
Q Ms. Barthelme, admittedly you have had problems with controlled substances?
A Yes.
Q But you have needed them in the past, have you not?
A I have.
Q And you have also had some problems with other drugs; is that right?
A I have. I am human.
Q Sure. And I am just here to get all the truth out of you.
A Right.
Q In some of your overdoses those were contributing factors, cocaine and amphetamines?

A I couldn't tell you about that.
Q Have you ever ingested those things?
A I have, yes.
Q And so those contributed to your prior drug problems?
A I did cocaine and meth and pot when I was a teenager.
Q When you were admitted to the hospital in early '08, you had cocaine and methamphetamine in your system.
A Okay.
Q Do you remember that?
A Do not remember it, but I would not deny it either.
Q And in January of '09, you were readmitted to the hospital before you went to Freedom House, right?
A Right.
Q And prior to that admission, had you been talking to some of your family members, maybe on the phone, about whether or not you took some Xanax? Do you remember that?
A Well, I know there was a couple of times when my sister asked me if I had taken Xanax.
Q Do you remember an officer coming to your house that day before you went to the hospital?
A I do not.
Q Nobody found any pills, and they said you weren't intoxicated. Do you remember that?
A I do not.
Q Do you remember talking to your sister on the phone, or

your brother?
A No.
Q How about talking to Dr. Barron? He said that you were alert and oriented.
A No.
Q So if a doctor said that you were alert, oriented, and had a conversation with him, that would be inaccurate?
A I don't remember having a conversation with him.
Q You mentioned that you got some pills from Dr. Johnson when Dr. Mann didn't have his permit?
A I did.
Q You were getting Xanax, at least, from Dr. Johnson, right?
A No. I was getting Lorcet from Dr. Johnson.
Q You were getting Lorcet from Dr. Johnson?
A Yeah.
Q Were you also getting Xanax?
A I do not believe so.
Q Do you recall telling the agent that you were getting Xanax from Dr. Johnson?
A I remember that.
Q Prior to your overdose in January?
A I remember that.
Q Do you also remember -- let me go back. Are you aware that your family had complained about Dr. Mann's treatment of you before January of last year?

A Yes.
Q And are you aware that they also called him about it?
A Yes.
Q So he was aware of your family being upset at him --
A Yeah.
Q -- and thinking that he is not doing right by you?
A Yeah.
Q That was not new in January of '09?
A No.
Q And in fact you told the agents that you told Dr. Mann that one of your sisters was going to do something, but you weren't sure when you told him that?
A Can you repeat that?
Q You talked to the agents about your sister -- first of all, did you tell the agents that your sister had written a letter to the medical board?
A I don't remember.
Q Would you have known if she had written a letter to the medical board?
A She would have told me.
Q But you were in rehab?
A I was in rehab.
Q So were you allowed to talk to whoever you wanted every day?
A No. But I left one day and went to see Dr. Mann about my

foot.
Q What day was that?
A I couldn't tell you the exact day.
Q So while you were out seeing Dr. Mann for the foot -- you sprained your ankle, right?
A I did.
Q While you were out, you did other things while you were out that day?
A No.
Q Well then, how do you -- how long were you gone?
A I could not tell you that either.
Q Did you drive yourself?
A No. My kids took me.
Q Did you go straight there and straight back?
A No. Probably -- we were probably gone an extra 20, 30 minutes. I think I got something to eat or something.
Q So while you are in the rehab facility, you communicate with your sister, and she tells you that she has written a letter or not?
A Yeah, she told me she wrote a letter.
Q She doesn't write the letter until after you go see Dr. Mann, so how would you have known about the letter and how could you have communicated that to him while you were in rehab?
MR. GORDON: I'm going to object. That assumes a fact not in evidence, first of all.

THE COURT: That's overruled. This is cross-examination.

THE WITNESS: I believe my sister actually e-mailed first.

BY MS. CASSINELLI COUCH

Q E-mailed?

A The medical board.

Q You believe there was an e-mail and a letter?

A I believe.

Q In any event, you told the agents that you told Dr. Mann about it at some point. Well, let me go back. I think you testified on direct that you told him sometime while you were in rehab?

A Right.

Q Do you remember telling the agents it was either before or after?

A I do remember that.

Q Did you call him or did you see him?

A Call who?

Q How did you communicate that to Dr. Mann? Did you call him on the phone?

A No. I was at the office.

Q And that was on -- that was a few days after you entered rehab?

A Right.

Q The 12th? Does that sound right?
A I couldn't tell you the exact date.
Q Well, it was prior to the letter being written?
A Right.
Q Or the e-mail, whichever you think it was?
A Right.
Q You -- and your husband is Phil, right?
A Right.
Q Y'all did -- at least your husband did work for the Manns, kind of a groundskeeper type?
A Right.
Q And also did some work inside the house?
A I don't know if he did some work inside the house or not.
Q Do you remember going in to do some Sheetrock work?
A Me? No. I didn't do that.
Q Are you aware that your husband did?
A At Dr. Mann's home?
Q Or the clinic, either one.
A No. I don't recall that, no.
Q You don't recall that?
A No.
Q You also testified that you went over to the Manns' house after Dr. Mann was arrested and took some things from Sue to take to what I think was like a resale store.
A Yes.

Q Something like that?
A Uh-huh.
Q Not to be destroyed, but to be resold?
A Right.
Q Were you in the house -- I mean, did you go in the house when you went over there that day?
A It's -- well, it was the basement part or whatever. I went in the door there, right in the door.
Q Could you see the wreck that the agents or the state police had made when they searched the house before that?
A I didn't go enough in, no.
Q And I believe you said there was also another set of stuff that you-all went and got and were supposed to take to the resale store, but you got busy and took some of it?
A Right.
Q Sue told you, "Look through it and have anything you want"?
A Yes, she did.
Q Do you recall speaking with an investigator for Dr. Mann?
A Who?
Q Larry Norwood.
A No.
Q I believe there were two gentlemen that you spoke with?
A They come to my home?
Q I believe you met somewhere in town. Do you remember that? You and your husband, not just you.

A At the sheriff's department?
Q No. I believe you met somewhere. Maybe a restaurant.
A Yeah.
Q You remember that?
A I remember -- I don't remember the name Larry, but I remember, yeah.
Q And you remember two guys and you and Phil?
A Yeah.
Q Do you remember telling them when they asked you about your sister and your family and the drug issues, that you were aware that your sister had written the medical board a year and a half to two years ago?
A I don't remember that, no.
Q You didn't say anything about any letters in January of '09?
A I don't recall that.
Q Do you remember telling them about going into the house to do some Sheetrock work?
A No. I didn't say anything like that. I don't do sheet work.
Q I believe your husband was doing the work.
A Well --
Q You don't remember talking about that at all?
A No, I don't.
Q In your statement to the agents, you met with them on

April 16th of this year. Does that sound right?
A Probably.
Q About how long do you think you met with them? Do you think it was like 20 minutes or an hour or 2 hours?
A When we met at the sheriff's department or when they come to my home?
Q Well, wherever you met them on April 16th. Probably at home.
A They weren't there long. Probably 30 minutes maybe.
Q Is that when you wrote out -- they wrote you out a statement and you signed it?
A Okay. Yeah.
Q Is that the same -- are we talking about the same time?
A I believe so.
Q Did you read it before you signed it?
A Probably not.
Q In your statement there are statements written down indicating that Phil, your husband, went to Memphis with Dr. Mann before you went to rehab.
A Right.
Q Stand-alone statement. If you were explaining that, would you have provided more detail than you provided on direct examination?
A Repeat that question.
Q If you had written this statement, would you have explained

the background of the things in the statement? Meaning -- it says, "Rita had Dr. Mann's cell phone and office number," which is true, right?

A Right.

Q If asked, would you have explained that that was his normal practice?

A Yeah.

Q It mentions that Phil went to Memphis with Dr. Mann.

A He did.

Q If asked, would you have provided more information about that?

A Uh --

Q About Pete and working with Pete?

A Probably. I probably would have said the same thing.

Q Right. And you would have just explained it; is that right? You wouldn't have just made one statement and not explained the rest of it?

A Right.

Q It also talks about you going to pick up things from Sue. If asked, you would have explained that you picked them up to take them to a secondhand store, right?

A Yeah.

Q The bottom of the statement says, "This information is true and accurate. I have not been promised anything or threatened in any way by the ATF agents. I am currently taking

medication -- Rita is currently taking medication, but is completely clear as to the information she voluntarily gave to the ATF agents." Do you feel like that if you didn't cooperate, you were going to jail or something bad was going to happen?

A No. I just -- I have never been involved in anything like this, so -- I didn't want to be involved.

Q So you are telling me that you and your husband didn't get the impression that something bad was going to happen if you didn't cooperate with them?

A No.

Q And if you and your husband had said that before, that would be untrue?

A Repeat that again.

Q If you and your husband had said, "We felt like if we didn't tell them what they wanted us to tell them, something bad was going to happen."

A I don't know.

Q You don't know if you felt that way?

A No.

Q It's okay if you did or didn't.

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

Q And you may not feel that way right now, but at some point you felt that way?

A No.

Q When you wrote the letter, "The Feds won't leave us alone,"

you felt something.
A I didn't know why we were wanted to be talked to. I didn't know. I didn't know why we were involved in it.
Q And you didn't tell the agents anything about Dr. Mann supposedly giving you pills until April of this year?
A I can't tell you the exact date.
MS. CASSINELLI COUCH: May I have a moment?
THE COURT: Yes.
BY MS. CASSINELLI COUCH
Q Ms. Barthelme, I am not trying to trick you. I just am trying to get to the truth of the matter. Do you remember the term "cuffed and stuffed"?
A I do.
Q Do you remember telling our investigators you and your husband felt like you were going to be cuffed and stuffed if you didn't do what they wanted you to do?
A I remember saying "cuffed and stuffed."
Q And that's a true and accurate statement?
A I was scared at first. Yes, I was.
Q Have you testified before the grand jury?
A No.
Q And after that initial meeting where I believe that you had not -- you had an anxiety attack afterwards?
A I did.
Q Some sort of.

After that initial meeting is when you talked to them about the medications that you talked about today?
A I can't sit here and tell you exactly when. It was around then, yes, I guess. I don't know if it was April. I don't know if it was May.
Q Well, it was when you gave the statement about the medications, which was April?
A Right.
Q Thank you.
THE COURT: Mr. Dudley?
MR. DUDLEY: May I have one moment, Your Honor?
BY MR. DUDLEY
Q Good morning, Ms. Barthelme. I am Tim Dudley, I don't think we have ever met before. I represent Sue. You said Sue asked you to come to her house and haul some stuff away?
A Yeah.
Q Was she secretive about asking you to do that?
A No.
Q Did she ask you to take that stuff somewhere and hide it?
A No.
Q Did she ask you not to tell anyone what was in the stuff she wanted taken away?
A No.
Q And you said the stuff was junk?
A To me it was, yes.

Q Kind of stuff if you did a spring cleaning you would want to get rid of?
A Right.
Q Okay. Did you have a son?
A I do have two sons.
Q How old are they?
A My oldest is 23 and my youngest is 14.
Q Did you and your husband get a motor vehicle from Dr. Mann for one of your sons?
A Two dirt bikes.
Q I'm sorry. A dirt bike?
A Two dirt bikes.
Q Two dirt bikes. Can you tell the jury what kind of dirt bikes they were? If you don't know, that's fine. I don't know anything about motorcycles either.
A I think one was a 80 and one is a 100.
Q Do you remember about when you got the bikes?
A I don't remember.
Q Were you making some payments on the bikes to the Manns?
A I was.
Q Were you doing that when Dr. Mann was arrested?
A No.
Q Did you do that after Dr. Mann was arrested?
A I think I did. A couple of times, I did, yes.
Q Made some payments on bikes?

A I did, yes.
Q When you met, do you recall the name of the agent you met with on April 16 of this year?
A Their names?
Q Yeah.
A David. And I don't remember the other gentleman's name.
Q David Oliver?
A Yes.
Q And was that meeting with David Oliver, was that in your house?
A It was in my home, yes.
Q And after the -- after you talked to -- and let me back up a little bit. When they came to you, did they tell you why they wanted to meet with you?
A I don't remember.
Q Did they start asking you questions about Dr. Mann?
A Yeah.
Q Did it become obvious to you fairly quickly that they were looking for information about Dr. Mann?
A Yeah.
Q Did it become obvious to you very quickly that they wanted negative information about Dr. Mann?
A They wanted information, yeah.
Q And did they question you about you getting pills from Dr. Mann?

A I believe so.
Q And did you tell them that you weren't getting pills from Dr. Mann?
A I am sure I did.
Q And when the interview was over, you have already said the agent wrote up a statement?
A Right.
Q And you signed it?
A I did.
Q And when you signed the statement, you certified that the information in the statement is true and accurate?
A I did.
Q Okay. And in this statement when they asked you about getting pills from Dr. Mann, didn't you tell them that you overdosed on medication you received from Dr. Johnson?
A I did.
Q Was that true?
A No.
Q So, I mean, are you telling the jury that you just lied to the ATF agent?
A I did not want to be involved, so I -- I just -- I said whatever I had to say to get them out of my home. I didn't want to be involved.
Q Okay. Let me -- and I may have been too harsh. Let me ask it a different way. Did you intentionally tell the agent

something that wasn't true?
A I did.
Q And then signed something saying that what you told them was true and accurate?
A I signed it.
Q And in this statement, you had every opportunity to tell Mr. Oliver and the other agent that Dr. Mann had given you medication after he had lost his DEA permit, right?
A I did.
Q And that is not in the statement at all, is it, ma'am?
A No.
Q Even though they had asked you about that?
A Right.

MR. DUDLEY: That's all I have, Your Honor. Thank you.

THE COURT: Redirect?

MR. GORDON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. GORDON

Q Rita, the statement that everyone is talking about that the agents wrote out for you and you signed, when you wrote that -- when you met with the agents on that day, April 18, was that the first time agents had ever talked to you?
A No.
Q No? Was that the first time they ever met you face to face?

A Well, the -- the couple that came out to my home trying to talk to my husband or serve my husband, but, yeah.
Q And let's talk about that. Before this April date, your husband had already been talked to many times, correct?
A Correct.
Q And he even testified in front of the grand jury in this case, correct?
A He did.
Q And so he had been involved in this case for a very long time?
A Right.
Q All right. So but this April meeting, was that the first time the agents came and said, "Rita, we want to talk to you"?
A Yeah.
Q And how did you feel about that?
A I was not a happy camper.
Q Why?
A Because I was Dr. Mann's friend. I didn't want to get involved.
Q Okay. So when you met with them this first time, did you tell them everything that you knew about Dr. Mann?
A The first time, no.
Q Why not?
A I didn't want to be involved.
Q Is that why you covered for Dr. Mann and said that these

pills were from Dr. Johnson?
A Yeah.
Q Is that the truth?
A Yeah. I didn't want to be involved.
Q This cuffed-and-stuffed comment, what was that about?
A I just said I was going to tell the truth no matter who it was -- who, what -- who it was about. I was not going to jail for anybody.
Q And since April, since you first met with the agent in April, have you told the truth?
A I have.
Q With -- as time has passed?
A I have.
Q Have you told this jury the truth?
A I have.
Q And every time that I have met with you, what is the one rule I told you you need to follow?
A To tell the truth.
Q And that's the only rule. That's the one thing I said that you had to do, correct?
A Every time, yes.
Q Is that what you have done in this trial?
A Yes.

MR. GORDON: No further questions.

RECROSS-EXAMINATION

BY MS. CASSINELLI COUCH

Q Ms. Barthelme, you were present for at least one interview that your husband gave, were you not?

A He was outside. I was in the house. I would go outside to smoke a cigarette every now and then, but, no, I was in the house.

Q But you were around for it?

A Right.

Q And you knew who the agents were that came?

A I didn't know them, no.

Q Well, do you remember talking to our investigators about that meeting?

A I remember that, yes, I do.

Q And you knew stuff about it. I mean, you knew who -- you thought you knew the name of the agent, you knew it was ATF, and you provided some information about it?

A Right.

Q So you were around for it?

A I remember that.

Q And the cuffed-and-stuffed comment was in the context of they didn't like the answer that you-all were giving, and you felt like you were going to be cuffed and stuffed if you didn't give the answer that they wanted?

A I don't remember saying that.

Q You also mentioned Dr. Johnson. I believe Mr. Gordon

mentioned Dr. Johnson, and that's who you told the ATF that you got Xanax from and Lorcet. And you have in fact gotten Xanax from him recently.

A No.

Q When did you get the Lorcet and Xanax? Last year?

A Yeah. A year, year and a half ago, two years ago. I don't remember the exact dates. Yes.

Q That's okay. I believe that that was your testimony on direct, that you recently got it, but that's fine. You got it a year and a half ago about?

A A year and a half, two years ago, somewhere in there.

Q That would be '08 and early '09.

You also testified that you -- you told the ATF agents that you were getting pills from Dr. Mann -- these are Mr. Gordon's words in fairness -- as time passed. As the time passed, you eventually told them that Dr. Mann had given you the pills?

A I told them he had given me the pills, yeah.

Q Is that correct? Is that your testimony: As the time passed?

A Correct.

Q So here recently in time for trial, they have got you ready to talk about that here on the stand today. You knew that's what you were expected to do, was come in here and tell the jury that you got the pills from Dr. Mann?

A I knew I was supposed to come in here and tell the truth.

Q Did they tell you not to tell the truth at any other time?
A No.
Q Did you tell the truth to our investigators?
A To Drake and -- you know, I don't remember the exact words I said to them. I remember meeting them, yes, but mostly they were talking to my husband.
Q Who you were sitting right next to?
A Right.
Q Did you tell them the truth?
A As far as I can remember.
Q No mention of any of the drugs?
A Not that I remember.
Q You also didn't mention in any statement that I have seen paying Dr. Mann $300, approximately $300 a month for pills. So what you are saying is he gave you the shots that you needed when you needed them and he didn't always make you pay for them because you couldn't afford it. And he gave your husband all the lawn mowing equipment for him to use to pay off over years because he knew that your husband needed it to maintain a business and make money for your family, but he took $300 a month from you?
A I didn't always pay him. It was approximately $300 a month. I owed him sometimes.
Q Not really sure about that either?
A It was approximately $300 a month and at times I didn't

have cash and I owed it to him.
Q So he gave you everything else for free, but that's what you paid for?
A Yes.
Q Thank you.
THE COURT: Mr. Dudley, anything?
MR. DUDLEY: No, Your Honor.
THE COURT: Anything else, Mr. Gordon?
MR. GORDON: No, Your Honor.
THE COURT: Okay. You can stand down.
Call your next.
MR. GORDON: United States calls Ray Black.

RAY BLACK, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON
Q Good morning, sir.
A Good morning.
Q State your name for the record.
A Name is Ray Black.
Q How are you employed, Mr. Black?
A Employed by Lowe's Home Improvement, store manager.
Q Where is your store located?
A Russellville, Arkansas.
Q How long have you been the manager there?
A Almost four years.

Q What did you do before that?
A I was with Wal-Mart before that for about eight years.
Q Okay. Other cities and other states?
A Uh-huh. Washington, D.C., there for four years. Atlanta, Georgia, there for about six or seven years.
Q Does your Lowe's store issue and accept merchandise cards for payments?
A Yes, sir.
Q Okay. Tell us, when would you issue a merchandise card to a customer?
A Merchandise card is issued if a customer brings back merchandise without a receipt. We will issue a merch card back to that customer, which is basically a store credit.
Q Essentially it works like a gift card?
A Correct. Except for a gift card, you can cash your gift card out, and a merchandise credit card, you cannot cash out.
Q Okay. Did you receive a subpoena from ATF back in March of 2009 to produce records pertaining to a merchandise card that was used in this case?
A Yes.
Q And did you comply with that subpoena?
A Yes, I did.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON

Q I'm going to show you what has been marked as Government Exhibit 97-A.
A Yes, sir.
Q Are those the records that you produced?
A Yes, they are.
Q And did you look at these before testifying?
A Yes, I did.
MR. GORDON: Your Honor, I would like to offer Government Exhibit 97-A.
MR. DUDLEY: No objection.
THE COURT: They're received.
(Government's Exhibit 97-A received in evidence.)
BY MR. GORDON
Q On the first page here, Mr. Black, can you tell us what we're looking at?
A Basically these are the transactions from when the card was issued and each purchase that was made with the card.
Q On this column on the far left, is that the merchandise card number?
A That is the merchandise card number, and then it tells us what type of sale that took place with the card on the next line.
Q Okay. From looking at the second column, transaction type identifier, can you tell what date this merchandise card was issued?

A Yes. Issue was on 11/17/2008.
Q Okay. And the column that says business date, is that just each date that something happened?
A Each date that the card was used, yes.
Q And then the columns for region, district, and location number?
A Right. Location number is the store, my store number, which I was Store 235.
Q What's invoice number?
A Invoice number is a tracking number of each transaction that took place.
Q And the cashier identifier?
A Cashier identifier is basically a code for that cashier to sign on to the register.
Q How about a transaction amount?
A It is the amount of each purchase.
Q Using the invoice number, can you take that number and go back and get more specific details out of your system?
A Yes, you can.
Q Did you do that?
A Yes. You can use that number to pull up in our system and then pull up the actual receipt of that particular transaction.
Q And did you do that for us in this case?
A Yes, I did.
Q Okay. Let's look at page 2 of this exhibit. What are we

looking at here?
A This is a refund of two items, one being for 18.96 and the other being for 37.98, subtotal to 56.94. Apparently had a receipt for some of it, so I -- some of it went back to American Express and the 41.21 was issued to a merchandise card.
Q Okay. So this first page, this is the transaction that set up the merchandise card?
A Correct.
Q Let's look at the second one, please. What are we looking at here?
A This is a purchase. The purchase for 3.98, an aerator for 3/17, which was 7.76 which left an ending balance on the card of 33.45.
Q I guess we're on the third page now. The top part is X'd out, and the bottom part is circled. Tell us about that.
A Once we -- when we pull up a transaction and it actually pulls up, it's like a real -- just like a receipt tape. It's actually a computerized receipt tape, is what it is. So the transaction before that particular transaction is what we are seeing above.
Q That's the part that's X'd out?
A Right.
Q So the part that's circled on the bottom is actually the part that deals with this merchandise card?
A Correct.

Q Let's go to the next page. What are we looking at here?
A This was a purchase of two different candle bases, 4.56. I guess the total was 4.95, and ending balance on the card was 28.50. This was on 1/19/09 at 8:14.
Q Let's look at the next page. What's the date of this transaction?
A It -- February the 2nd, '09.
Q What was purchased on this occasion?
A This was a black, 4-millimeter plastic. It's a visquene, I guess, at 12:00.
Q Is that a roll of black plastic?
A Yes, it's a roll.
Q What was the dimension of the plastic?
A 3 foot by 50 foot.
Q What was the time of that purchase?
A 6:01.
Q P.m.?
A P.m., correct.
Q Let's look at the next transaction. What was the date of this one, please?
A Date of this one is 2 -- February the 3rd, 2009, at 5:02.
Q P.m.?
A P.m., correct.
Q What was purchased?
A The 3 foot by 50 foot black 4-millimeter plastic, 12:06.

Q And was that the same item that was purchased the day before?
A Yes, yeah. Item 16922. It is the same item.
Q And then I believe this was the last time that this merchandise card was used?
A Correct.
Q Based on the information on those printouts or from those receipts, can you take the item number of the item that was purchased and go to your shelf and figure out which item was actually purchased?
A Right. With the description of the item, knowing what the item is, you will just use that item number, which is 16922, to go find that item on the shelf.
Q And did I ask -- was I in your store and did I ask you to actually go to the shelf and find the item that was purchased on February 2 and February 3?
A Yes, you did.
Q Did you do so?
A Yes.
Q Let me show you what has been marked as Government Exhibit 97-C. Is that a picture of the item that was purchased on February 2nd and February 3rd of 2009?
A Yes, it is.
MR. GORDON: I would like to offer Government Exhibit 97-C.

THE COURT: It's in evidence already.

MR. GORDON: Okay.

THE COURT: Mr. McCutcheon.

MR. GORDON: Thank you.

BY MR. GORDON

Q Is that a picture of the item that was purchased on those two days?

A Yes, it is.

Q Is that your hand holding it up?

A Looks like it.

Q Do you have a video camera system in your store?

A Yes, sir.

Q And how many cameras are in the store?

A I think we have a total of 27 cameras in the store.

Q Do the cameras monitor the registers?

A Yeah. Each of the registers has at least one camera on it. Some have several cameras on it.

Q And with the time and the date from the receipts that you testified about moments ago, can you go back and pull the surveillance footage to see who was buying what?

A Yes. We can pull up with the time and the date, and on that receipt also it will show which register it was on. You can go back and pull that time and date and register up and look at the transaction.

Q And did I -- did we ask you to go back and pull the video

footage from the February 2 purchase and the February 3 purchase?

A Yes. We pulled both, both purchases.

Q Did you save them to a disk?

A Saved them to a disk.

Q Did you later provide that disk to ATF?

A Yes, sir.

MR. GORDON: May I approach the witness?

THE COURT: You may.

BY MR. GORDON

Q I show you what is marked as Government Exhibit 97-B.

A Yes.

Q Did you watch this before testifying?

A Yes.

Q How do you know this is what you watched?

A It's my store and -- on the film.

Q Okay. Is that your initials and the date actually written on the disk?

A Yes, it is.

Q Does this disk contain the video from the purchases on February 2nd and February 3rd?

A Correct.

MR. GORDON: At this time I would like to offer 97-B into evidence.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 97-B received in evidence.)

THE COURT: Do you want to see if we can play that?

MR. GORDON: Your Honor, rather than mess everything up completely, can we publish these later?

THE COURT: Yes.

MR. GORDON: Thank you.

Thank you, Mr. Black.

Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX

Q Good morning, Mr. Black. Do you know the Manns?

A No.

Q You don't recognize them or anything?

A No.

Q You wouldn't know whether they are regular customers or frequent or infrequent customers at Lowe's?

A Would I or --

Q Right.

A I see a lot of people that I do know are frequent customers, but I couldn't say, yes, he was a frequent customer.

Q And so -- we don't know whether these show the only times any one of the Manns have ever been to Lowe's or whether they go there frequently, right?

A Correct.
Q And I was just going to ask if you recognized them from the store, but you don't?
A Right.
Q Big store?
A 110,000 square feet.
Q Wow. How long has it been open?
A What is that?
Q How long has it been open?
A At least 14 years.
Q Lots of customers?
A Correct.
Q How long have you been there?
A Three years.
Q Understood. The black plastic that you were shown a picture of, what's it generally used for?
A It can be used for several different things. Mostly what it would be used for is a vapor barrier that you would use under concrete or under floors or under a house or anything like that.
Q Okay. Maybe in rock beds and stuff like that too?
A Yes.
Q And you can use it in gardening and a variety of things?
A Personally, I wouldn't use it for that, but -- it does tend to harden after several years and it can crack and your weeds will come up through there.

Q Understood. Now, these transactions were done on this merchandise card, right?
A Right.
Q And I missed this, but were you also saying there was some transactions done on an American Express?
A What happens is if you come and say that you are bringing back several items to return, if you have a receipt, we will return that back to the -- if you purchased it on American Express or if you paid cash, we will refund it back to the American Express or give you cash. Apparently it looks like they had a receipt and so it went back to the American Express, which it was originally purchased from.
Q And when you use -- I will start out with a credit card. If I go in and I use my American Express to buy something, say at Lowe's, there is going to be a record of that transaction and a paperwork trail that leads back to me and my American Express card, right?
A Yeah. Only through your -- your receipt.
Q Right. Well, you can also check my American Express records to see if I was at Lowe's on a given date. In other words, it generates paperwork that tells you who was using that card to buy something, right?
A Correct.
Q And the same thing would be true on a merchandise card?
A Yes.

Q Okay. It leaves that paper trail, right?
A Correct.
Q Now, if I didn't want somebody to know that I was going to buy something, the best method would be for me to use cash, right?
A Correct.
Q Because there is no payment trail, right?
A Kind of sort of.
Q Pardon?
A Kind of sort of. There actually is a paper trail with a transaction. Now, also through our systems, you enter in a phone number. If you was to enter in your correct phone number, then it could be traced back.
Q If I wanted to hide the fact that I was buying something like black plastic, wouldn't I want to use cash and give a fake phone number?
A Yeah. If that's what you want to do.
Q Thanks. That's all I have got. Thank you.
THE COURT: Anything else of this witness?

REDIRECT EXAMINATION

BY MR. GORDON
Q Mr. Black, when you issue a merchandise card though, you don't get the customer's information, right? They don't fill out any paperwork saying who they are or anything like that, correct?

A Well, yes. They do receive the -- they have to have a valid driver's license in order to refund anything.
Q Okay. It's checked, but it's not copied, correct?
A Correct.
Q I mean, like the paperwork we offered today, Government Exhibit 97-A, the history of the card, it doesn't tell you whose card it was, right?
A Correct. Correct.
Q You can track the purchases using that card, but you don't know whose it was, do you?
A No.

MR. GORDON: Okay. No further questions.

MR. HENDRIX: Nothing further. Thanks.

THE COURT: You can stand down, Mr. Black.

Call your next.

MS. WHATLEY: Mark Rinke.

MARK RINKE, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY

Q Mr. Rinke, let me make sure, you have already been sworn, correct?
A Yes, ma'am.
Q Would you please state your name?
A Mark Rinke.
Q And you have to speak up.

A Mark Andrew Rinke.
Q And spell your last name.
A R-I-N-K-E.
Q Where are you employed?
A City of London.
Q How long have you worked for the city of London?
A Four years.
Q What do you do for them?
A I work for the street and water department.
Q And were you working on March 3, 2009?
A Yes, ma'am.
Q And what were you doing that day?
A I was looking at the water lines to see if there were any leaks that day.
Q And where were you doing that?
A It was Star Harbor, Milky Way Lane, up in that region.
Q And was there any other reason you were in that area that day other than just looking at water lines?
A I had a friend tell me about a swimming pool I went and looked at that way -- when I was up that way looking at the water lines.
Q Where was that swimming pool located?
A I think it's Galaxy Lane up there. The house is off that.
Q What vehicle were you in?
A I was in a City of London work truck.

Q What color is that vehicle?
A It's white with City of London on the door.
Q With what?
A City of London on the door.
Q And do all city vehicles have City of London on the door?
A Yes, ma'am. Except for our newest one. It doesn't have City of London on it.
Q And what color are the vehicles?
A It's white.
Q Are you familiar with the area around Galaxy Lane?
A Just from the water lines. Just, that's not a very -- we don't go up there very often. We just go up there and check the water lines every now and then.
Q Why don't you go up there very often?
A We don't usually have a lot of problems up there. We go up there temporarily to check to see if we have any problems arise.
Q Do you have a lot of customers up there?
A I think we have four houses up there.
Q And you said there was Star Harbor, Milky Way, and Galaxy Lane?
A Star Harbor is the region down there off of Blackwood, and Milky Way and Galaxy Lane are the ones that are on top of the mountain, I believe.
Q You said, and -- I guess it's officially in London?
A Yes, ma'am.

Q Is it near Lake Dardanelle?
A Yes, ma'am.
MR. GORDON: May I approach?
THE COURT: Yes.
BY MR. GORDON
Q I'm showing you what has been introduced as Government Exhibit 101-A. Is this a picture of that region?
A Yes, ma'am.
Q And is this where you were that day?
A Yes, ma'am.
MR. GORDON: May I approach again?
THE COURT: You may.
BY MR. GORDON
Q I am showing you what has been introduced as Government Exhibit 101-B. Is this a closer-in version?
A Yes, ma'am.
Q And can you tell us where the house was that you looked at the swimming pool?
A The house is right here.
Q And when you say "right here," are you pointing almost in the middle of the picture?
A Yes, ma'am.
Q Off of Galaxy Lane?
A Yes, ma'am.
Q Is that house visible from Milky Way Lane?

A Yes, ma'am. The back side of it is.
Q Tell me what you did after you left the house on Galaxy Lane that day.
A After I left the house, I went and had lunch, and I came back that afternoon.
Q Okay. Well, did you do anything before you had lunch after you left looking at the swimming pool?
A Yes, ma'am. I drove at the end of Galaxy Lane. I stopped, got out briefly, and that was when I found a box that was covered. I seen it in the ground, partially dug around it. I had seen that it was covered up, and I -- I seen that it was a box that was wrapped in black plastic. I uncovered the top of it. I figured it was nothing, none of my business. I left for lunch that day and that was it. I came back in the afternoon with the employee that I work with.
Q Back up a little bit.
A Okay.
Q Might as well go ahead and tell the jury, why did you get out of your car that day?
A I took a restroom break, and I stepped less than -- it was less than 60 feet off the road. As I was walking out there to take care of my business, I stepped in a slight depression and, when I did, I kind of -- it kind of tripped me up. I turned around and seen something unusual in the ground. I went to uncover it. I started to pull the object out of the ground and

that was -- that was it. I realized that it was none of my business. I left for lunch that day. I told the employee that I work with about what I found, and we went back that afternoon to look at it.

Q Okay. How well was the box buried?

A It was almost completely covered. There was a slight corner that was exposed, and I think that was exposed after I stepped on it, dragging my foot across it.

Q You said the box was wrapped in black plastic. Can you describe that for us?

A It was pretty heavy-duty black plastic. It was wrapped very well. It looked like it was wrapped more than once to keep out the elements, and it was duct taped to keep it completely exposure -- it was to keep it from being exposed to the elements.

Q Were there any tears on the black plastic?

A No, ma'am. It looked clean. It looked brand new, the plastic did.

Q Describe the dirt around the box.

A It was fresh. You could see where the ground had settled a little bit. It looked fairly recently disturbed. It wasn't -- it wasn't hard or anything like that.

Q You said you left it there?

A Yes, ma'am.

Q And then you went and talked to the guy you work with?

A Yes, ma'am.
Q What's his name?
A Ryan Kimbell.
Q Did you ever go back to the box?
A No, ma'am. I left it all day. We went back that afternoon at 4:30, right before we got off.
Q And who is we?
A Myself and Ryan Kimbell, my other employee.
Q When you returned to the area that afternoon around 4:30, did the box appear to be in the same condition it had been in earlier that day when you saw it around lunch?
A Yes, ma'am.
Q Tell the jury what you did then.
A Myself and Ryan Kimbell opened -- we tore the plastic open. After we removed the box from the ground, we opened up the plastic and opened up a -- it was a green military-grade container. It was duct taped around the lid. Opened it up and we found -- I guess they were grenades.
Q You didn't know what they were?
A I didn't. The gentleman I worked with did.
Q You keep pointing. Does that mean he is sitting out there somewhere?
A Yes, ma'am.
Q Other than -- was there anything else in the box?
A It was just grenades, and they were in a sleeve, like four

or five per belt. It looked like a belt.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MR. GORDON

Q Does this appear to be the box that you saw that day?

A Yes, ma'am.

Q And for the record, I am showing you Government Exhibit 99-A. Are these the belts that you saw that day?

A Yes, ma'am.

Q And for the record, that is Government Exhibit 99-A1. How full was the box?

A Completely full.

Q Did you touch any of the belts?

A Yes, ma'am.

Q Did you touch anything that was inside the belts?

A Yes, ma'am, I believe.

Q What about the box?

A Yes, ma'am. When we was opening it up.

Q After you opened the box, did you or Mr. Kimbell call anyone?

A Yes, ma'am. We called our boss, the mayor of the City of London.

Q After that --

A Just told him what we found.

Q After that, did anyone else appear on the scene?

A Yes, ma'am. A county sheriff from the sheriff's department, Pope County Sheriff's Department, showed up.
Q And what happened after he arrived?
A He arrived, we told him who we were, asked him who he was, and he told us that he was with the Pope County sheriff's department. And he was there to look at what we found. We took him over there and he took several pictures and after that we asked him if he needed us for anything else. He took our information, and we left.
MS. WHATLEY: If we can look at Government Exhibit 98-A.
BY MS. WHATLEY
Q Is this what the box looked like when you pulled it out of the ground?
A Yes, ma'am.
Q And did you pull the black plastic off?
A Yes, ma'am.
Q And what about the duct tape?
A We cut the duct tape.
Q Who is we?
A Me and Ryan Kimbell.
Q And if we can look at Government Exhibit 98-J, is this what the area looks like where you found the box?
A Yes, ma'am.
Q And approximately how far off the road was it?

A I am just guessing. Less than 60 feet.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: Yes.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX

Q Good afternoon. You work for the City of London?

A Yes, sir.

Q Doing what now?

A I work for the street and water department.

Q What do you-all do?

A Take care of the streets, fix water leaks, put in main lines.

Q Is that a part-time job for you?

A Yes, sir.

Q What's your full-time?

A I work for the Russellville Fire Department.

Q And back in March of '09, were you working full time also at the fire department?

A Yes, sir.

Q And as firemen, I assume y'all work with and know, for instance, Russellville police department officers, Pope County sheriffs, that sort of thing?

A Oh, yes, sir.

Q Okay. Let's go through that day. You go out to this area on Galaxy Lane in the morning; is that right?
A It was before lunch.
Q Do you remember what time?
A I believe it was around 11:00.
Q And your purpose to go out there was to do what?
A I had a friend tell me about a pool. I was checking the water lines that day. I went up there to just look at the pool while I was up in that area. It's not a very -- we don't go up in that area very often. I got out with the pool, maintain the cul-de-sac. That's when I got out and I did what I did.
Q Sure.
A And that was pretty much it.
Q Was it your friend's pool?
A It was a friend that I know. He was actually putting the pool in.
Q And I take it it's at that house on Galaxy Lane? That's, I guess, the only house on Galaxy Lane?
A Yes, sir.
Q And that's the pool you were checking out?
A Yes, sir.
Q And do you -- it was your friend that had installed it, so was the swimming pool in construction at that time?
A Yes, sir.
Q And you wanted to go out to check the city water lines?

A Yes, sir. I was checking the water lines.
Q And so did you go actually to the pool?
A Yes, sir.
Q And that's in this person's backyard, right?
A Yes, sir.
Q And do you know the owner, Lynn -- I am going to butcher this pronunciation. I think it's Blunier, B-L-U-N-I-E-R.
A No, I do not.
Q And you drove your white City of London truck out there?
A Yes, sir.
Q And how long were you out there?
A I walked up there and looked at it. Less than five minutes.
Q Okay.
A I just took a look at it.
Q Did you see the owners of the home?
A No, sir.
Q Was anybody home?
A Not that I knew, sir.
Q Are you aware that she does not work and stays home?
A No, sir.
Q Are you aware that she has said that she doesn't believe anybody could come up and look at her pool without her being aware of it?
A No, sir.

Q And are you aware she said, "I have never seen a City of London truck in this neighborhood"?
A No, sir.
Q So how long then are you checking out the pool and the water line before going down to the end of Galaxy lane?
A I got out, viewed the pool, less than five minutes. Drove down there to the end of the cul-de-sac. I was there for -- it wasn't a very long amount of time. Found that and I did what -- I used the bathroom and I just -- I left after I discovered that in the ground.
Q And you testified that you thought it was about 60 feet and I think we have already seen pictures of this, but I gather that that area is sort of a -- a new-ish subdivision, right?
A I don't know how long it's been there. It's fairly new homes up there.
Q And I gather there was -- there is construction that's been going on on new homes here for a little bit in that area?
A I don't know of any new homes that's been put up there recently.
Q Okay. So you go down. It's a cul-de-sac, but it's not developed enough where there are curbs at the end of the cul-de-sac?
A There are vacant lots at the end of the cul-de-sac.
Q There is no curb?
A No.

Q Almost gets gravelly and then you step off into non-gravel, right?
A Yes, sir.
Q And you said 60 feet and is it that -- that's, that's 20 yards and I am -- I gather you are sort of guessing that it's 60 feet?
A Yes, sir. That's a guess.
Q Do you feel like you took about 20 steps to get out there?
A Yes, sir.
Q And it's in a clearing, right? I'm starting to be clear. Then you tripped over something that's sticking up in the ground, right?
A It was a depression in the ground, kind of a slight depression. You could tell where the ground had kind of settled, and when I stepped I caught the heel of my boot. I didn't really fall, just kind of stumbled a little bit and I turned around to see what it was.
MR. HENDRIX: And if we could, could we pull up that series of Government's Exhibits 98.
BY MR. HENDRIX
Q All right. That's 98-A, and that's what -- you now have pulled it out of the ground. You are by yourself, right?
A I -- when I initially found it, I could not pull it out of the ground. I just uncovered the top and dug my fingers around the lid of the box, and I left for lunch. It wasn't -- at first

I -- it was none of my business. I left it.
Q And let me get a better sense from you on that. So when you are out there that morning around 11:00 and you stumble, you realize it and what exactly do you do? Do you pull it out of the ground? Just sort of feel around it and see what it is or --
A I felt around the lid of the box, just uncovered the top of it and felt around the lip of it and left it in the ground.
Q How much did you uncover of it before you left?
A Just the -- enough that the top -- I could feel the lip of the top of the box.
Q Sort of dusted off the top?
A Basically, yes, sir.
Q And obviously it's not buried deeply at all, right?
A The whole box was in the ground. I just uncovered the lid.
Q Okay. You had said that part of it was exposed. That's what I was trying to get at. Is that right?
A I believe it was exposed after I stepped on it. When I stepped and I jerked my foot, I think that's what uncovered partially the corner of it. And I turned and looked and seen black plastic in the ground.
Q Say that one more time.
A When I was walking, I stepped on it, and I think when I stepped, I drug my foot. And I think that's what uncovered the corner of the box.

Q I got you, and you turned around and saw --
A Saw the black plastic sticking out of the ground, right.
Q So I get the sense that not only was it not buried deeply, but it was obvious that it was a minimal amount of dirt or whatever at the top, right?
A Yes, sir.
Q Okay. And you leave it in that state, is that right, when you leave?
A Yes, sir.
Q It's still in the hole?
A Yes, sir.
Q You sort of dust it off the top, and at that point did you see the parameters of what you were dealing with? Did you see that it was a box?
A Yes, sir.
Q And you leave and you do what --
A I went to lunch, did my daily work for the day. I told Ryan Kimbell, the other employee about it. And I went back that afternoon at 4:30 to look -- to take a look to see what it was.
Q On direct you were motioning, and that was in reference to Ryan Kimbell. Is he in the courtroom?
A No, sir.
Q He is out back? He is in the witness room out there?
A Yes, sir.
Q Okay. Got you.

So you go back and do your regular business. Do you contact anybody other than Mr. Kimbell about this?
A No, sir.
Q And what time do you remember telling Mr. Kimbell about it?
A I think it was around 4:00.
Q Around 4:00. And what do you tell him?
A I just told him that I was out there checking the waterlines. I discovered a box in the ground. I asked if he would go up there and take a look at it to see what it was with me.
Q Why?
A I can't tell you that. I just, I guess, thinking it was something for the worst. I don't know. I didn't have any idea what it would be.
Q I note that -- isn't Mr. Kimbell in the National Guard?
A Yes, sir.
Q Was that why you went to Mr. Kimbell, because of some military issue?
A I had no idea what was in the box. I had -- I didn't know of anything that would be in there. I just wanted him there to be a witness when we opened it up.
Q So you guys get there, and how do you get there? One car? Two cars?
A We took his city employee truck.
Q Say that again.

A We took his city employee truck.
Q City of London?
A Yes.
Q So that would be twice then that day that this white City of London truck was out in that neighborhood?
A Yes, sir.
Q Give me a sense of this. The second time when you and Mr. Kimbell were out there, how long were you out there?
A Probably about an hour.
Q How long of that hour was it before you guys contacted any law enforcement?
A After we found it, I figure we was there 20 minutes. It took us that long to get it up, dig it out of the ground. We contacted our boss, which is the mayor. He contacted Pope County, and it took them several minutes to get out there.
Q And that's when Joseph Smith with Pope County sheriff's office comes out?
A Yes, sir.
Q So was he the only one?
A Yes, sir.
Q And so it was the three of y'all?
A Yes, sir.
Q And it was Officer Smith who took photographs?
A Yes, sir.
Q Did you-all take any photographs of your own?

A No, sir.
Q Any measurements, were they taken?
A Not by us, sir.
Q Okay.
MR. HENDRIX: Can I look at 98 again?
BY MR. HENDRIX
Q Now, where the point of the story is, I guess, in this picture what has happened is Officer Smith has arrived. He is the one that's taking this photograph. This is what you-all had done. You removed it from that depression, right?
A Yes, sir.
Q And unwrapped it and looked in?
A Yes, sir.
Q Is that right?
A Yes, sir.
Q And so that's the hole that it was in?
A Yeah. To the left.
Q And there is leaves all around it, right?
A Yes, sir.
Q All right. And so the hole, the depression is on the left, right?
A Yes, sir.
Q And that's looking in the hole?
A Yes, sir.
Q With the leaves in it?

A Yes, sir.
Q And you have got -- that's the duct tape. So we are seeing the very side of the ammo can, right?
A Yes, sir.
Q Same deal, hole behind the ammo can, correct?
A Yes, sir.
Q Okay. How deep do you figure that hole was?
A It was deep enough for the box to be completely buried.
Q But with little room to spare, I gather?
A Yes. Very limited.
Q And it's pretty rocky soil, isn't it?
A I don't believe so, sir.
Q I have been to that area and it's -- in that part of the state, isn't this all sort of hard, rocky soil? It's not delta earth, is it?
A I am not that much digging out there, sir. I couldn't tell you.
Q Fair enough.
MR. HENDRIX: All right. And that's the next one, and I think at 98-J, is that where we are? Is there one more?
BY MR. HENDRIX
Q Okay. And this is a -- a bigger view. Can you on this picture tell us where the can was, where the hole is?
A Directly in the middle where that stick is, just to the left.

Q And can you mark on this? Do you see what I just did? You can put your finger --
A I think it's on the other side right there.
Q So that's the hole?
A Yes, sir.
Q Okay. Now, that is a clearing from, if I were looking at this, I would be standing on Galaxy Lane right now looking out; is that correct?
A Yes, sir.
Q Okay. And that is a fairly large clearing, right?
A Yes, sir.
Q Now, what we don't have is a picture -- what is surrounded -- woods surround that entire area, right?
A Yes, sir.
Q And they get pretty thick, right?
A Yes, sir.
Q And we see the tree lines in this area on that part, right?
A Yes, sir.
Q And how far did you figure that from the hole to that tree line is?
A Probably another 20 feet.
Q Okay. And the tree line then comes back around, right? And extends all the way back around, right?
A Yes, sir.
Q In fact, that whole area, except where you access it off

Galaxy Lane to this little clearing, is surrounded, right?
A Yes, sir.
Q Did you find it odd that it wasn't buried in the woods instead of out in the open?
A I didn't really find anything odd. I didn't plan on finding anything that day.
Q Yeah. When you and I were looking at those pictures, what made you think that it -- on your direct you said something about it looked fresh. What made you think that?
A It looked fresh?
Q Yeah.
A Just the dirt looked fresh. You could tell it was discolored. It looked like it had been recently buried.
MR. HENDRIX: Can we look at 98-B again?
BY MR. HENDRIX
Q Is there anything in that picture that indicates to you that it was freshly buried? And maybe that's not a good one.
A You can see that the dirt up here to the left, how it's kind of discolored, it's kind of got orange color to it. That was the way the dirt was around it, kind of fresh looking.
Q Okay. Does it strike you odd that the leaves are in the hole?
A No, sir.
Q Why?
A There was leaves all around.

Q Yeah. Are you seeing something in these photographs that indicates to you that this was freshly dug within the past day or two or had possibly been there for quite some time?
A I couldn't say whether it was a day or two, but this looks like fresh dirt here to me.
Q Would you point to it again?
A To the right here, that looks like fresh dirt.
Q But that's not the hole, right?
A The hole is right here, yeah.
Q So you are pointing at something?
A But the way the dirt looked right here to the right is the way that it looked around the box.
Q So it was something that didn't involve the hole that made you think that this had been freshly dug?
A Yes, sir.
Q Okay.

MR. HENDRIX: Your Honor, may I have a minute?

THE COURT: Yes.

MR. HENDRIX: I will pass the witness.

Thank you, Mr. Rinke.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. WHATLEY

Q Prior to that day, had you ever personally met Randeep Mann?

A No, ma'am.

MS. WHATLEY: No questions.

THE COURT: Okay. You can stand down.

How long will your next witness be? Is it one that we can get on before lunch?

MS. WHATLEY: Direct will probably be less than ten minutes.

THE COURT: Let's see if we can push through and -- because we have five witnesses we swore in for this morning.

MS. WHATLEY: Ryan Kimbell.

RYAN KIMBELL, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY

Q Good afternoon.

A Good afternoon.

Q Would you please state your name?

A Ryan Kimbell.

Q Spell your name for us.

A K-I-M-B-E-L-L.

Q Where are you employed?

A The City of London, Arkansas.

Q And how long have you been employed by the City of London?

A Almost 11 years.

Q What do you do for them?

A I work for the water department, wastewater, and anything

they might need working on streets or things like that.
Q Were you working on March 3, 2009?
A Yes, ma'am.
Q Do you know Mark Rinke?
A I do.
Q Who is he?
A He is a part-time employee of the city for the street department.
Q Did the two of you go anywhere together that day?
A We did.
Q Where did you go?
A That afternoon we went up to the -- we call it Star Harbor, Galaxy Lane area of London.
Q And why did you go there?
A I went there because Mr. Rinke had told me that he had found something in that area but did not know what it was. He told me this around lunchtime and I told him when I was not busy, I will go up there and take a look at it with you. And so around 4:30 in the afternoon, we went up there and took a look.
Q Were you with Mr. Rinke when you went up there?
A Yes, ma'am.
Q When you got to the location, what did you see?
A There was a -- it was a cleared out area with just trees and grass and dirt and there was some kind of black box -- a box with black plastic on it sticking up out of the ground.

Q When you got there, you said the black plastic was still around the box?
A It was, yes.
Q And describe the plastic for us.
A It was just a thick black plastic and duct tape had been used to seal around the case.
Q Were there any tears or deterioration on the black plastic?
A No, ma'am. It looked fairly new. There was not a lot of dirt or deterioration to it.
Q And was it -- you said it was still buried when you got there?
A It was still in the ground. I believe Mr. Rinke had kind of moved some dirt around from the edges to identify it as a box of some sort.
Q And describe the dirt that was around the box.
A The box didn't look like it had been there that long. I mean, the dirt was freshly put around it, and it just had enough scattered out to where you could see that it was a box.
Q So you said the dirt was loose?
A Yes, ma'am.
Q Was the box fully covered with the plastic and the duct tape?
A Yes, ma'am. On my recollection, it was.
Q And by being wrapped that way, was it protected from the elements?

A It would have been, yes.
Q Did you pull the box out of the ground?
A I believe it was Mr. Rinke that actually pulled it up out of the ground. I may have helped him pull it up out of the ground. It was still in the ground when I got there. It was just the top was uncovered.
Q And what did you do after you pulled it out of the ground?
A We proceeded to remove the plastic to see what was actually in the box.
Q Did you have to cut through any duct tape to get --
A We did. We had to cut or tear the duct tape and plastic to get in the box.
Q Once you removed the plastic from the box, did you know what it was?
A Yes. Once I opened the box, I knew exactly what it was.
Q How do you know that?
A I am a ex-Marine and also a Army Reservist, and so I have been familiar with the case and the contents of the case.
Q Why don't you tell the jury about your military experience. How long have you been in the Army Reserves?
A Almost 11 years, ma'am.
Q Have you ever been in combat?
A I have, ma'am.
Q When was that?
A I deployed to Iraq from 2005, 2006, where I was exposed to

the 40-millimeter grenades that were found. I have actually carried them on myself when I was in the combat zone.

Q Did you bring any back with you?

A No, ma'am.

Q Is that allowed?

A No, ma'am, it's not.

Q You said you were in the Marine Corps as well. When was that?

A That was in '95 to '99.

Q Have you ever been an instructor?

A I am currently a chemical instructor for the unit here in Little Rock, Arkansas.

Q With your military experience, have you ever seen ammunition canisters before?

A I have.

Q And did you open the canister that day?

A Yes, ma'am.

Q And what was in it?

A Inside there were cloth bandoleers that contained 40-millimeter grenades.

Q And when you saw them, you knew they were 40-millimeters?

A Yes, ma'am, I did.

Q Based on your prior service?

A That's correct.

Q Have you ever shot 40-millimeter grenades?

A I have shot practice rounds, ma'am, not the real thing.
Q When did you do that?
A That would have been prior to my deployment to Iraq when I was at Fort Polk, Louisiana.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY
Q I am showing you what has been introduced as Government Exhibit 99-A. Does that appear to be the canister you saw that day?
A Yes, ma'am, it does.
Q There is writing on the outside of this canister?
A Yes, ma'am.
Q Can you please tell us what each line means?
A Oh, I don't know if I could break down what each line does mean. What I identify with is the 7.62-millimeter, which is -- we call it an M-249 or a saw round, a fairly large bullet. And then the lot number would designate where, what lot that batch of ammunition came from.
Q Okay. So when you saw 7.62-millimeter on the top right-hand corner of this box, what did that tell you?
A Without opening the can, you would assume that it contained the 7.62-millimeter rounds.
Q And based on your experience in the military, is that why these markings are placed on the canister?

A Yes, ma'am. To identify the contents.
Q Once you opened the canister, did the ammunition inside the canister match what is stated on the outside?
A No, ma'am, it did not.
Q Did you think that the rounds were live rounds?
A Yes, ma'am, I did.
Q Why?
A They -- well, I have seen them before. The HE rounds have gold, what I would call gold colored tops to them. It identifies them as highly explosive.
Q Was there anything in the box besides live rounds?
A Yes, ma'am. I did notice a -- one training round that was on top. It's identified with a blue top instead of the gold.
MS. WHATLEY: If we can look at Government Exhibit 98-G.
BY MS. WHATLEY
Q You see that on the screen in front of you?
A Yes, ma'am.
Q Can you please touch the screen and show us what was the live round?
A This gold colored top right here.
Q You can touch the screen.
A Oh, okay.
Q And the one lying beside it, what did you believe that one to be?

A That's a practice round.
Q Have you seen practice rounds before?
A Yes, ma'am.
Q Have you seen live rounds before?
A Yes, ma'am.
Q Have you ever seen 40-millimeter grenades outside of the military setting?
A No, ma'am, I had not.
Q Did you take any of the rounds out of the bands?
A To look at them, yes, ma'am.
Q What did you do after that?
A At that time, once we identified what they were, I set them back in the canister, proceeded to contact my boss, the mayor of London, and asked him how to proceed. And at that time he called the sheriff's department, and we waited on site until the sheriff's department arrived.
Q And someone from the sheriff's office did show up?
A Yes, ma'am.
Q And what happened once that person got there?
A We showed him what we had found. He brought a camera and proceeded to take some pictures. We identified ourselves to him, and at that time he told us we could leave the area and that's what we did, leaving it in his possession.
Q Did you touch the canister or the grenades after the person from the sheriff's office got there?

A Not after he arrived, no, ma'am.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: Yes.

MS. WHATLEY: No further questions.

CROSS-EXAMINATION

BY MR. HENDRIX

Q Mr. Kimbell, excuse me.

A Yes, sir.

Q Just a few quick areas. The -- you and Mr. Rinke work together for the city?

A Yes, sir, we do.

Q It is a part-time job for him?

A Yes, sir.

Q You are full time?

A Correct.

Q Are you also friends or is it a coworker?

A We're friends at work. We don't really have much dealings outside of work.

Q Does he know your military background?

A Yes, sir, he does.

Q Is that why he came to you to say, Can you come out and look at this thing?

A Oh, no, sir. He had no idea, until we broke the plastic, what kind of container it was. So there is no reason he would have looked at a military person for that kind of information.

Q So it was -- it then just ended up being fortuitous that he picked you, who does have a military background and some familiarity with 40-millimeter --
A Yes, sir. That was just a consequence (sic). There was only one other person there at the city that he could have chosen to go up there with him.
Q I was just curious because both of you-all have stated an opinion in that it was that this ammo can did not appear to have been buried there very long. And Mr. Rinke and I went through those pictures. Can you tell me what you base your opinion on?
A I guess on things that I have seen that have been buried in the ground for a time. They are going to have some deterioration and look dirtier than what that canister and plastic appeared to be.
Q Well, since you gave an opinion, let me ask. In your opinion could it have been buried as long as a week?
A That's possible, sir. I couldn't say.
Q A month?
A Possibly.
Q Six months?
A I am not an expert, sir.
Q A year?
A No, sir. In my opinion, no, sir, absolutely not. But that's just my opinion.
Q An investigator that works for us is an old state police

officer, a guy named Jim Keen. And Jim came out to talk to you during this, and you refused to talk to him. Can you tell me why --

A I didn't feel it was pertinent prior to this case, sir.

Q It was after Dr. Mann had been charged.

A It was my understanding that this would all be talked about at trial, not prior to that.

Q You talked to members of law enforcement, didn't you?

A Just ATF when I have been interviewed.

Q And you have been interviewed by ATF, correct?

A Correct.

Q But you didn't want to be interviewed by our side?

A Law enforcement, I would have no problem, sir, but he was a private investigator. With his agenda, I felt that was different.

Q You talked to law enforcement, but you won't talk to the other side is what I am hearing?

A I see a difference between a private investigator and law enforcement, sir.

Q Even though he is former state police?

A Former is not a police officer, sir.

Q Okay. Were you told not to talk to us?

A No, sir, I was not.

Q Okay. That's all I have got.

THE COURT: Any follow-up?

MS. WHATLEY: No, Your Honor.

THE COURT: Okay. You can stand down.

We are going to take our morning break. Let me -- I am going to release the jury, but let me speak to Ms. Jxxxx before -- you-all can head to lunch, and I want to speak to her for two seconds. Everybody else remember all the admonitions we have spoken about. Don't talk to anybody, don't read anything about it, don't start forming hard opinions until you have heard all the evidence. Don't even speak to each other about the case because you will have a chance when we give the case to you to sit down and to gather any impressions and thoughts of your fellow jurors.

Also, don't speak to the lawyers, don't speak to the parties or the witnesses. We want this process to be fair and appear to be fair.

And I am not picking on Ms. Jxxxx. I just want to ask her about something, some scheduling. Don't go back in the back thinking I am picking on Ms. Jxxxx.

We will be in recess until -- let's come back at 5 minutes until 2:00.

(Jury exits the courtroom.)

THE COURT: I know about your sister-in-law. I am sorry.

JUROR 3: Thank you.

THE COURT: I know it's very difficult when a family

member -- I have a sister-in-law. So I understand they're like sisters.

JUROR 3: Yes, sir.

THE COURT: So I understand you have things you need to think about. What I would say to you is I really appreciate the fact that you have stated you want to stay on the jury. I really appreciate that. That means a lot.

Second thing is something that I have spoken with the lawyers about, and the lawyers said we would accommodate you in whatever way we can accommodate you. So when you find out when the funeral arrangements are made -- are they going to be in Little Rock or Lonoke?

JUROR 3: Greenbrier.

THE COURT: When you find out times, dates, those types of things, just let us know, and we will schedule around you.

JUROR 3: Okay.

THE COURT: So if you need a morning off, whatever it is, just let me know. And if it ends up being one of those things where it's midday, we will just have to take a day off.

JUROR 3: You don't mind to do that?

THE COURT: Well, we want to keep you on the jury. So -- now, if you are telling me this is going to be difficult for you to think about the case, if that ever becomes a problem, you let me know --

JUROR 3: I will, but that's not a problem.

THE COURT: -- if that happens. Otherwise, we will just schedule some other things for that day and go work on some other cases.

JUROR 3: All right.

THE COURT: Have a good one.

JUROR 3: Thank you, sir.

(Recess at 12:42 p.m.)

C E R T I F I C A T E

I, Cheryl Nelson Kellar, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Cheryl N. Kellar, RPR, CRR, CCR Date: March 7, 2011
United States Court Reporter

(Proceedings continuing at 2:00 p.m.; jury present.)

THE COURT: Ms. Whatley, call your next.

MS. WHATLEY: The United States calls Curlan McCray.

CURLAN MCCRAY, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good afternoon.

A. How are you doing?

Q. Can you please state your name.

A. Curlan McCray.

Q. And are you currently incarcerated?

A. Yes, ma'am.

Q. And where?

A. At Pulaski County.

Q. And where were you before we brought you up here?

A. Pollock, Louisiana.

Q. And why are you incarcerated?

A. For possession of a controlled substance, intent to deliver crack cocaine.

Q. What's your sentence for that?

A. Ten years.

Q. Do you have any prior convictions?

A. Yes, ma'am.

Q. And what are those for?

A. Possession of a controlled substance, crack cocaine.

Q. So you have -- are all your convictions dealing with drug charges?
A. Yes, ma'am.
Q. How long have you been incarcerated on your current charge?
A. Two and a half years.
Q. And prior to being down there at Pollock, where were you housed?
A. Jefferson County, Pulaski County, Dallas County, Fordyce.
Q. When were you in Dallas County?
A. From March until sometime early May.
Q. What year?
A. 2009.
Q. While you were there, did you meet the defendant Randeep Mann?
A. Yes, ma'am, I did.
Q. And how did you meet him?
A. When I got there, they housed us in the same unit. And it was an open barracks. We shared bunks. I was on the bottom bunk, and he was on the top bunk.
Q. Did he talk a lot while he was in the jail down at Dallas County?
A. Yes, he did.
Q. What did he talk about?
A. He talked about a lot of different things. He talked about his family, talked about the charges he was facing, talked about

several different things.
Q. When he talked about his family, did he tell you he was married?
A. Yes, ma'am.
Q. Did he tell you he had any kids?
A. Yes, ma'am.
Q. How many kids did he tell you he had?
A. He said he had four kids: Two sons, two daughters; one biological son. One of his sons was adopted.
Q. Did he tell you why he was in jail?
A. Yes. He told me the feds raided his houses, and they found 110 machine guns, and they found some gas grenades in his house, and they found some hand grenades some 300 yards away from his house or whatever.
Q. Did he talk about anything else?
A. Yes. He talked about -- he talked about this guy who was over the medical board, that he and the guy had several disagreements. He talked about the guy, where he had sued the medical board or whatever, and that the guy was trying to get his license taken away from him and different stuff like that.
Q. Let me stop you there. When he talked about the guy, did he say what the guy's position was with the medical board?
A. He said he was the director over the medical board or something like that.
Q. What was his attitude when he was talking to you about this

guy?
A. When he talked about the guy, I mean, he was real emotional. He would like get angry and, you know, you could tell that he had a deep hate for the guy or whatever.
Q. A deep hate for the guy?
A. Right.
Q. Did he ever say he wanted anything to happen to the guy?
A. Well, I remember one conversation where he said, you know, he really disliked the guy, and he wished he was dead or whatever. But at the time that he told me this, I didn't know that it was the same guy that was involved that was the victim of the West Memphis bombing or whatever until I seen it on the news later on.

MR. LASSITER: Your Honor, I think I'm going to object to that. It sounds like he's speculating as to who he is talking about here.

THE COURT: I'll overrule it. I think he is saying that he didn't figure out they were the same person until he saw it on television. I'll overrule it.

BY MS. WHATLEY:
Q. How often did he talk about this guy?
A. He talked about the guy pretty often. He talked about him a lot. He talked about a lot of different things, you know.
Q. Did he talk about the grenades that were found?
A. Well, I mean, I questioned him about it. He told me the

box that they found inside his house was identical to the box that they found 300 yards away from his house or whatever, you know. I asked him if the grenades belonged to him, and he didn't say that they actually belonged to him or whatever.

Q. Now, this guy he talked about, I want to make sure the record is clear. I believe you testified the guy was the director of the medical board?

A. Right.

Q. And that's the guy he was talking about he had the hate for?

A. Right.

Q. Did he say he wanted something to happen to that guy?

A. Right.

Q. What did he say he wanted to happen to him?

A. Excuse me. Can you say that again?

Q. What did he say he wanted to happen to the guy that was the head of the medical board?

A. I remember he said -- he just said, you know, the guy was a real pain in the butt and, you know, he hated the guy, and he wished he was dead.

Q. Now, you testified earlier that you were sentenced to ten years in prison. Right?

A. Right.

Q. Are you hoping that your sentence is going to be reduced based on your cooperation?

A. Yes.
Q. When was the first time you talked to law enforcement about this?
A. Sometime in 2009. I believe it was in July sometime, in 2009.
Q. After that, when was the next time you talked to law enforcement about this?
A. Maybe a week or two ago.
Q. When was the first time you learned you might get something off for testifying?
A. About a week ago, when I spoke with my lawyer.
Q. And do you understand that even if we ask Judge Wright, the judge that sentenced you, to reduce your sentence, that it's up to her whether or not to reduce it?
A. Right.
Q. Have any promises been made to you?
A. No, ma'am.
Q. Why did you come forward with this information?
A. Because I just -- I felt like it was the right thing to do.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: You may.

MS. WHATLEY: I have no more questions.

(Technical difficulties.)

THE COURT: Does the defense want to hold up until we get someone up here to fix it, or can we proceed?

MS. CASSINELLI COUCH: If we could just take a momentary break.

THE COURT: Ladies and gentlemen, I'm not going to let you go back to the jury room, because we have somebody coming up here to fix it. But you can stand and stretch and do what you want to. It will just take a few minutes.

(Brief recess in the courtroom.)

THE COURT: Cross-examination?

MR. LASSITER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. LASSITER:

Q. Good afternoon, Mr. McCray.

A. Good afternoon.

Q. As I understand it, you pled guilty in federal court to possession with intent to distribute cocaine base sometime around October of 2008. Is that correct?

A. Yes, sir.

Q. You were originally charged in a two-count indictment. Is that right?

A. Yes, sir.

Q. And you pled to the first count. The government dismissed the second count. And in May of 2009 Judge Wright gave you a ten-year sentence. Is that correct?

A. Yes, sir.

Q. Now, there's no parole in the federal system. Right?

A. Right.
Q. So you would have to do most of that ten-year sentence. Is that correct?
A. Yes, sir.
Q. You get some good time off, but you know that you are going to be, in the best-case scenario, inside for at least eight and a half years. Right?
A. Yes, sir.
Q. Now, have you been designated to the federal facility yet?
A. Yes, sir.
Q. And that's somewhere in Louisiana?
A. Right.
Q. And where in Louisiana?
A. Pollock, Louisiana.
Q. I'm sorry?
A. Pollock, Louisiana.
Q. Would you spell that for the court reporter, please?
A. P-o-l-l-o-c-k.
Q. Is that a camp?
A. No, sir.
Q. No. You wouldn't qualify for a camp with a sentence of ten years, would you?
A. Not that I know of. I don't know.
Q. Probably with your criminal history you wouldn't qualify for a camp either, would you?

A. I'm not sure. I mean, I don't know how that works.
Q. Are you in a secure facility with barbed wire on top of the fence?
A. Yes, sir.
Q. And when did you arrive at that federal correctional institution?
A. Sometime in June 2009.
Q. When you were originally indicted in May of 2007, were you pretrial detained?
A. No, sir.
Q. Were you out on bond?
A. Yes, sir.
Q. And were you taken into custody after you pled or before you pled?
A. No, sir. I was detained. I had a failure to appear for court, and the U.S. Marshals came and picked me up in 2008 in February.
Q. So you were out from about May of 2007 until about February of 2008. You missed a court date, and then you were detained. Correct?
A. Right.
Q. By that, we mean held without bond. Right?
A. Right.
Q. And I think you testified you were detained in several different facilities, Pulaski County being one. Is that right?

A. Right.
Q. And Dallas County being another. That's Fordyce. Right?
A. Right.
Q. And where else?
A. Jefferson County, Pine Bluff.
Q. And how long were you at Fordyce?
A. I would say roughly two months, I believe.
Q. You pled guilty in October of '08, and you were sentenced in May of '09 to the ten years. Is that correct?
A. Right.
Q. And during that time period, did you have any kind of cooperation agreement with the government?
A. No, sir.
Q. But you did get into a plea agreement with the government, didn't you?
A. Yes, sir.

MR. LASSITER: May I approach the witness, Your Honor?

THE COURT: You may.

MR. LASSITER: 6?

MR. HENDRIX: Correct.

BY MR. LASSITER:
Q. Let me show you what I've marked for identification purposes as Defendants' Exhibit No. 6. Let me show you the last page. Is that your signature?
A. Yes, sir.

Q. And your attorney's signature?
A. Yes, sir.
Q. I think that's dated October 8th of 2008. Correct? Would you just look through there and see if that appears to be the plea agreement that you entered.
A. I believe it is.
Q. I'm sorry. Would you speak up?
A. Yes. I believe it is.
MR. LASSITER: Your Honor, I move to introduce Defendants' Exhibit 6.
MS. WHATLEY: No objection.
THE COURT: It's received.
(Defendants' Exhibit 6 received in evidence.)
BY MR. LASSITER:
Q. Is Pollock, where you are incarcerated, is that a high-security facility?
A. Yes, sir.
Q. There's a camp next door, but you are not eligible to be in that camp, are you?
A. No, sir.
Q. Now, we just talked about, and you identified this plea agreement that you worked out with the government before your plea in 2008. But you weren't a stranger to the courthouse at that time, were you?
A. I don't understand what you are saying.

Q. You had other convictions. Correct?
A. Yes.
Q. You have a conviction in Pine Bluff -- it looks like maybe it's 2003 -- for a felony controlled substance violation?
A. Excuse me?
Q. Forty-eight months' probation?
A. Yes, sir.
Q. Don't you have a conviction in September of '04 in the District Court of Calcasieu Parish, Louisiana, for possession of cocaine with intent to distribute?
A. Yes, sir.
Q. Does a two-year sentence on that sound right?
A. Yes, sir.
Q. Back in 2002, did you have a conviction in Jefferson County for criminal mischief in the first degree, a felony?
A. Yes, sir.
Q. I think you got 36 months' probation on that. Is that correct?
A. Yes, sir.
Q. So when you were indicted on this, on the case we're talking about that you pled guilty to, you had these three prior felony convictions. Right?
A. Right. Correct.
Q. Let me ask you again, at the time you either pled guilty in that case or prior to the time you were sentenced, did you have

some kind of understanding with the government that you would cooperate in some fashion with them?
A. No, sir.
Q. I think in your plea agreement initially, the parties; that is, you and the government, had agreed that 13 years would be an appropriate sentence. Is that correct?
A. Correct.
Q. But at sentencing, Judge Wright gave you a ten-year sentence. Is that correct?
A. Correct.
Q. Is your monitor on?
A. Yes, sir.
Q. Are we looking at paragraph 5 of your plea agreement that addresses stipulations?
A. Yes, sir.
Q. Look at paragraph B. I guess I just asked you, you initially agreed to a sentence of 13 years. And then, in exchange for the agreement, the government agreed to certain things that were beneficial to you. Correct?
A. Yes, sir.
Q. The government agreed that they would not move for a minimum mandatory 20-year sentencing enhancement. Right?
A. Yes, sir.
Q. At the time that you entered into this agreement, you had revocation petitions pending on you for a couple of those felony

cases we just talked about. Right?
A. Yes, sir.
Q. In other words, the State of Arkansas had filed a pleading in court asking that your probation or suspended sentence or whatever be revoked because of this federal charge. Is that correct?
A. I believe so.
Q. Was there some other conduct that led to those revocation petitions being filed? Did you not show up in court or not abide by other conditions of probation or parole?
A. Like I said, possibly I had failure to appears. I didn't show up for court.
Q. If we look at paragraph 2, as part of this agreement the prosecutor agreed to dismiss a couple of those revocation petitions. Right?
A. Correct.
Q. He agreed to dismiss the revocation petition on the 2002 felony conviction for which you got 48 months' probation. Right?
A. Yes, sir.
Q. And he agreed to dismiss a revocation petition on the felony criminal mischief charge I asked you about a minute ago. Right?
A. Yes, sir.
Q. It looks like there were a couple of new cases that were

pending against you: 2003-344, 2005-1186, and 2006-946. Those cases were all pending in Jefferson County when you signed off on the plea agreement, were they not?

A. Yes, sir.

Q. Were those controlled substance related cases?

A. I believe so.

Q. And they were all dismissed as part of this deal that you worked with the government. Right?

A. Yes, sir.

Q. And then you signed off on this. You went to sentencing. Rather than 13 years, you got ten years. Is that right?

A. Yes, sir.

Q. You were looking at a lot of time before you signed off on this agreement, weren't you?

A. Obviously, yeah.

Q. Well, the Count 1 that you pled to carried a mandatory minimum of ten years, didn't it?

A. Right.

Q. Then there was some 20-year enhancement the government agreed not to pursue as part of the plea agreement?

A. Right.

Q. That would have taken you out to 30. Right?

A. Possibly.

Q. Now, you first talked to an ATF agent about these conversations that you testified about that you say that you had

with Dr. Mann. Is that right?
A. Right.
Q. And that was sometime in -- what month in 2009 did you think that took place?
A. I believe it was around July 2009.
Q. And you talked to Mr. Gordon at some point in time. Correct?
A. Yes, sir.
Q. And who else that works for the government have you talked to?
A. Ms. Karen -- I don't know her last name.
Q. Ms. Whatley?
A. Yes, ma'am -- yes, sir.
Q. I want to ask you about these conversations that you say you had with Dr. Mann. You were at Fordyce at the time. Correct?
A. Right.
Q. Would you describe that facility to the jury, please. Are you in an individual cell, or are you in an open room with bunks?
A. Well, at the time, we were in an open unit with bunks, bunk beds. It was an open unit. There was several other detainees.
Q. Who were some of those detainees?
A. I know a few by nicknames. I don't know exactly everybody's name.

Q. Tell us some of those nicknames.
A. A guy named Nino; a guy they called Contra; another guy, last name Williams; a guy named Cruz.
Q. Who did you hang out with?
A. Who did I hang out with?
Q. Uh-huh.
A. I didn't hang out with anybody.
Q. You just kind of stayed to yourself?
A. Correct.
Q. Dr. Mann was on the bunk above you. Is that right?
A. Yes, sir. He was until he moved from the top bunk, and he moved to the floor. Then he was sleeping on the floor.
Q. Did you stay on the bottom bunk when he went to the floor?
A. Yes, sir.
Q. Did you have some difference of opinion with Dr. Mann about dangling his legs over the side of the bunk?
A. Excuse me?
Q. Did you have some disagreement with Dr. Mann about him dangling his legs off the side of the bunk? Did you have words with him about that?
A. We didn't have any words. I mean, you know, I just asked him if he could -- you know, he was hanging his feet in my face while I was sitting on the bunk.
Q. What did you do to pass the time? Did you play dominoes?
A. Yeah. We played dominoes, worked out, played cards.

Q. Who did you play dominoes with?
A. With -- I played with Dr. Mann a few times. We played -- I played with whoever wanted to play.
Q. Did Dr. Mann ever express to you that your playing dominoes was keeping him and some of the others awake?
A. No, sir, he didn't. But I remember one time when he flushed some of the dominoes down the toilet.
Q. Right. It kind of upset you, didn't it?
A. Well, it upset a few people in the unit.
Q. Well, I imagine that's because you were keeping him awake and some others awake playing. He said something to you about that, didn't he?
A. No. He never said anything to me about it.
Q. How long were you in the same cell with him?
A. We were in the unit from the time I was there until the time I left.
Q. How long was that?
A. From May, early May to early March. I would say around almost two months, something like that.
Q. The conversation you said you had with him, is that when he's on his bunk upstairs and you are down below? You are playing dominoes? What's going on?
A. At the time, we wasn't doing anything in particular. Like I say, Dr. Mann, he likes to conversate. He likes to talk all the time, you know. We was just talking, you know.

Q. Just the two of you?
A. Well, yeah, at the moment, yeah.
Q. When these remarks were made, there's nobody else there to overhear it. Right?
A. I mean, there was several people in the unit. He would talk from one person. And if you get tired of listening, he would go and talk to another person, you know.
Q. These conversations he had with you that you testified here about, it was just the two of you talking from your recollection. Right?
A. Right.
Q. Were you over in the corner or something?
A. No. We wasn't in a corner. We was sitting at a table.
Q. Did you engage him in conversation to try to get him off by himself to talk?
A. No, sir.
Q. Hoping you might win a story and report something to the ATF, maybe get a little something out of it?
A. Excuse me?
Q. These remarks that you reported to the ATF, you hoped you would get something out of that. Right?
A. Yeah, possibly, yeah.
Q. Yes. Not possibly. For sure. Right? You hoped you would get your sentence reduced. That's why you are here today. Right?

A. Yes.
Q. As a matter of fact, the government confirmed to you that they would ask the judge to reduce your sentence. Correct?
A. Yes.
Q. They are going to come forward and do that because you've come here today and testified as a government witness. Correct? That's the bottom line, isn't it?
A. Yes, sir.
Q. And you've been around the block. I mean, you've been charged with three felonies before this. You know how the system works. You know when there's an opening. You know when you might get an opportunity to do something that could help yourself. Right?
A. Yes.
Q. Regardless of whether it's the truth or you are making it all up. Right? You know how the game is played.
A. Excuse me?
Q. You know how the game is played.
A. Yes.
Q. You've been in jail before.
A. Yes.
Q. It wasn't the first rodeo for you being locked up. Right?
A. No, sir.

MR. LASSITER: Can I have a second?

BY MR. LASSITER:

Q. I asked you a few moments ago, the count you were convicted of, Count 1, because there was more than 50 grams of crack cocaine involved, that that carried a minimum mandatory ten years. Correct?
A. Right.
Q. We're in agreement on that. The only way you can get under that, the only way you can get under that is if you cooperate and the government goes back and asks the judge to reduce your sentence. Right?
A. Right.

MR. LASSITER: Pass the witness.

THE COURT: Redirect?

MS. WHATLEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Mr. McCray, are you telling this jury the truth?
A. Yes, ma'am.
Q. And is everything that you said Dr. Mann told you, is that what he told you?
A. Yes, ma'am.
Q. Have any specific promises been made to you about what you are going to get for this today?
A. No, ma'am.
Q. I'm putting on the screen what was introduced as Defendants' Exhibit No. 6. Is that your signature at the

bottom?
A. Yes, ma'am.
Q. Is that your attorney's signature?
A. Yes, ma'am.
Q. When did you sign this document?
A. October the 8th.
Q. Of 2008?
A. 2008.
Q. And you entered into that with Ms. Clevenger. Correct?
A. Yes, ma'am.
Q. I wasn't on that case, was I?
A. No, ma'am.
Q. Mr. Gordon wasn't on that case, was he?
A. No, ma'am.
Q. You actually signed this in 2008, before you even met Randeep Mann, didn't you?
A. Yes, ma'am.
Q. So were any of the things that were talked about in here, were they given to you because you were testifying against Randeep Mann?
A. No, ma'am.
Q. Mr. Lassiter pointed out to you the stipulation where certain offenses were going to be dismissed. Do you recall that?
A. Yes, ma'am.

Q. Was that what you actually pled guilty to in federal court?
A. Which ones?
Q. Did you have any cases in Jefferson County that were dismissed because you pled guilty in federal court?
A. Yes, ma'am.
Q. Were some of those the same drug charges?
A. I believe so, yes.

MS. WHATLEY: No further questions.

THE COURT: Anything else?

MS. CASSINELLI COUCH: Your Honor, may we have just a moment?

MR. LASSITER: Your Honor, we have no further questions. Thank you for the opportunity to check that.

THE COURT: Okay. Mr. McCray, you can stand down. Call your next witness.

MR. GORDON: Your Honor, before we call our next witness, we would ask the Court's permission to go ahead and publish Government Exhibit 97-A to the jury.

THE COURT: Yes.

MR. GORDON: 97-B.

THE COURT: If I remember, that is the Lowe's exhibits.

MR. GORDON: Yes, Your Honor.

United States calls Rowdy Sweet.

THE COURT: How many witnesses are we going to have

today?

MR. GORDON: Just one, Your Honor.

ROWDY SWEET, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Please state your name for the record.

A. Rowdy Sweet.

Q. Is it spelled like it sounds?

A. Yes, sir.

Q. Who do you work for?

A. Pope County Sheriff's Office.

Q. How long have you worked there?

A. Since 1999.

Q. What's your current assignment with the sheriff's office?

A. Chief investigator.

Q. How long have you been the chief investigator?

A. Since '08.

Q. What did you do before that?

A. From '05 to present, I've been an investigator. And then I started at the sheriff's office in 1999 in the jail and in approximately '01 started on the street.

Q. Will you do me a favor and pull that microphone in front of you so we can hear you better. Do you have any military experience?

A. Yes, sir.

Q. Tell us about that.
A. I graduated from Atkins High School in '92, entered the United States Navy and was in the Navy until, I believe, June of '99.
Q. What did you do for the Navy?
A. I was in naval aviation, worked on the flight deck of aircraft carriers.
Q. Did you grow up in Atkins?
A. Yes.
Q. Is that up in Pope County?
A. Yes.
Q. Were you on duty with the sheriff's office on March 3rd of 2009?
A. Yes.
Q. Did you have anything to do with the recovery of some 40-millimeter grenades that were found on Galaxy Lane that day?
A. No, sir, not that day.
Q. When was the first time that you saw those grenades?
A. On the very next day, the 4th of March.
Q. How was it that you came to see them?
A. Sergeant Smith brought them into my office.
Q. Did you keep them in your office?
A. Yes, sir.
Q. When he brought them in, what did you do?
A. We looked at them. We didn't take many of them out. If we

touched any at all, we had gloves on. And we contacted the ATF because we did not have any knowledge of what exactly they were.
Q. Had you seen anything like that before?
A. No, sir.
Q. Did ATF respond to the sheriff's office?
A. Yes.
Q. Do you remember who it was?
A. I believe it was -- let me make sure I have the name right -- David Oliver.
Q. Did Agent Oliver take possession of the grenades and the canister they were in?
A. Not at the exact time he arrived.
Q. Later on that day?
A. Yes.
Q. Okay. That same day, March 4th, 2009, did the state police get a search warrant to search a residence at 313 Milky Way Lane?
A. Yes. On March the 4th?
Q. Yes.
A. Yes.
Q. Was that done by Stacie Rhoads?
A. Yes, sir.
Q. Did you participate in the execution of that search warrant at 313 Milky Way Lane?
A. Yes, sir.

Q. Was that search warrant executed on March 4th as well?
A. Yes.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes, you may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 101-B. I'm going to hand you a green circle here.
A. Okay.
Q. I'm going to ask you to place it in front of the house you executed the search warrant on.
A. Do you want front?
Q. Thank you. Had you ever been to that house before, Lieutenant Sweet?
A. No, sir.
Q. Do you know who lived there?
A. I knew when I arrived, yes, sir.
Q. Who?
A. Dr. Mann.
Q. Do you know Dr. Mann?
A. I know who he is.
Q. Do you know him personally?
A. No, sir.
Q. Is he your doctor?
A. No, sir.
Q. Do you know Mrs. Mann?

A. I know who she is. I don't know her personally.
Q. Through the course of this case, you know who she is?
A. Yes.
Q. Do you know any of their children?
A. The only thing I knew is during this case, he had a son by the name of Dan. Other than that, I don't know if he has any other children.
Q. So before this case, did you know who Dr. Mann or his family was?
A. I never met them before, no.
Q. Okay. When you arrived on the scene, what did you do?
A. I took photos of the residence.
Q. What was the purpose of doing that?
A. Just usually before a search warrant, we take pictures of the residence as it is prior to law enforcement entering and searching.
Q. Why?
A. Just to show where things were prior to anyone touching anything.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. GORDON:
Q. So before anyone in the house or before the search was conducted, you went through and took pictures?
A. Yes.

Q. Then did you also take pictures during the course of the search warrant?
A. Yes, sir.
Q. I'm going to show you what's been marked as Government Exhibit 100-B all the way through 100-GGGGG. Are these the pictures you took?
A. Would you like me to turn them upside down?
Q. Sure.
MR. GORDON: Your Honor, can we approach?
THE COURT: Yes.
(Proceedings at the bench as follows:)
MR. GORDON: While Lieutenant Sweet is looking at the pictures, those pictures do include the prescription pill bottle pictures you saw yesterday. And we intend to offer them at this point in time.
THE COURT: Is he the one you were going to call in your case --
MR. GORDON: He can do the same thing the other witness was going to do.
THE COURT: Remind me why. I think there was a relevance argument.
MR. GORDON: You wanted to hear from Rita first.
THE COURT: To see what the cross was going to be like with regard to whether she received these pills. What's the position of the defense?

MS. CASSINELLI COUCH: Your Honor, our position would be, under 403, we believe it's too prejudicial. The pictures Mr. Gordon I believe is offering, if I have the right pictures in my mind, are not in any way limited. They include tons of different medications for different family members, I mean, kind of all thrown together to look, to make it seem like there's a whole arsenal of illegal pills, which there's not.

THE COURT: I think I should ask for the relevance of showing the pills. This is not a pill case.

MR. GORDON: Again, because they called into question Rita's truthfulness, whether or not she was telling the jury the truth. This now shows Dr. Mann had access to these pills.

MS. CASSINELLI COUCH: She didn't say she got them at the house.

THE COURT: Hold on just a second. As I was listening to the testimony this morning, I remembered there was a motion in limine that was filed by the defense to keep out all of that medical testimony. I think there was. I overruled it. I denied it because the government's response was that you have to show the story, show how the investigation started, show what led to what.

This morning in the testimony, we spent maybe a good hour or so almost showing Dr. Mann is a drug dealer. I mean, that's the way it came across. He is leaving pills for people, and they are picking them up. And although that may be important in

another case, I don't know it was relevant to this case now. So they crossed the witnesses on that. But the pictures of the pills are being offered to bolster the testimony of a witness who has testified about stuff that was probably irrelevant as to the guilt in this case.

I understand it lays the foundation for why we start these investigations, what was Dr. Mann investigated for, why was he going before the board. But that stuff is very prejudicial for this case.

MR. GORDON: Your Honor, it's our position that establishes his motive for the bombing, because when you look at it, it was Rita's sister Jeanice that complained to the board right before the bombing occurred. And that was the relevance of Rita, you know, he is giving all these pills to Rita. Jeanice finds out. She tells the board. Rita tells Dr. Mann.

THE COURT: I understand the testimony of Rita, "Jeanice called the board. I confronted him, called him." And then the actual patient says, "Yeah, my sister, I told," or "I knew they knew my sister did it." That would have been sufficient to show that. But we went into all of, I guess, the dirty details of it.

Can I see the pictures and see what they look like? That might help.

See, I think I just don't want to make a mistake and let the jury focus so much on how bad of a doctor Dr. Mann might

have been. The testimony this morning almost -- if I were just listening to it, he sounds like a drug dealer, somebody who leaves pills places for people so they can secretly drop the money and pick up the pills. I just wouldn't want the jury to confuse whatever he might have been doing with what he's being charged with in this case. How do we guard or keep that from happening? I'm asking both sides. I know from the defense's point of view it would exclude these pictures.

Your position is, Mr. Gordon, you need this to put everything in context. And you have a witness who was cross-examined very thoroughly on this issue, so you have to be able to show what she was saying is true.

MR. GORDON: Correct.

THE COURT: If that were the case, or if that's the case, how do we get the jury focused at the end on the fact this is not a case about whether Dr. Mann really was a criminal doctor or a bad doctor, that all of that stuff that we went into is not intended to show that because he overprescribed and essentially was a drug dealer he also did these things? You understand what I'm saying?

MR. GORDON: I think they could be given a limiting instruction which talks about what you just said, they can only consider it for motive. That's been our theory all along.

THE COURT: Mr. Gordon, I don't think the motive -- the motive isn't that he prescribed pills. The motive is that

the sister finked on him or ratted him out. So the sister rats him out, so he's mad. He wants to make sure that he gets everybody before they take action. The mere fact he prescribed the pills, that was the reason for her going to the medical board. But it's almost like we have two different cases going on here, maybe three different ones now.

Anyway, Mr. Gordon says we can have a limiting instruction where we tell the jury, look, all of this evidence regarding pills, prescribing, none of that can be used by you in determining whether Dr. Mann -- well, we would have to craft it right, because you can't say it can't be used, because if you use it for motive, it is being used. So we would have to craft something. I may be talking too much. You understand, my wheels are spinning. How do you keep them from focusing on the fact -- not the fact -- on the evidence that shows he might have been a bad doctor, and that shows he probably did this too? How do we do that?

MS. CASSINELLI COUCH: Your Honor, I don't believe we can do that. First of all, it's hard to tell them not to consider it for certain purposes when the government is putting on multiple witnesses to prove it as if it is a direct issue and a charge in this case. And as the Court has already explained, the motive is the complaint and the fact that there was going to be a complaint. That testimony has come in. So, you know, showing the jury how many pictures of prescriptions of Dr. Mann

and his family just serves to make the jury think he's --

THE COURT: Let me ask this question. In Exhibit No. 100-NNN, this seems to be a prescription written by a Dr. Umerah, Mike Umerah, to Dr. Mann. It says, "Take one tablet by mouth every 46 hours for pain as needed." Now, I don't know that. But isn't that the name of this doctor, Dr. Mike Umerah, whatever that is, this is the prescribing doctor, and this is the patient?

MR. GORDON: Yes, sir. We're not even saying these are illegal. The point is, he has access to prescribed medication. If it's a valid prescription, he can lawfully possess it. The whole point is, he has access to these things. We're not saying it is illegal.

THE COURT: These seem to be prescriptions written to him by other doctors, to other family.

MR. GORDON: Kept in the gun safe.

MS. CASSINELLI COUCH: Along with all the other valuables.

THE COURT: I know the implication. The implication is he went to other doctors to prescribe to him, and he kept a stash of them that he would then give to his patients maybe. I don't know that's relevant. I don't know that that advances the case.

MR. GORDON: Again, I think it helps support Rita's testimony after her cross-examination.

THE COURT: Now, remind me. Who did the cross-examination of --

MS. CASSINELLI COUCH: Ms. Barthelme?

THE COURT: Yes.

MS. CASSINELLI COUCH: Me. I have no idea what happened.

THE COURT: Well, here. If I'm not mistaken, I think in the cross Ms. Couch asked her questions about payment. "And you got this free, you got that free, you got that free, and you didn't pay for that. But now you are trying to say he made you pay $300 a month for this," indicating she was lying about those payments or that she was stretching the truth.

MR. GORDON: That was part of it.

THE COURT: Yes. I don't know Ms. Couch ever said that she didn't actually get the drugs, did she? It's like she stayed away from that intentionally.

MR. GORDON: They called into doubt her entire testimony by just saying she was saying what she had to say because we made her say it, because she was scared of ATF and the government, and we made her say it.

MS. CASSINELLI COUCH: Of course, you brought that out. As time passed, her story had come around. Regardless, I don't think those have any probative value. And it is major confusion of the issues if we put in 50 pictures of drugs prescribed to family members.

MR. GORDON: All of which are legal.

MS. CASSINELLI COUCH: Of course, Rita also said she got the same drugs different places. Many of the drugs aren't even in those pictures.

THE COURT: The truth is, I don't think there's a clear call on this. I don't think there's a clear call on this. The problem is, if I exclude them, then the government doesn't have -- I'm not going to say to bolster a witness. You are not supposed to allow bolstering -- but does not have a way to rehabilitate the witness.

At the same time, we already have testimony about the drugs anyway. Whether the jury wants to believe it or not is a different story. But then, if we let it in, we're putting in not a hundred pictures but a stack of pictures about drugs.

It seems to be, except for the rehabilitation of the witness, almost irrelevant. Why do we need this many? If you have a few --

MR. GORDON: That's just what there was. I guess I could go through and pull out a few.

THE COURT: Here's what I will allow you to do. I'm going to pull a Solomon move here. And everybody can object to it, have wholesale error. But what I will allow you to do is go through. We'll take about a ten-minute break. Go through -- how many pictures do we have here?

MR. GORDON: Judge, I have no idea.

THE COURT: I will let you pick out five pictures. Why I came up with five, there's no rhyme or reason for that. I'll be very honest with you. I'll let you pick out five you want, and I'll allow you to admit five, or I will receive five. But I won't let you do all these. I think at some point it's overkill, and all we're trying to prove is Dr. Mann is a bad man and he was a bad doctor, he was essentially a drug dealer. I think you can rehabilitate your witness with five pictures as well as you can with a hundred pictures. It will just be a representative sample of what they found.

MR. GORDON: He doesn't have to say that's all the drugs.

THE COURT: I won't hold him to that. He can say he found a number of drugs, and this is a representative sample of what I found.

MR. GORDON: Before we move on, there is a picture of drugs that are not in a bottle.

THE COURT: Like in a bag or something?

MR. GORDON: One picture, it has them in several -- not even that one. A couple more back. Right there.

THE COURT: I will let you pick out your five. I will let the defense make a record on it. I understand the defense's point of view is they are irrelevant and that none of these should be admissible. If you want to make more of a record on that, I will allow it.

MS. CASSINELLI COUCH: Maybe you should pick out your five first. But I would say that, just before you even go there, I can't see the relevance of providing photographs of drugs that have nothing to do with Rita at all.

MR. GORDON: I'll find the pictures of the ones she says he gave her.

MS. CASSINELLI COUCH: Can he pick and then we discuss?

THE COURT: We can do that. What we can do, I'll come out for a couple of seconds before we bring the jury back. We'll make a record on it. Then we'll proceed.

MS. CASSINELLI COUCH: Yes, sir.

(Proceedings continuing in open court as follows:)

THE COURT: Ladies and gentlemen, we have an issue we need to decide, so we're going to try to take it up pretty quickly. But this is going to take a few more minutes. So what we're going to do, I'm going to give you a ten-minute break. I'll take a short break. But then I'll come back a few minutes before you come back. We'll decide, and we'll let opposing counsel meet and discuss an issue, and we're going to rule on it. Then I'll bring you back.

As you understand -- I think I told you this before we got started, and I asked all of you in voir dire about this. In a case, you have opposing sides. And we have rules of evidence that determine whether certain evidence is admissible. Well, we

have some issues now that can go either way. So I need to make sure I'm clear and that we're all on the same page before we proceed. That's why it is taking so long, because there's not a clear-cut answer to this issue.

So I'm going to let you go back and take about ten minutes. We will come back and get started probably around 3:20, but I'm not going to promise you that. We'll be in recess until then.

(Jury excused.)

MR. GORDON: Judge, do you want us to come up to you?

THE COURT: No. If those are the ones you've chosen, you can read it into the record which ones.

MR. GORDON: Your Honor, we would like to present to the jury Government Exhibit 100-UUUU.

MS. CASSINELLI COUCH: Can we just come up here?

MR. GORDON: 100-VVVV, 100-QQQ, 100-RRR, 100-YYY, 100-ZZZ. I know the Court said five. But I would like to point out that -YYY and -ZZZ are of the same bottle. -QQQ and -RRR are of the same bottle.

THE COURT: What would be the purpose of introducing both of them?

MR. GORDON: Because it shows the complete prescription.

THE COURT: Okay.

MS. CASSINELLI COUCH: Your Honor, we would object to this one because this clearly has all the other medications that

the Court has said --

THE COURT: That's 100-UUUU?

MS. CASSINELLI COUCH: Yes. This is sort of precisely what the Court just excluded all wrapped up into one photograph. Most of these medications in this photograph don't have anything to do with Ms. Barthelme's testimony. They are not medications that she said she received. That seems to be an end run.

MR. GORDON: We have someone from DEA here who told us that the contents of these bottles do not appear to be controlled substances. This one is the alprazolam. That's one of the ones that Rita said he gave her.

THE COURT: How do we let the jury know which ones are not?

MR. GORDON: We're going to call her next.

MS. CASSINELLI COUCH: Your Honor, there's already a picture of that.

THE COURT: I will introduce that if we have somebody that says this is not controlled.

MS. CASSINELLI COUCH: She's going to say all these are not controlled?

MR. GORDON: She is going to say all of the labeled ones are not controlled. Actually, I would rather --

THE COURT: That's okay.

MS. CASSINELLI COUCH: It seems to me we don't even know what some of the medications in these bottles are. I've

not seen anything from the government that indicates who they were prescribed to, if they gathered the family's records. So it seems to me you are just adding a pile of pills, you know, when you've already got the purpose of the photograph in another photograph. That seems highly prejudicial. Then we're going to have to call a DEA agent to start going through pills. That seems to me to be a waste of time and confusion to the issues.

THE COURT: Your objection is noted, and it's overruled. It is sustained as to the remaining pictures. It's overruled as to these six.

MS. CASSINELLI COUCH: Your Honor, we would also like to, without opening the door to all the other 50 pictures or whatever, we would like to have the agent, and whoever else may testify about this at the house, just explain these were all located with other medications for the family, to demonstrate these weren't hidden in a safe because they were controlled substances, secreted --

THE COURT: I think that's fair. They can ask that question. I just don't want to get all these pictures in, have them focusing when they get back just on these pictures, coming to a conclusion that has nothing to do with the case. So you can ask the limited question, "Well, weren't there other medications prescribed to other family members with these?"

MS. CASSINELLI COUCH: I think they were actually in two locations.

THE COURT: Whatever clears it up. If you spend a whole lot of time on that -- I know my mike is on. Everybody can hear me. We're not doing this to be secretive. We're just doing it because it's easier to deal with the pictures up here. If you go down that road too much, you can open it up. Think about it when you are doing your cross.

MS. CASSINELLI COUCH: Like I said, we want it to be clear these are not hidden by themselves. Also, we would like to be able to ask the question, something to the effect -- I don't know if it would be this witness or not -- about the medical records, that nobody knows who was prescribed what within the family outside of Dr. Mann.

THE COURT: I don't think that would open the door to get the other pictures in.

MS. CASSINELLI COUCH: If you think it would, I want you to tell me now.

MR. GORDON: I'll let you know after you ask it.

MS. CASSINELLI COUCH: Oh, nice.

THE COURT: We don't know.

MS. CASSINELLI COUCH: I'm telling you, we'll go there, so if you think that opens the door --

THE COURT: If you limit your cross, limit those questions in your cross to the ones you've just stated, I will tell you it will not open the door. If you start going further, then there's a chance you will.

MR. GORDON: And I'll be watching.

MR. HENDRIX: I don't mean to waste anybody's time. The question then is, as the proponent of this evidence, what is the government's theory of admissibility, what rule? I'm assuming it's 404(b).

MR. GORDON: Well, no, because this is not illegal. If they are prescribed to him, there's nothing illegal going on here.

MR. HENDRIX: If it is considered a prior bad act, I'm hearing the theory of admissibility to be this is uncharged conduct. Right? It's not part. It's not intrinsic to the indictment, therefore the theory of admissibility would have to be under 404(b). As the Court is aware, we had filed a motion pretrial advocating the position this was character evidence and inadmissible character evidence.

MS. CASSINELLI COUCH: And it was noticed as such from the government.

MR. HENDRIX: So I guess what I want to say, just for the record, Judge, is if you have changed -- of course, the Court denied our motion. If you have changed your mind, if anything, this would be the juncture for us to move for a mistrial.

If the Court is not persuaded by that, then the next, I think, practical thing is can that evidence now be excluded? Can the jury be told this is evidence you are -- I'm striking

this from the record?

The third level is, if the theory of admissibility is 404(b), is it time for a 404(b) limiting instruction that says -- we have a 404 instruction that says you are not to consider character evidence in determining guilt or innocence.

THE COURT: Mr. Hendrix, my understanding was it was not introduced for that purpose. I think it was introduced -- this is what I understand at least, based on the response of the government -- was to just lay a foundation for all of the actions that occurred afterwards. You understand, it wasn't to go to the character of Dr. Mann.

Now, from what I understand, once the witness took the stand to kind of lay the foundation for what was happening and how we got here, she was cross-examined with questions about credibility and whether she was accurate. So the reason for these pictures is only to rehabilitate her.

MR. HENDRIX: Okay.

THE COURT: It's for that limited purpose. Like I said before we left, in listening to the testimony this morning, we went very deep into a lot of things that have nothing to do with this trial. Now, I would be amenable to an instruction at the end of the trial that attempts to put that evidence in its proper place. But I would have to see an instruction that can do that.

MR. HENDRIX: Sort of like what we did in the context

of hearsay earlier. This is not being offered for the truth of the matter asserted, but merely to rehabilitate a witness. You are not to consider this as evidence of guilt or innocence.

THE COURT: Something in that vein. Mr. Gordon has to have a position on this. I think I've stated what your responses were to the motion in limine. I imagine it is still the same as what you said earlier.

MR. GORDON: Yes.

THE COURT: I don't want to do anybody's work. Anything else?

MR. GORDON: I still think we are within our response to their motion in limine.

MS. CASSINELLI COUCH: I think, to follow what you were saying, Mr. Hendrix was talking about Ms. Barthelme's testimony. We are under the impression the Court had ruled that the extent of her testimony was relevant and admissible specifically as to the drug dealing aspects. If we were -- if we misunderstood that, then we do object and do ask the Court to strike that testimony as being irrelevant. We were under the impression it was covered by the Court's prior order. If now the Court is reconsidering --

THE COURT: Well, you probably listened to what I was saying this morning, and that's what led you to make this motion. As I was sitting here, the same thing I said earlier, we got so deep into it that I do believe we went a little bit

outside of what I expected. And I'm not going to say the limited purpose I denied the motion in limine. I thought the government needed to be able to prove its case by putting on the big picture to show how we got here. I do think we went a little deeper into that than what I had expected. I don't think we went deep enough to grant a mistrial. I don't think we're there at all. We're not even in that neighborhood.

I do think, however, that we probably do need an instruction. But it's one that will be given when we charge the jury, you know, if we get there, you know. It just lets them know this evidence was presented for background evidence as to the motive and all these other things, but it was not offered to prove that Dr. Mann is a drug dealer or for his character. I don't think you were offering it for character evidence.

MR. GORDON: No.

THE COURT: You were offering it for motive and background. I think that would be appropriate to say that, just an instruction we give at the end of the case. I don't think we need to give it now.

MS. CASSINELLI COUCH: I think we were just thinking, to the extent she went outside of what is relevant to motive, we would ask the testimony be stricken as irrelevant.

THE COURT: Then we would have to go through and designate what part of it.

MS. CASSINELLI COUCH: Mike will do it.

THE COURT: I will overrule that.

MS. CASSINELLI COUCH: Thank you, Judge.

THE COURT: Are we ready?

MR. GORDON: Can I let Lieutenant Sweet know what is going on so we don't step afoul of your order?

Through Lieutenant Sweet I will intend to introduce all the guns that were seized on this search warrant. I think there are 17 or 19 of them. And then there will be about a hundred more later on in the trial.

THE COURT: I'm sure you will object to them. That's fine.

MR. GORDON: I wanted to let everybody know.

MR. HENDRIX: Are you going to bring them in?

MR. GORDON: Yeah, right in here.

MS. CASSINELLI COUCH: We object. We really object to the hundred. We're not going there now.

MR. GORDON: That's later in the week.

(Proceedings continuing in open court as follows; jury present.)

THE COURT: Mr. Gordon, you may continue.

MR. GORDON: Thank you.

BY MR. GORDON:

Q. All right, Lieutenant Sweet. Are you done looking at these pictures?

A. Yes, sir.

Q. Government's Exhibit 100-A through 100-MMM, are these all photographs that you took?
A. Yes, sir.
Q. Government Exhibit 100-XXX through 100-GGGGG, did you take those pictures as well?
A. Yes, sir.
Q. 100-QQ, -RR -- I'm sorry -- 100-QQQ, 100-RRR, 100-YYY, 100-ZZZ, 100-UUUU and 100-VVVV, did you take those pictures?
A. Yes.
Q. And all of those pictures that I just named off, are they all fair and accurate depictions of items that were present at Dr. Mann's house during the search warrant?
A. Yes, sir.

MR. GORDON: Your Honor, I would offer those pictures and only those pictures.

THE COURT: They are received, subject to the objections that have already been lodged.

(Government's Exhibits 100-QQQ, 100-RRR, 100-YYY, 100-ZZZ, 100-UUUU and 100-VVVV received in evidence.)

BY MR. GORDON:
Q. Thank you. Lieutenant Sweet, let's look at Government Exhibit 100-A first. What are we looking at here?
A. The front of the residence.
Q. 100-B?
A. Same, front of the residence.

Q. 100-C?
A. Front of the residence, including the garage.
Q. 100-D?
A. Front of the residence.
Q. 100-E?
A. It's the back, back yard.
Q. 100-F?
A. It's also the back.
Q. 100-G?
A. The back.
Q. 100-H?
A. The back of the residence.
Q. What was behind the residence? You've got the grass and the trees and then what?
A. The lake.
Q. When you went inside the house, what's the first thing you took pictures of?
A. The entry to -- I believe I went in the garage area first, the entry there.
Q. Did you take some pictures of some money?
A. Yes, yes.
Q. Where was that money located?
A. It was downstairs in a bedroom in a Jacuzzi tub inside a panel there, a little door.
Q. How was that money brought to your attention?

A. Dr. Mann, I believe, had advised Agent Stacie Rhoads, and then we photographed the money.
Q. Why did you photograph the money?
A. Just to assure -- Stacie Rhoads had asked Dr. Mann if there was any money or anything of value in the residence and so we could count it and record that, because we had no need to have the money.
Q. Okay. Where was the money located?
A. It was in a downstairs bedroom in a Jacuzzi tub panel area.
Q. Let's look at 100-I. What are we looking at there?
A. It's the back side of the Jacuzzi tub there in -- I guess you would call it in the maintenance area. In the bag there is the money.
Q. 100-J. Is that a close-up of the bag in 100-J?
A. Yes.
Q. And 100-K, is that the contents of the bag?
A. Yes, sir.
Q. Do you know how much there was?
A. I believe there was 12,000.
Q. Was any other money in the house pointed out to you?
A. No, sir.
Q. Was that money seized?
A. No, sir.
Q. Why not?
A. It wasn't included in the search warrant. We had no need

to take the money.
Q. Now, during the execution of the search warrant, what was your role?
A. I was there to just record what was taking place, photograph. And I was the guy with the list that would place the E numbers on the evidence, take the photos and record them.
Q. So as other people were searching the house, if they found something, you were called in. And you would take a picture of the evidence in place?
A. Yes, sir.
Q. And then collect it?
A. Yes.
Q. Were there two main areas in the house where evidence was found?
A. Yes, sir.
Q. Where were those two places?
A. The detached garage and the -- I guess you would call it a closet off of the weight room area, off of the gym.
Q. How many garages did this house have?
A. Well, there was one attached garage and one detached garage with, I think, three stalls in the attached and four to five in the other.
Q. Let's look at 100-A, please. Obviously, there's two garage doors on the left?
A. There's two garage doors on the detached. And then the two

windows just to the right of that garage is a garage.
Q. Go ahead. You can touch the screen there, and it will show up on ours. Show us where the second garage is.
A. There.
Q. Thank you. You said -- where in the garage was the evidence found?
A. If you walk directly in front of that door, there's a storage room.
Q. Okay. Let's look at Government Exhibit 100-L. Is that inside the garage?
A. Yes, sir.
Q. And then in the background you can see a green car?
A. Yes.
Q. Is that the second garage that's actually attached to the house?
A. Yes.
Q. Let's look at 100-M. Can you tell us in this picture where most of the evidence was found?
A. This doorway here.
Q. The doorway on the right?
A. Yes.
Q. Let's look at 100-N. Does that show the doorway down there behind the silver bike?
A. Yes.
Q. While we're talking about garages, let's go ahead and look

at the other ones. Let's look at 100-O, please. Is that the inside of the garage attached to the house?
A. Yes.
Q. 100-P. Those stairs there, does that go into the house?
A. Yes.
Q. Let's look at 100-Q. Is that the entrance into the room in the garage where you found evidence?
A. Yes, sir.
Q. Describe for the jury what was inside that room.
A. When you walk inside the room, to the right side there's several army green ammo cans of various sizes, also wooden crates and boxes.
Q. Was there ammunition in there?
A. Yes. There was loose ammunition also laying on some of the boxes. And to the left, there were several boxes that were not open, stacked up. And to the left side, behind the door there, there was boxes of ammo.
Q. Let's look at 100-R. What are we looking at here?
A. That's as you walk straight in, if you turn to your right, that's what you see or what we saw.
Q. What are those green things on the left?
A. The green things there are ammo cans. They are, I guess you could say, large size ammo cans. There were some small ones and the loose ammo there on the top and some crates with different types of ammo in it.

Q. Let's look at 100-S. Is that a close-up of some of the ammunition cans?
A. Yes, sir.
Q. Did you seize all of the ammo cans?
A. Not all of them.
Q. Which ones?
A. The only ones we seized were the ones that looked identical, similar to the one found by Sergeant Smith.
Q. The one buried down on Galaxy Lane?
A. Yes.
Q. How many ammo cans like that did you find?
A. Five was how many we seized.
Q. Five in this room in the garage?
A. Yes.
Q. Let's look at 100-T, please. Is that one of them?
A. Yes, sir.
Q. With a 2 on it?
A. Yes.
Q. Did you look inside these ammo cans?
A. Yes.
Q. What was inside the one with the 2 on it?
A. There was ammo was inside of it, and that ammo was taken out. I couldn't tell you exactly what type of round it was.
Q. Let's look at 100-U, please. Does that show the contents of the ammo can in 100-T?

A. Yes.
Q. 100-V, is that the box after taking it out of the ammo can?
A. Yes, sir.
Q. 100-W, is that the ammunition that was inside?
A. Yes, sir.
Q. Let's look at 100-X, please. Are those the other four ammunition cans that were found in the storage room?
A. Yes, sir.
Q. 100-Y, is that the contents of one of those four?
A. Yes.
Q. Is that ammunition in there?
A. Yes.
Q. 100-Z, the contents of another box?
A. Yes, sir.
Q. Is that ammunition as well?
A. Yes.
Q. 100-AA, is that the contents of another box?
A. Yes.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. Lieutenant Sweet, I show you what's been marked as Exhibits 102-D and 102-C. Do you recognize those?
A. Yes, sir.
Q. Are those two of the ammo boxes that were removed from Dr.

Mann's garage?
A. Yes, sir.
Q. That's 102-D and -E. Do those ammo cans have a lot number on them?
A. Yes.
Q. If you would, read into the record the lot number on 102-D.
A. LC-07A606L248.
Q. And if you would read the lot number on Government Exhibit 102-E into the record.
A. LC-07A606L248.
Q. The same lot number as 102-D. Correct?
A. Yes.
Q. Lieutenant Sweet, I'm going to show you what's been marked as Government Exhibit 102-B. Is that also one of the ammo cans you removed?
A. Yes.
Q. Please read the lot number into the record.
A. LC-06B602L312.
Q. Let me show you Government Exhibit 102-C. Is that also one of the ammo cans you removed from the garage?
A. Yes.
Q. If you would read that lot number into the record as well.
A. LC-06B602L312.
Q. Again, the same lot number that's on 102-B?
A. Yes.

Q. Let me show you what's been marked as Government Exhibit 102-A. Do you recognize that?
A. Yes.
Q. Is that one of the ammo cans removed from Dr. Mann's garage?
A. Yes.
Q. If you would, read the lot number into the record.
A. LC-07B606L250.
Q. So 102-C and 102-B are ammo cans with the same lot number. Correct?
A. Yes.
Q. 102-D and 102-E have the same lot number?
A. Yes.
Q. But it's different from the one on the other cans?
A. Correct.
Q. I'm going to show you what's already been admitted as Government Exhibit 99-A, the buried ammo can. Please read the lot number into the record.
A. LC-07B606L250.
Q. Does that lot number match 102-A, which was found in Dr. Mann's garage?
A. Yes.

MR. GORDON: Your Honor, I would like to offer Government Exhibit 102-A, -B, -C, -D and -E.

MR. HENDRIX: No objection.

THE COURT: They are received.

(Government's Exhibits 102-A, 102-B, 102-C, 102-D and 102-E received in evidence.)

MR. GORDON: Thank you.

BY MR. GORDON:

Q. In the storage room in the garage, did you find any black plastic?

A. Yes, sir.

Q. Did you seize it?

A. Yes, sir.

Q. Why?

A. When Sergeant Smith located the ammo can, it had black plastic around it.

Q. Let's look at 100-BB. Is that some of the black plastic that you found?

A. Yes, sir.

Q. Was it located amongst the ammo cans?

A. Yes, sir.

Q. Let's look at 100-CC. Does that show where it was located?

A. Yes, sir.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government Exhibit 103, and let me ask you this. Do you recall coming to

ATF a few weeks ago and reviewing the evidence in this case?
A. Yes, sir.
Q. And making sure what we had matched with what you had?
A. Yes, sir.
Q. The contents of Government Exhibit 103, is that the same black plastic that's listed in Government Exhibit 100-CC and -BB?
A. Yes, sir.
MR. GORDON: Your Honor, I would offer Government Exhibit 103.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 103 received in evidence.)
BY MR. GORDON:
Q. Did you find any more black plastic in the storage room?
A. Yes, sir.
Q. Let's look at Government Exhibit 100-DD. Is that the black plastic?
A. Yes.
Q. Let's look at 100-EE. Same black plastic, but you've marked it?
A. Yes.
MR. GORDON: May I approach, Your Honor?
THE COURT: Yes.
BY MR. GORDON:

Q. I'm going to show you what's been marked as Government Exhibit 104. Is this the same black plastic that is pictured in these last two pictures?
A. Yes.
MR. GORDON: Your Honor, I would offer Government Exhibit 104.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 104 received in evidence.)
BY MR. GORDON:
Q. Did you find another, any other black plastic, in the house or in the garage or somewhere else?
A. In the attached garage.
Q. Okay. Let's look at Government Exhibit 100-FF. Is that the black plastic?
A. Yes.
Q. You said you found it where?
A. In the main garage, the attached garage.
Q. Let's look at Government Exhibit 100-P. In front of the blue car, there's some wooden shelves. Is that where you found that roll of plastic?
A. Yes.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. GORDON:

Q. I'm going to show you what's been marked as Government Exhibit 105.
A. Yes.
Q. Is this the same black plastic depicted in Government Exhibit 100-FF?
A. Yes.
MR. GORDON: Your Honor, I would offer Government 105.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 105 received in evidence.)
BY MR. GORDON:
Q. Did you find any more black plastic in the house?
A. Not that I recall.
Q. Did you find a second roll like this?
A. No.
Q. Did you seize all the black plastic that was found in the house or the garages?
A. Yes.
Q. Did you find any practice grenades?
A. Yes.
Q. Where were they found?
A. The same area as the ammo cans, to the left.
Q. Let's look at 100-GG, please. Does this show the opposite side of the room from the ammo cans?
A. Yes, sir.

Q. What's in all these boxes?
A. Some of them contained weapons, guns. And some of them contained ammo.
Q. Let's look at Government Exhibit 100-HH. Does that show the practice grenades that were found?
A. Yes, sir.
Q. Are they marked in that picture with the No. 5 on the box?
A. Yes.
Q. Let's look at 100-II. Is that a close-up of the same box?
A. Yes.
Q. 100-JJ, is that a close-up of the practice grenades?
A. Yes, sir.
Q. Do you recall how many there were?
A. I do not.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. I show you what's been marked as Government Exhibit 106.
A. Yes.
Q. Does that contain the practice grenades?
A. Yes.
Q. Are those the same practice grenades depicted in Government Exhibit 100-JJ, -II and -HH?
A. Yes.
Q. Can you count for us how many are in this box on the

bottom?
A. Yes. Twenty-one.
Q. Twenty-one loose. How many in the box?
A. Twenty-five.
MR. GORDON: Your Honor, I would offer Government Exhibit 106.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 106 received in evidence.)
BY MR. GORDON:
Q. Obviously, you seized the practice grenades. Why?
A. They were similar to the ones found in the woods by Sergeant Smith. And there was one similar practice grenade in that can.
Q. Do me a favor. Pull that microphone a little bit closer to you. Tell us again, why did you seize those grenades?
A. They were similar to the ones found by Sergeant Smith, and inside the container seized by Sergeant Smith was also one practice grenade.
Q. During your search of the house, did anyone find a 40-millimeter grenade?
A. A grenade?
Q. A live round, an explosive round.
A. No.
Q. Did you find a manual for a grenade launcher?

A. Yes.
Q. Where was that located?
A. It was in the same area as the practice grenades, that area.
Q. Let's look at Government Exhibit 100-LL. Does that show the manual for a grenade launcher?
A. Yes.
Q. Where is it in that picture, please?
A. (Indicating.)
Q. Are we looking at the back of it in the front of the box?
A. Yes.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 107. Do you recognize that?
A. Yes, sir. Yes.
Q. Is this the same manual that is depicted in Government Exhibit 100-LL?
A. Yes, sir.
MR. GORDON: Your Honor, I would offer Government Exhibit 107.
MR. HENDRIX: Judge, before you admit it, can you admit it conditionally, give us time in the next break to take a look at it?

THE COURT: I'll do that. Just remind me, Mr. Gordon, once they have had a chance to look at it.

MR. HENDRIX: 107?

THE COURT: Yes. It's 107.

MR. GORDON: Your Honor, can I switch over to the ELMO for a moment?

BY MR. GORDON:

Q. Lieutenant Sweet, would you read the title of this manual into the record, please?

A. *40-mm Grenade Launcher, M203 and M79.*

Q. I want to turn back to page B-1 in the back. Can you read that first sentence for us, please?

A. "This appendix lists in table B-1 the standard and developmental ammunition used with 40-millimeter grenade launchers M203/M79."

Q. What is the first cartridge listed in the table below?

A. 40-millimeter HE M381 and M406.

Q. On page B-2, does it provide a picture of a 40-millimeter M406 HE cartridge?

A. Yes.

Q. Did you find a manual for hand grenades?

A. Yes.

Q. Where did you find that?

A. Same storage area.

Q. Let's look at 100-KK. Is that manual in this picture?

A. Yes.
Q. Where is it?
A. Inside the envelope.
Q. Inside it or under it?
A. Under it there. You can see the white part under it.
Q. Go ahead. If you can, try to point it out for us.
A. Right there.
Q. Was that manual seized?
A. Yes.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 108-B.
A. Yes.
Q. Is that the same manual depicted in 100-KK?
A. Yes.
Q. Did you seize the envelope as well?
A. Yes, sir.
MR. GORDON: I guess, for the record, 108-A is the envelope. 108-B is the manual. I would offer those two exhibits at this time.
MR. HENDRIX: Can I ask for the same ruling?
MR. GORDON: Is it conditionally admitted, Your Honor?
THE COURT: Yes.

(Government's Exhibits 108-A and 108-B received in evidence.)

BY MR. GORDON:

Q. While Mr. Hendrix looks through the manual in 108, is there information on an MK3A2 hand grenade in there?

A. Yes.

Q. Does it talk about how to operate one of those grenades?

A. Yes.

Q. Back in Government Exhibit 100-GG, you testified that there were guns in some of those boxes?

A. Yes.

Q. Then ammunition there as well as on the other side of the room?

A. Yes, sir.

Q. Did you collect any of the guns or ammunition from the storage room?

A. No, sir.

Q. Why not?

A. It wasn't on the search warrant, and there was no need for us to take them.

Q. You testified that evidence was seized in a second location as well. Where was that second location?

A. The second main location was the -- I would call it the gym downstairs.

Q. Let's look at 100-MM. Is that the gym you are talking

about?
A. Yes.
Q. Was the evidence located in the gym or somewhere else in this picture?
A. Inside that doorway.
Q. The doorway in the back?
A. Yes.
Q. Did you see any guns in the gym itself?
A. No.
Q. Do you recall seeing any guns on a tripod in that room?
A. Yes. The tripod guns, not any rifles or handguns or anything.
Q. Let's look at Government Exhibit 100-NN. Is that the gun that was in this weight room?
A. Yes.
Q. When you went back into that back room off the gym, describe for the jury what you saw back there.
A. When I walked in, the safes had already been opened. And there were four safes were loaded with handguns, rifles. There was guns laying on the floor. There were guns propped up on the walls, just guns laying everywhere.
Q. Let's look at 100-OO. Is that a picture inside the gun room?
A. Yes, sir.
Q. 100-PP, same thing?

A. Yes, sir.
Q. 100-QQ, same thing?
A. Yes.
Q. 100-RR?
A. Yes.
Q. On this picture 100-RR, there's a black floor mat. In the center of that, is there another tripod-mounted machine gun?
A. Yes, sir. That's what you see in the middle there.
Q. The guns inside these safes, were they seized?
A. Some of the ones that were seized may have been in the safe. I don't know. But not all of the guns, no.
Q. Okay. But some guns were seized during the search warrant?
A. Yes, sir.
Q. How did you determine which ones to take?
A. I didn't determine that.
Q. Who did?
A. ATF.
Q. Okay. And did you seize the guns that they directed you to seize?
A. Yes, sir.
Q. Do you remember how many guns were seized?
A. I believe 18 guns and a launcher and a briefcase.
Q. And earlier today did you verify the guns that we're going to present here in court were the guns actually seized --
A. Yes, sir.

Q. -- from the Manns' house during this search warrant?
A. Yes, sir.
MR. GORDON: Your Honor, I would ask the Court's permission to bring in the guns.
THE COURT: Okay.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 110-B. Is this one of the guns that you seized?
A. Yes.
Q. Can you tell us what it is?
A. It is 110-B. Correct?
Q. Yes, sir.
A. HK MP55D.
Q. Is there a serial number on it?
A. Yes, sir.
Q. What's the serial number, please?
A. 43-12981.
Q. I show you what's been marked as Government's Exhibit 110-C. Is this also one of the guns that was seized?
A. Yes.
Q. Can you identify it for the record, please?
A. HK MP5, Serial No. 12204.
Q. I show you what's been marked as Government Exhibit 110-G.

Is this one of the guns that was seized?
A. Yes.
Q. Would you please identify it for the record?
A. It's a Poly Tech Incorp. AK-47, Serial No. PW 85-000629.
Q. I show you what's been marked as Government Exhibit 110-J. Is this one of the firearms you seized?
A. Yes.
Q. Please identify it for the record.
A. It's an F Nationale 223, Serial No. S012524.
Q. I show you Government Exhibit I.
A. 110-I?
Q. 110-I, yes.
A. Okay.
Q. Is this one of the firearms you seized?
A. Yes, sir.
Q. Please identify it for the record.
A. An FIE Model SPAS 12. The serial number is AA00600.
Q. I show you Government Exhibit 112. Is this one of the firearms you seized?
A. Yes.
Q. Please identify it for the record.
A. USAS-12, Serial No. A0002089.
Q. I show you Government Exhibit 110-D. Did you seize this firearm?
A. Yes.

Q. Please identify it for the record.
A. HK A3, Serial No. A016116.
Q. I show you Government Exhibit 109-A. Did you seize this weapon?
A. Yes, sir.
Q. Please identify it for the record.
A. It's a Colt AR-15, Serial No. 209252, with an attached 45-millimeter grenade launcher with Serial No. 175521.
Q. Government Exhibit 107, the grenade launcher manual, on page 2-1, there's a diagram at the bottom. Does that look like the picture or similar to the picture of Government Exhibit 109-A?
A. Yes, sir.

MR. GORDON: Your Honor, before I move on, I would like to offer Government Exhibit 109-A, 110-G, 110-B, 110-C, 110-I, 110-J, 112 and 110-D into evidence.

MR. HENDRIX: No objection. Also, Judge, on 108-B -- what's that one? 107. I'm sorry. No objection.

THE COURT: Those are received.

(Government's Exhibits 107, 109-A, 110-B, 110-C, 110-D, 110-G, 110-I, 110-J and 112 received in evidence.)

BY MR. GORDON:
Q. Lieutenant Sweet, I'm going to show you Government Exhibit 110-M. Did you seize this one as well?
A. Yes, sir.

Q. Please identify it for the record.
A. Fleming Firearms, Serial No. 903SA829.
MR. GORDON: Your Honor, I offer Government Exhibit 110-M.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 110-M received in evidence.)
BY MR. GORDON:
Q. Lieutenant Sweet, I'm going to show you Government Exhibit 111. Did you seize this one as well?
A. Yes, sir.
Q. Please identify it for the record.
A. Battlefield machine gun, Serial No. BM-0834.
MR. GORDON: Your Honor, we offer Government Exhibit 111.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 111 received in evidence.)
BY MR. GORDON:
Q. I show you Government Exhibit 110-H. Did you seize this firearm as well?
A. Yes, sir.
Q. Please identify it for the record.
A. FN223. Serial number is FN 037768.
MR. GORDON: Your Honor, I would offer Government

Exhibit 110-H.

THE COURT: It's received.

(Government's Exhibit 110-H received in evidence.)

THE COURT: Mr. Gordon.

(Proceedings at the bench as follows:)

THE COURT: I want to make sure the record is clear, that defendants moved to exclude these before trial, or maybe as we were getting started. I'm going to receive all the guns, because I've already ruled on it. I know you are saying, Mr. Hendrix, you don't have an objection to them being received. But I'm going to receive all of these over your previous objection.

MR. HENDRIX: I appreciate it.

THE COURT: We're going to receive all of them. I'll receive them. You can call them, and I'll receive them. And we don't have to go back and forth on all this.

MR. GORDON: Thank you.

THE COURT: We'll show for the record they are received over your previous objection.

MR. HENDRIX: Perfect. Thanks, Judge.

(Proceedings continuing in open court as follows:)

BY MR. GORDON:

Q. Lieutenant Sweet, I'm going to show you Government Exhibit 110-P. Did you seize this firearm?

A. Yes.

Q. Would you identify it for the record, please.
A. AKM 7.62X39, Serial No. 162106.
THE COURT: It's received.
(Government's Exhibit 110-P received in evidence.)
BY MR. GORDON:
Q. I'm going to show you Government Exhibit 110-L. Did you seize this firearm?
A. Yes.
Q. Would you please identify it for the record?
A. FEG 7.62. The serial number is SM00164.
THE COURT: It's received.
(Government's Exhibit 110-L received in evidence.)
BY MR. GORDON:
Q. Government Exhibit 110-K, did you seize this firearm?
A. Yes, sir.
Q. Would you identify it for the record?
A. Fleming Firearms Model A113. The serial number is 9035 -- correction -- 3SA027.
THE COURT: It's received.
(Government's Exhibit 110-K received in evidence.)
BY MR. GORDON:
Q. Government Exhibit 110-A, did you seize that as well?
A. Yes, sir.
Q. Please identify it.
A. HK MP5K, Serial No. 21-23285.

THE COURT: It's received.

(Government's Exhibit 110-A received in evidence.)

BY MR. GORDON:

Q. Government Exhibit 110-E, did you seize this firearm?

A. Yes, sir.

Q. Please identify it.

A. That was D? 110-D?

Q. E, like elephant.

A. E. HK SP89, Serial No. 21-18720.

THE COURT: Received.

(Government's Exhibit 110-E received in evidence.)

BY MR. GORDON:

Q. Government Exhibit 110-F?

A. Yes.

Q. Did you seize that?

A. Yes.

Q. Please identify it.

A. DC Industries Incorp., Model ND5-3. Serial number is 3004688.

THE COURT: It's received.

(Government's Exhibit 110-F received in evidence.)

BY MR. GORDON:

Q. How about Government Exhibit 110-N?

A. Yes.

Q. Please describe it for the record.

A. Australian Automatic Arms 223. Serial number is SAP100802.

THE COURT: It's received.

(Government's Exhibit 110-N received in evidence.)

BY MR. GORDON:

Q. And Government Exhibit 109-B, did you seize this?

A. Yes, sir.

Q. What is it, please?

A. 40-millimeter grenade launcher, Serial No. 104164.

THE COURT: It's received.

(Government's Exhibit 109-B received in evidence.)

BY MR. GORDON:

Q. Lieutenant Sweet, will you identify Government Exhibit 109-A?

A. Yes, sir.

Q. Tell us again what kind of grenade launcher it is on there.

A. 40-millimeter.

Q. Thank you. And, again, you did not seize all the firearms in that room?

A. No, sir.

Q. What happened to the rest of them?

A. We left them there.

Q. Did you seize more than you left behind or the other way around?

A. We left behind more than we seized.

Q. Inside the safe, did you find anything other than firearms?

A. I believe there was some medication.
Q. Medication in prescription bottles?
A. Yes, sir.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you Government Exhibits 100-QQQ, -RRR, -YYY, -ZZZ, -UUUU and -VVVV. Is that a representative sample of the medications that you found in the gun safes?
A. Yes, sir.
Q. Let's look at Government Exhibit 100-RRR, please. I'm sorry. Let's start with -QQQ, -RRR. Lieutenant Sweet, just so we're clear, on -QQQ and -RRR, is it the same bottle, we're just rotating it to see the whole label?
A. Correct.
Q. -YYY, is this a different bottle?
A. Yes.
Q. -ZZZ, same bottle as -YYY, we're just rotating it?
A. Yes.
Q. -UUUU. The pills depicted here, were they all inside that brown bag in the picture?
A. Yes.
Q. Then -VVV -- I'm sorry -- -VVVV, is that just a close-up from one of the boxes in -UUUU?
A. Yes.

Q. That's just a representative sample of -- it's not all of them. Right?
A. Right.
Q. I believe most of these, the ones we showed the jury, were prescribed to Randeep Mann. Is that correct?
A. Yes.
Q. Were there other prescription bottles in the safe for other members of Dr. Mann's family?
A. I believe so.
Q. Outside of the residence, was there any duct tape that was collected?
A. Yes, sir.
Q. Do you recall who found that?
A. I believe Cross and Carter with the state police.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q. I show you Government Exhibit 113. Inside of this, is that the duct tape that was found outside?
A. Yes, sir.
MR. GORDON: Your Honor, I would offer Government Exhibit 113.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 113 received in evidence.)

BY MR. GORDON:
Q. Was there any evidence seized from anywhere else in the house?
A. Yes.
Q. Do you remember finding a black three-ring binder in one of the bedrooms?
A. Yes.
Q. I'm going to show you Government Exhibit 100-XXXX and -YYYY. I guess we can just put them up on the screen. Is that the bedroom where the black binder was found?
A. Yes, sir.
Q. Can you see it in this picture?
A. Yes, sir.
Q. If you would, please mark it for us.
A. There.
Q. For the record, it's on the dresser on the left. 100-YYYY, does that show the black binder as well?
A. Yes, sir.
Q. 100-ZZZZ, is that the black binder?
A. Underneath the papers, yes.
Q. The paper on top of the black binder, was that seized?
A. Yes, sir.
Q. Did you mark it as Government Exhibit 12 -- I'm sorry -- on your records, is it Exhibit No. 12?
A. Yes, sir.

Q. Okay. Is that what we're looking at in 100-AAAAA?
A. Yes.
Q. Do you recall coming by the ATF office on June 16th of this year and reviewing the evidence that was seized from the search warrant?
A. Yes, sir.
Q. And did you look at the paperwork that was seized here in 100-AAAAA?
A. Yes.
Q. And did we separate some of the paperwork out of that stack?
A. Yes, sir.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 114-A through Government Exhibit 114-I. Are those the documents that we removed from the papers stacked on top of the black binder?
A. Yes, sir.
MR. GORDON: Your Honor, I would offer Government Exhibits 114-A through -I.
MR. HENDRIX: Judge, I think we would like to see them. We need to take a longer look at them before the Court admits them.

THE COURT: Okay.

BY MR. GORDON:

Q. Lieutenant Sweet, let's look at Government Exhibit 100-BBBBB. Is that the black binder that was underneath the stack of papers?

A. Yes, sir.

Q. Is that also in Government Exhibit 100-CCCCC?

A. Yes.

Q. And the same thing with the black binder, did you come to our office and go through it and we pulled out certain documents from the black binder?

A. Yes, sir.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you Government Exhibits 115-A through 115-R. Are those documents that were removed from the black binder?

A. Yes, sir.

MR. GORDON: Your Honor, I would offer Government Exhibits 115-A through 115-R.

THE COURT: Any objection?

MR. HENDRIX: Your Honor, again, we would ask the Court for an opportunity for us to look through this a little bit more thoroughly before the Court admits it.

THE COURT: Okay.

BY MR. GORDON:

Q. In that same bedroom, Lieutenant Sweet, was there any other evidence seized?

A. Yes.

Q. What was it? Do you recall some newspaper articles?

A. Yes, from the end table.

Q. Let's look at Government Exhibit 100-DDDDD. Are those the articles?

A. Yes.

Q. But they were inside the end table?

A. Yes.

Q. Here you've pulled them out?

A. Yes.

Q. Are those the same articles that I've marked as Government Exhibit 116?

A. Yes, sir.

MR. GORDON: I offer Government Exhibit 116.

MR. HENDRIX: Judge, I actually will just flat object to this because it is a newspaper article. It's hearsay.

THE COURT: What's the relevance of this? We can take it up at the bench.

MR. GORDON: Should we approach?

THE COURT: We can.

(Proceedings at the bench as follows:)

MR. HENDRIX: Let me do the procedural thing. Judge, before I get into that, the number of documents and stuff, we would ask for the Court's indulgence, give us an opportunity to look through that. We're getting close to five. I think Mr. Gordon was going to get to about five or a little bit after.

THE COURT: That's fine. We can break today and come back and make a record in the morning.

MR. HENDRIX: Hearsay objection, relevance objection.

MR. GORDON: On the back of this article, Your Honor, this was sent to Dr. Mann from a witness that we're going to call later to establish a relationship between him and this witness.

THE COURT: Okay. But I mean, this article isn't related to this, though, is it?

MR. HENDRIX: Not that I'm aware.

MR. GORDON: No mention of Dr. Mann. It is a gun case involving a man by the last name Carmen.

THE COURT: I understand that. This was found at the scene. Right?

MR. GORDON: Yes, sir.

THE COURT: You have a witness who you want to show has a relationship with Dr. Mann?

MR. GORDON: Yes, sir.

THE COURT: And this is his handwriting on the article, not Dr. Mann's, but the witness.

MR. GORDON: Well, the witness isn't here yet. I haven't shown that to him. I can tell you his name is Lloyd.

THE COURT: Here's what I'll let you do. You've already identified it.

MR. GORDON: Yes, sir.

THE COURT: If the witness comes in and says, "My name is Lloyd, and I wrote this," then I will receive it.

MR. HENDRIX: May we --

THE COURT: Because the article isn't an article about this case. I think that letter just so happens to be written on that article about a gun case, I guess. I don't know what that means, that letter.

MR. GORDON: Just so the Court knows, some of the documents in 114 and 115, they are additional letters to and from Lloyd Hahn.

MR. HENDRIX: What is that word?

MR. GORDON: "Dissent," "much dissent here."

THE COURT: You can identify it now. If he comes in and says "that's my handwriting" --

MR. GORDON: Okay.

THE COURT: -- we'll receive it. I'll let you make a record on that point.

MR. GORDON: It is at least identified.

THE COURT: It is identified.

MR. GORDON: I won't offer it yet.

THE COURT: Then when he comes in, we'll receive it then.

MR. GORDON: Okay.

THE COURT: I'm sure you'll have a record to be made.

MR. HENDRIX: Sure. Thanks.

(Proceedings continuing in open court as follows:)

MR. GORDON: Your Honor, I'm not sure if I've already done this. But I was told I haven't, so may I approach the witness?

THE COURT: You may.

BY MR. GORDON:

Q. Lieutenant Sweet, Government Exhibits 100-YYYY, -ZZZZ, -AAA through -D, are these all photographs that you took?

A. Yes, sir.

Q. Are they fair and accurate photographs of what you saw during the execution of this search warrant?

A. Yes.

MR. GORDON: Your Honor, I would offer those pictures at this time.

THE COURT: Those are the ones you identified either yesterday or the day before, but we didn't receive them. I'll receive them now.

(Government's Exhibits 100-YYYY, 100-ZZZZ, 100-AAA through -D received in evidence.)

MR. GORDON: Thank you.

Apparently there's three more, Judge. These things are sticky.

BY MR. GORDON:

Q. Government Exhibit 100-EEEEE, -F and -G?

A. Yes.

Q. Did you take those as well?

A. Yes, sir.

Q. During the search warrant?

A. Yes.

Q. Are they fair and accurate depictions?

A. Yes.

MR. GORDON: I would offer those three exhibits, Your Honor.

THE COURT: They are received.

(Government's Exhibits 100-EEEEE, 100-FFFFF and 100-GGGGG received in evidence.)

MR. GORDON: Thank you.

BY MR. GORDON:

Q. Lieutenant Sweet, what did you do with all the evidence that was seized in this case from the house?

A. We placed it inside the van that we had brought to the house. Everything in bags was taped and initialed. And then it was transported to the sheriff's office and locked in a bay and then transported to ATF the next morning.

Q. Did you transport it to ATF?

A. No, sir.
Q. Do you know who did?
A. I believe it was Sergeant Smith and Dodson.
Q. At the conclusion of this search warrant, was Dr. Mann arrested?
A. Yes, sir.
Q. Did he make any comments to anyone upon his arrest?
A. He made a comment to David Oliver.
Q. Is David Oliver an ATF agent?
A. Yes, sir.
Q. What did he say to David Oliver?
A. He said something to the effect --

MR. HENDRIX: Your Honor, I guess I would object if it was not said to this witness. I'm not sure this witness would have a foundation.

THE COURT: Lay a foundation for it. That's sustained. Lay a foundation for the witness to show how he knows.

BY MR. GORDON:
Q. Did you hear the comment Dr. Mann made to Agent Oliver?
A. Yes. I was there with him.
Q. It's not something that someone told you. You actually heard it.
A. Yes, sir.
Q. And these were the words of Dr. Mann?

A. Yes, sir.
Q. And for the record, do you see Dr. Mann present in the courtroom?
A. Yes, sir.
Q. If you would, please point to him. Identify some clothing he is wearing.
A. Black jacket, brown shirt.
MR. GORDON: Your Honor, may the record reflect he has identified the defendant.
THE COURT: Yes.
BY MR. GORDON:
Q. What did Dr. Mann say to Agent Oliver?
A. Agent Oliver advised him why he was under arrest, advised him of the box that was found down the street from his residence. At that time Dr. Mann stated to Mr. Oliver, "Did you" -- "were those planted there?" "Did you plant those there," something to that effect.
MR. GORDON: Your Honor, there's nothing else I can do until I get Government Exhibits 114 and 115 back.
THE COURT: Let's break for today. Ladies and gentlemen of the jury, we have some procedural issues we need to take up in the morning, so we will have you back at 9:30. The lawyers will come back at nine so we can take care of those before the jury comes in, or do we need more time? Is 30 minutes going to be enough, or do we need to have them come back

at ten? Either way is fine with me. I don't know how much time we need.

MR. HENDRIX: I wonder if the jury would like ten.

THE COURT: That's what we'll do. We'll be cautious. We'll have you come back at 10 o'clock. That way, hopefully within an hour we can get a lot of these issues cleared up before we have you in.

From what I understand -- Ms. Whatley brought it to my attention -- that there was a tanker fire on I-40 near where?

MS. WHATLEY: The Crystal Hill exit, Your Honor.

THE COURT: The Crystal Hill exit. That was more than an hour ago. Hopefully it's cleared up. Knowing how things operate around here, it probably is not cleaned up by now. Make sure you look out for that on your way home, or if you go that way, you might want to go a different way.

All right. Same admonition as always. Don't talk. Okay. Have a good evening. We'll see you back tomorrow at 10 o'clock.

(Jury excused.)

THE COURT: Mr. Gordon had one thing he wanted to put on the record before we break.

MR. GORDON: Your Honor, Government Exhibit 100, somewhere in there there was a mislabeling error. And there is no Government Exhibit 100-WW, just for the record.

THE COURT: Ms. Whatley, is today your birthday?

MS. WHATLEY: Yes, sir.

THE COURT: I would have everybody sing "Happy Birthday," but then I would have to sing, and I can't sing at all. So we'll just say Happy Birthday, Ms. Whatley. And don't drive home on I-40 going towards Crystal Hill.

(Overnight recess at 5:03 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Elaine Hinson, RMR, CRR, CCR Date: March 4, 2011.
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and
SANGEETA MANN, a/k/a SUE MANN (2), July 20, 2010
Little Rock, Arkansas
9:50 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 7
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

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On Behalf of Defendant Randeep Mann (1):

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[Continued]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - VOLUME 7 (July 20, 2010)

WITNESSES FOR THE GOVERNMENT:	Direct	Cross	Redirect	Recross
ROWDY SWEET (Continuing)	1216	1218		
JOE CARTER	1235	1240		
CLIFF DODSON	1243			
LISA BARNHILL	1248	1261		
BILL BUFORD	1262	1270		
TODD BILLE	1283	1298	1303	1303
STEPHEN SHELLEY	1306	1325		
RON NEFF	1329	1342		
CECIL NORWOOD	1346	1351	1385	1409
MICHAEL KNAPP	1412	1427		

EXHIBITS: **RECEIVED**

Government's Exhibit 108-A, 108-B..... 1205
Government's Exhibits 117-A through 117-F..... 1246
Government's Exhibit 82-M..... 1253
Government's Exhibits 118-A through 118-D..... 1266
Government's Exhibits 118-E, 118-F..... 1269
Government's Exhibits 119-A through 119-H..... 1282
Government's Exhibits 120-A through 120-H..... 1308
Government's Exhibit 121..... 1312
Government's Exhibit 122..... 1316
Government's Exhibit 123..... 1317
Government's Exhibit 124..... 1318
Government's Exhibit 125..... 1332
Government's Exhibit 126..... 1338
Government's Exhibit 111-A..... 1421
Government's Exhibit 111-B..... 1424

Defendants' Exhibit 7..... 1353

(Jury not present.)

MR. HENDRIX: Good morning, Your Honor.

THE COURT: Good morning. What do we have to take care of this morning?

MR. HENDRIX: Just a few things. A few very particular things, Judge, and then the last thing I need to reserve is to talk about a little bigger global problem.

First issues: 100-K came in, Judge -- can I show it to you, Judge?

THE COURT: Yes.

MR. HENDRIX: That's the picture of the money. I think that it came in. We would object to it as being irrelevant.

THE COURT: Mr. Gordon, I remember when this came in, and that was the bag inside of the -- not the hot tub, but the whirlpool tub had some money in it. I think the officers asked them, "Do you have any money in the house so that once we confiscate everything, we want to make sure everything's tidied up?" He said, "Yeah, we have money hidden under the whirlpool tub. Pull the door down, look in there, there's a yellow bag," or something, and this money was in it. I think the officer testified that it was $12,000, or something. I forget what he said. On here it looks like it was 6,000. What is the relevance of the money stash?

MR. GORDON: You want me to approach or just say it

here?

THE COURT: No, say it there.

MR. GORDON: We intend to trace that money, not just through this search warrant, but subsequent search warrants, and there will be a witness later on who will testify that Dr. Mann offered him a certain amount of money to kill Dr. Pierce since he survived the bombing. So it's to show that that amount of cash was available in Dr. Mann's house.

THE COURT: Okay.

MR. HENDRIX: And so it would be -- the next argument I'll get to on the next exhibits, the same argument applies. It's a Rule 104. Its relevance is conditioned on a future fact, and that future fact has not been met, so we'd ask that -- it's been identified and so forth, but that it not be admitted until that conditional fact has been met.

THE COURT: Mr. Gordon, what's your position on that, that we should hold up on receiving this until the witness comes in and testifies?

MR. GORDON: First of all, Your Honor, it has already been received by the Court, so I think this objection is untimely. My understanding of 104 is that the Court is allowed to admit it, to conditionally admit it until we connect it up later, and that's what I would ask the Court to do, again, because we're going to trace this through several more search warrants.

THE COURT: This is what I'll do on this. I've already received it. What I will do is, if we don't have a witness who comes in and says what the government says will happen, I will entertain a motion to strike it.

MR. HENDRIX: Okay.

THE COURT: At that point we can deal with it. But as it stands now, this is admitted.

MR. HENDRIX: That's good. Then, Judge, the next group of exhibits are 114-A, comprehensively, through 115-R, and these are documents that were seized during the search warrant of the house from a black binder that was in the Manns' bedroom and I think they were at that place where we were conditionally -- they've not been admitted. The admissibility will be conditioned on a future fact. And our position would be the same, except unlike the money picture, I don't believe they've been admitted.

THE COURT: Here what's what I have. 108-A through -B, I think those were conditionally admitted. 114-A through -I, 115-A through -R, and then we had 116. Does that match what you have?

MR. HENDRIX: 116 -- 108-A I've got, and then 114-A through 115-R, and then --

THE COURT: That was the newspaper article, 116. And that was going to be conditioned on some other testimony about the guy who wrote it.

MR. HENDRIX: A future fact.

THE COURT: Yeah.

MR. HENDRIX: So if Your Honor is willing again to go through that process that these are not admitted yet until they're made relevant, the question becomes, are they not published to the jury until that conditional fact is met?

THE COURT: Have we already published those to the jury? I think some of these we might have already shown.

MR. GORDON: 104 and 105 we have not, Your Honor, as 116 we have not either. And, actually, I don't think any of those were published.

MR. HENDRIX: I don't think any of them have.

THE COURT: Did you intend to publish them now? I think you were going to publish them until we held up on it.

MR. GORDON: That was my intention, Your Honor.

THE COURT: I don't remember what 114 -- oh, these were the papers from the binder.

MR. HENDRIX: Right.

THE COURT: Now, let me ask you a question. What's the objection to those? These are documents that the agent said he recovered from the house, they are documents he recovered. What's the objection?

MR. HENDRIX: Relevance. We don't know what they mean, what they're relevant to, do they help prove a fact that's important to the case or not? I mean, I know what -- I know --

THE COURT: One was the manual -- wasn't one the manual?

MR. HENDRIX: The manual's going to come in. I don't see how you can --

THE COURT: We've already received those?

MR. HENDRIX: Going to the manual, Judge, there's two parts to that. The manual is 108-B. I think the relevance is obvious. 108-A was this manila folder that was contained, I guess, in and around the manual, in a box, and it's a series of writings. And our position is the same, we don't know what it's relevant to. It's not been made relevant yet through the government's case. I understand they'll try to make it relevant later.

THE COURT: What's in those writings?

MR. HENDRIX: Sir?

THE COURT: What's in those writings, Mr. Gordon?

MR. GORDON: Essentially, Your Honor, it's a few pages of a phone list is what really it is, handwritten names and phone numbers. And quite frankly, I didn't even know that was inside the envelope until it was pointed out to me. But now that I've seen it --

THE COURT: That's exhibit what?

MR. GORDON: Inside 108-A.

THE COURT: Mr. Hendrix, I'm going to receive those, that phone list. In and of itself, a phone list with some phone

numbers on it is benign, so if the government is going to link that to some other part of the case, you know, I don't know what it's for, but I'll receive it. Just having some numbers on a sheet of paper is not necessarily going to prejudice your client. Now, it might if they show that this number contains the name of somebody who was involved in something else, but then at that point it becomes relevant.

MR. HENDRIX: Okay. Now, the more global problem, and here's what it is, Judge.

THE COURT: Let me do this. So 108-A and -B are received.

(Government Exhibits 108-A and 108-B received in evidence.)

THE COURT: We're still holding 114-A through 115-R. Those are going to be pending --

MR. HENDRIX: For the relevancy objection.

MR. GORDON: Just so I'm clear, at this point in time those cannot be shown to the jury?

THE COURT: 108-A and -B or 114-A through 115-R?

MR. GORDON: 114 and 115.

THE COURT: I think what we've been doing so far, even before they've been admitted, we've allowed you to use them as exhibits, but I have not received them into evidence.

Now, is there any objection to him using those as demonstrative exhibits showing what they found and that type of thing, Mr. Hendrix?

MR. HENDRIX: This is just a practical consideration. Assume that they're not made relevant and the jury's been subjected to them, at that point we would be moving for a mistrial.

MR. GORDON: Your Honor, I would just ask for the Court's permission -- and the witness that I would have to link these up to show their relevance we are still a couple of days away from. So I would just ask permission of the Court then, when I'm asking them, I'd like to preface it with "I'd like to show you some documents that were found in the residence of Dr. Mann," just to remind the jury where these are coming from.

THE COURT: I'm not certain what you're asking. Again, I missed it. You want to do what?

MR. GORDON: I'd like to be able to, just so the jury will understand, if they can't see these now, so when they see them again later, they'll understand that these were the documents from the black binder.

THE COURT: Yes, you can do that.

MR. GORDON: That's fine.

THE COURT: You can even identify them now so the jury knows you're identifying things that will come in later. I think what the objection is, we don't want you to actually show them the actual documents now until we find that they're relevant.

MR. HENDRIX: Just to kind of give everybody a

heads-up, there's going to be some more evidence of cash, and we'll be objecting to that. So I just wanted to give a heads-up on that.

THE COURT: Now, we have practical considerations. Sometimes parties don't want to stand up and down, pop up and down making objections because they don't want to offend the jury. We can handle this one of two ways. You can object to all of it now and I can overrule it and we can make a record on it so you don't have to object. Sometimes people want to object so they let the jury know we disagree with this. So if you want to do that, you can do it that way too.

MR. HENDRIX: I was going to say, if the jury's not offended by me yet -- no, I'll go for the easier route on that.

THE COURT: So you're saying all pictures of cash, you're objecting to those?

MR. HENDRIX: Yes, sir.

THE COURT: And I'll overrule that.

MR. HENDRIX: And then the final thing is a little bit more of a global problem, and let me be specific and then I'll back up. We would like to have access to -- I'll give you an example. The entire contents of the black binder, the government selected portions of that, I gather. We would like to be able to go through it. The box that the manuals were found in, same thing. Now, here's what happened. Back on February 5 of 2010, Mr. Lassiter, Mr. Hall, and Mr. Mann, went

and looked at this stuff, and looked at the contents of the black binder and so forth. Afterwards, he wrote a letter to Ms. Whatley saying we would like copies of all this so we can go through it. Mr. Lassiter and Ms. Whatley have been talking this morning, and Ms. Whatley says she did not get that letter, and I have absolutely no reason to doubt that. But just as a practical matter, we still have not seen it.

THE COURT: Okay. What would be the objection to having that evidence box brought into the witness room and letting counsel just sit down and go through it? Because I can see where counsel may say, "Well, okay, jury, you've seen this stuff, but how about this stuff over here that exonerates us?"

MR. HENDRIX: I'm sorry, Mike. There was one other part of that production request, and it's the doctor files that we have been through, but I need to go back through them. We weren't allowed to make copies of those files.

THE COURT: Mr. Gordon, do you have any objection to bringing those in and letting them sit down and go through them?

MR. GORDON: No, Your Honor, that's fine. But I do want to say for the record, before Dr. Mann got indicted on Counts 1 and 2, when it was originally just the guns, the grenades, and the obstruction counts, the defense was given access to all this stuff, and they actually sent a clerk from their office who spent three days in our office photocopying every single page from what they're now wanting to see. We

reinitiated discovery once Counts 1 and 2 were added, and they have reviewed these documents. And they're more than welcome to come see it again, but I want the record to be clear that we have been giving them access to this stuff and they previously had copies of it.

THE COURT: The record is made on that. I think what the issue is, sometimes during a trial you start focusing in on things, and now counsel wants to take a look to make sure there's not anything else that they can use.

MR. HENDRIX: That's exactly right. With the way our discovery rules are in federal court, suddenly something's relevant, you go, wow, I missed it the first time.

THE COURT: This is a heavy evidence, exhibit, document case, and so I can see where you go through it five times, and then it's not until you get to trial and hear what's going on is when you piece it all together and say I need to look at that again.

MR. GORDON: Judge, we'll gladly make it available if they'll tell us when and where. I'm not going to just turn it over to them.

THE COURT: We understand that. I had a case once, I was actually on the defense side, where I had a tape of a conversation that I gave to the local city attorney down in West Helena. He never sent that tape back. As I sit here right now, I still have not gotten my tape back. And he's passed away and

everything. So I understand that you don't want to hand over originals, you know. And I'm not going to say that he got rid of the tape. I just say that that tape does not exist anymore.

Are we pretty much ready?

MR. HENDRIX: Yes, sir.

MS. WHATLEY: Your Honor, I have a question, because Mr. Hendrix and I were trying to work something else out in addition to all this other stuff. I spoke to Mr. Williams this morning, and he said we will not be taking a half day because the funeral --

THE COURT: Yes. We found out from the juror yesterday evening that the funeral is going to be this Saturday, and so she does not need a half a day. Now, I'm looking at counsel and I see that there might have been some plans for a half day. Now, let me ask you this. Did anybody -- from both sides. And I remember early on the lawyers asked me could we schedule in some breaks during this trial, because if you have a four, five, six-week trial, people have other things to do and they have to prepare. And I said no. I said we're going to work eight to nine, ten hours a day, and we're going to make this thing go because we're going to get finished. Now, I said if we need time, we will take it. I just didn't want to plan any in and then have everybody want to take different days. For scheduling purposes, I can't be here on the 29th. I have a CLE that I had been planning to give for some time over in Memphis

that I have to go give. So put that on your calendars for the 29th. Have you discussed an afternoon or morning that you want to take off? Because that would allow me to go do some other things.

MR. HENDRIX: We haven't. But let me tell you where we are and what Ms. Whatley is talking about. We've subpoenaed all of those, the medical board files on a handful of doctors, and Ms. Cryer tells us that it's huge, I mean, like crates of stuff. And so what Ms. Whatley and I have worked out is they're going to bring them up -- and we have to pay for the copying, which is about 1,800 bucks. So what we had in mind was to bring them here and for us to go through it, and go, don't copy that, copy this, don't copy that. And that will be a little time-consuming --

THE COURT: Just tell me when.

MR. HENDRIX: Sir?

THE COURT: Just tell me when. Have you decided on a day, or do you know?

MR. HENDRIX: I was looking for a full Friday off.

THE COURT: Let me ask this, for the government. What I'd like to do is, if we're going to do this -- because I know when each side is putting on their case, they get into a little flow. So if you have a natural break in your witnesses that we could take some time, that would be good.

MR. GORDON: Your Honor, can we approach on that?

THE COURT: Yes.

(Bench conference reported as follows:)

MR. GORDON: And I just wanted to approach because there's media here and I didn't want this to get out. We have a witness who's in the Witness Protection Program and the marshals have gone to great lengths to get him here Friday. He has to testify Friday, come and go on Friday. In order for our case to make sense, we would ask that we not take a break between now and Friday, but maybe take one on Monday instead of Friday. Because if we pull this guy out of order, it's not going to make a whole lot of sense.

THE COURT: What is the date Monday? Is it like the 27th? That means we'll end up taking Monday and Wednesday?

MS. WHATLEY: 26th is Monday.

THE COURT: 29th is not until Thursday. Okay. Here's another thing, and we can put this on the record too. The marshals approached me, the person who is transferring this guy, and apparently he's in witness protection, he has a new name now, and they've asked me to instruct defense counsel -- and I said I won't instruct them, but we'll talk about it -- to not ask him about his new identity, his new location, his new everything. Because one thing, it is irrelevant what his new name is. But they, for safety reasons, wanted me to instruct defense counsel to do whatever you wanted to do with him on that day because you won't have access to him again, and I told them

I wouldn't do that. So what we ended up agreeing on was, if defense counsel needed to recall him, just let us know a few days in advance and I'll get in contact with the marshal and they'll bring him back. But they don't want to keep him around here for very long because apparently -- well, they told me some stuff, people may come down here and try to make problems for him, having nothing to do with this case.

MR. HENDRIX: We've all talked about this, and our only concern is if -- I don't care whether it's outed he's in WITSEC or not. But if it is, I want it to be abundantly clear to the jury it wasn't about this case. We weren't in agreement on that. I think the government's higher-ups were telling them to go one way and not have us be able to --

THE COURT: Where did you plan to go on that? And you don't have to give up your whole case as we stand here, but in what general direction?

MR. GORDON: When I talked to a supervisor, I was told to bring it up.

THE COURT: Now, you know he's in witness protection based on testimony he gave out in Oklahoma City, or Tulsa, in a motorcycle gang case or something.

MR. GORDON: Well, actually, it's from a California case. It had to do with dealings from his gun business in Oklahoma City.

THE COURT: Okay.

MR. GORDON: That same business will be relevant in this case, but the California case has nothing to do with it.

THE COURT: Okay. Just know if you bring it up, I'll have to let defense counsel then clear it up and let everybody know that, "Look, your witness protection situation has nothing to do with this case."

Now, you're not going to ask what his name is --

MR. GORDON: No, sir.

THE COURT: -- or "Where are you located? You're hiding out."

MR. GORDON: Even if I wanted to stay away from it, the fact that he's in WITSEC, depending on the cross, because he cooperated with the government and got a very large 5K where he ended up only doing five years on a 130-month sentence, and depending on however they want to get into that, I think WITSEC would come up.

MR. HENDRIX: You know what we might want to do is -- because I'm sensitive of the concerns. We don't have that *Giglio* yet, so I can't address it. I don't know how far we're going to go with this guy and I don't know what deals he's gotten. But once we get to that point, Judge, can we all come back in chambers and work through this thing, figure out how we're going to do it?

THE COURT: We'll do it.

Do I need to tell the jury now that we might be taking some

extensive breaks in the next week or so? I'm talking about, are we going to have to meet and take time off to talk about all this evidence from these witnesses? Because I don't want them sitting over here -- I had the lady, I think it was Juror No. 12, maybe it was Juror No. 11, yesterday, as we were at the bench, she's over there (motioning), and I'm sitting there looking at her, I'm like, come on now, and she's letting me know that she's upset and she's tired of this. And you know that little look that sometimes people get, and she was getting it all. So, you know, if we're going to take time, I'd rather us do it like this than have them sitting over there. But I don't want to stop every five minutes. So if you all think you have some major issues we need to take up, let's take some time and let them go. Okay?

Anything else we need to do?

MR. HENDRIX: Now we need a ten-minute break.

THE COURT: You want to go to the restroom?

MR. HENDRIX: I do. At least.

THE COURT: That's fine. How many witnesses do we have this morning? We have the cross of that witness that was on yesterday, and who else?

MR. GORDON: We've got three new ones in the witness room right now and one on the way.

MR. HENDRIX: Those three will get us to noon, you think?

MS. WHATLEY: Depends on your cross.

MR. GORDON: Oh, yeah.

MR. HENDRIX: All search warrant stuff?

MS. WHATLEY: Yes.

MR. HENDRIX: No big drama then this morning?

MS. WHATLEY: No.

THE COURT: No big dramas?

MR. HENDRIX: We'll see.

(Whereupon, proceedings continued in open court as follows:)

THE COURT: Let's take ten minutes. Let the jury know that we're going to bring them in at 10:25.

COURT SECURITY OFFICER: Yes, sir.

THE COURT: Thank you. We'll be in recess until then.

(Recess from 10:14 a.m. until 10:27 a.m.; jury present.)

THE COURT: Mr. Hendrix, cross-examination, or did you have more?

MR. GORDON: I had just a little bit more, Your Honor.

THE COURT: Okay.

MR. GORDON: May I proceed, Your Honor?

THE COURT: You may.

ROWDY SWEET, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

CONTINUED DIRECT EXAMINATION

BY MR. GORDON:

Q. Agent Sweet, welcome back.

A. Thank you.
Q. I'll remind you that you're still under oath.
A. Yes, sir.
MR. GORDON: Has 108-B been received by the Court?
THE COURT: 108-A and -B have been received.
MR. GORDON: Thank you.
BY MR. GORDON:
Q. Agent Sweet, let's look at Government's Exhibit 108-B. Would you read the title, please.
A. "Grenades, Hand, and Rifle."
Q. And when we look at the table of contents here, does this manual deal with the operation, maintenance, shipment and storage of grenades?
A. Yes.
Q. On Table 1-1, down under description, offensive, is the MK3A2 one of the hand grenades discussed in this manual?
A. Yes, sir.
Q. Is there a picture of an MK3A2 offensive hand grenade on page 1-6?
A. Yes.
Q. And then in Chapter 2, entitled "Operating Instructions," does it include instructions for an MK3A2?
A. Yes, there in the first sentence.
MR. GORDON: Thank you, sir.
Pass the witness.

THE COURT: Cross-examination?

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. And I'll just start, Detective, where Mr. Gordon ended. And let's go back. Where was this manual found?

A. This one, that one was in the garage storage.

Q. It was in the garage storage room. In the new part of the garage, or the new garage, I guess. There are two garages.

A. The attached one.

Q. Yeah, it's in the attached one. And there are two storage rooms in that attached garage. Right?

A. Yes.

Q. Did you go through both of them?

A. Yes.

Q. And one of them had principally boxes of guns. Right?

A. Right.

Q. And they looked like dealer guns, you know, shipped to you as a dealer and so forth. Right?

A. Okay.

Q. Had ammunition?

A. Yes.

Q. And ammo cans and that sort of stuff?

A. Yes.

Q. And that's separate and apart from the interior of the home

where the collection actually is. Correct?
A. Yes, sir.
Q. And that's downstairs in the big locked safes and all that?
A. Yes, sir.
Q. And this storage room didn't have the type of exotic weapons in it that the collection has. Right?
A. No, sir.
Q. Okay. And then I want to show you what's marked as Government's LL. Was the manual found in that box in the storage room? Can you see that?
A. It's bright, but, yes. It was E-11. Well, that's the grenade launcher manual.
Q. So that was the box. Right?
A. Now you're talking about the grenade launcher manual?
Q. Either/or, the grenade -- we have two manuals, the grenade launcher and the --
A. That E-11 was the grenade launcher manual.
Q. Where was the grenade manual? Was it in the same place?
A. It was in the garage storage also.
THE COURT: We're getting switched over. You said that was LL.
MR. HENDRIX: We had 100-LL.
THE COURT: 100, okay.
BY MR. HENDRIX:
Q. I'm sorry. Now, just for my clarity, again, were both

manuals found in that box?
A. That's not the photo of the "Grenade, Hand, and Rifle" manual.
Q. Where was this box?
A. In that garage storage.
Q. What was in it?
A. That box there?
Q. Yeah.
A. That's the 40-millimeter grenade launcher manual.
Q. Where was the grenade manual found?
A. In that same area.
Q. But not in that same box?
A. No.
Q. Can we look at 100-KK? Is that the same box or a different box?
A. That's where the grenade launcher manual is.
Q. Okay. Two different boxes?
A. Right.
Q. Right? One had the grenade launcher manual, this one, a separate box had the grenade manual?
A. Right.
Q. And where was this box found?
A. Garage storage.
Q. Same area?
A. Right.

Q. Were they next to each other or on top of each other or anything?
A. I don't recall. I'd have to look at the picture back. Far back picture. I don't recall.
Q. Do you remember taking a picture of that?
A. Yeah, I took a picture of the whole room.
Q. Okay. Is there a picture of the whole room we can pull up to tell us where it was? Do you know which one it is? And this is 100-GG. Is that what we're talking about?
A. Well, it's going to be on this -- it will be somewhere on these shelves right in this area (pointing).
Q. Okay. I see one box. Do you know where the other one is?
A. I can't tell in that picture.
Q. But close to it?
A. Right. On that shelving area.
Q. And what we have here are just boxes and boxes. It's a clear storage area. Right?
A. Yes.
Q. Now, in the boxes, two different ones, that contained the manuals, two different manuals. What other documents were in there? Do you remember?
A. I don't remember.
Q. Was it just a bunch of paperwork stacked up on top of each other?
A. Yes.

Q. Were the manuals on top or on the bottom, in the middle, do you remember?
A. They were there where they were in the pictures.
Q. Which is --
A. Of -E -- well, I don't know what your numbers are, but --
Q. Let's look at 100-LL.
A. Right.
Q. What's that?
A. That's the 40-millimeter grenade launcher manual.
Q. That's the manual?
A. Yes, sir.
Q. Okay. And then 100-KK?
A. That's the "Grenades, Hand, and Rifle" manual.
Q. Where is it?
A. It's underneath the manila folder there.
Q. I gotcha.
A. That top piece.
Q. Beg your pardon?
A. It's underneath that top piece. Both were taken at the same time, those right there (pointing).
Q. Now, I know you're not an ATF agent. You've worked with ATF before. Right?
A. Yes.
Q. And if you don't know the answer to these questions, that's fine. I'll ask them of an ATF agent. But are you aware that

having grenade practice rounds is not illegal for anybody?
A. I don't have that knowledge.
Q. You don't know that?
A. (Shakes head.)
Q. Are you aware that having a grenade launcher is subject to ATF regulation --
A. I can't say I've read that law, but --
Q. Makes sense?
A. Right.
Q. Let's go back to the grenade launcher manual. It would make sense that if you lawfully own a grenade launcher, one might also want the manual to the grenades. Right?
A. They may, yeah.
Q. And on this grenade manual -- how do we want to do this? May I do it on the ELMO? Going back to it, this looks like a standard issue manual from the DOD, Department of Defense, and it's dated September 1971. Right?
A. Right.
Q. Okay. And you guys have emphasized that it contains information regarding the MK3A2, but it actually contains information about a whole host of grenades, doesn't it?
A. Yes, sir.
Q. I mean, page after page of them. Right?
A. Correct.
Q. Okay. And it's not devoted just to hand grenades. Right?

There's a whole section here on rifle propelled or propelled grenades. Right?
A. I haven't read the whole book, so --
Q. You wouldn't disagree with that? I guess we can go to the index. Description of functioning, general hand grenades, rifle grenades. Right?
A. Yes, that's what it says right there.
Q. And one would assume that such a manual would also be pertinent for practice rounds. Right?
A. I would guess. I don't know.
Q. Well, it would make sense, wouldn't it, that a manual -- because there's two types of grenades -- well, several different. But if hand grenades, rifle propelled, but then you also have the live version and the practice round?
A. Right.
Q. The practice round is so people can practice on these things?
A. Right.
Q. So a manual like this would be instructional for an owner of a lawful grenade launcher and practice rounds. Right?
A. I would assume. I haven't ever used one, so --
Q. You saw the ammo tin and its contents that were in the clearing by the wooded area. Right?
A. Yes.
Q. That Mr. Kimbell and Mr. Rinke found?

A. Right.
Q. And you saw those grenades. Right?
A. Yes.
Q. And I'm looking at 98-G, and that's a picture of the interior of that ammo tin that shows a live 40-millimeter, correct, which would be on our left?
A. I can't see it on here. I'm blank here.
Q. You've got nothing?
A. No.
Q. Still nothing? Wait.
A. Here we go.
Q. It's gizmoing up. On the left is the live 40-millimeter round. Right?
A. Yes.
Q. And on the right is the practice round that was found in that ammo tin on -- what day are we talking about, March 4 of '09? Correct?
A. I believe the can was found on the 3rd, but right.
Q. On March 3?
A. Yes.
Q. The one on the right is the practice round that was contained in there. Right?
A. Yes, sir.
Q. And can we look at first 100-II? Now, also, in the storage shed in the garage where the manuals were, you found these

practice rounds in the storage room during the state search warrant. Right?
A. Yes, sir.
Q. And can we look at 100-JJ? That's a close-up of them?
A. Yes, sir.
MR. HENDRIX: Mary Anne, is there any way to do 98-G on one side and this one on the other? That would be great.
BY MR. HENDRIX:
Q. Okay. The bottom is, again, the ones that were found in the tin and on the right is the practice round. Correct?
A. Right.
Q. And on the top are the practice rounds that I guess the next day you took from the storage room in Dr. Mann's house. Right?
A. Yes, sir.
Q. They do not look the same, do they?
A. They have a different color on the bottom.
Q. They have a different color? Are you aware whether or not they even have the same lot numbers or anything?
A. I'm not sure, sir.
Q. They're not similar practice rounds, are they?
A. Did you say they're not similar?
Q. Yeah. Different colors. Right?
A. They appear similar to me, but --
Q. I understand. The similarity is because they're both

practice rounds?
A. Right.
Q. And both have a blue top. Correct?
A. Right.
Q. The canister part, cartridge part, looks like the ones on the top are orange or pink and the one on the bottom is white. Right?
A. Right.
Q. Were you able to look at lot numbers?
A. I didn't look at those lot numbers.
Q. Are you also aware of -- I think we have live rounds, we have practice rounds. Are you familiar with flares?
A. No.
Q. Do you know what a flare is?
A. What type are you talking about?
Q. Like the type that can come out of a grenade launcher and they go up and they scatter --
A. Seen them on TV. That's about it.
Q. You know what I'm talking about, you've seen them in all the movies, right, and it has a little umbrella and comes down and lights the area?
A. Right.
Q. You know those also can be fired out of a grenade launcher. Right?
A. I'm not familiar, no.

Q. All right. These ammo cans, you guys looked at the lot numbers on these things. Right?
A. Yes, sir.
Q. And, for instance, I'm looking at this one, which is marked Government's Exhibit's 99-A, and it has a lot number, lot LC-07B606L250. Does that sound like the lot number?
A. Right, right.
Q. There's another one that has the same lot number, the exact same number. Right?
A. Okay.
Q. Does that sound right?
A. Yes.
Q. Just to be sure.
A. I don't know what state exhibit number compared to my numbers was. So I don't know that the exact two you're pointing to has the exact numbers on it.
Q. I understand. If you need to confirm this, feel free to come down here. I'm looking at 102-A, it has the exact same lot number, LC-07B606L250. Right?
A. Okay.
Q. Now, when a manufacturer manufactures something, they oftentimes put lot numbers on them to identify them. Correct?
A. I would assume.
Q. Yeah. It's a way of identifying these things.
A. Right.

Q. And we now know that at least two can have the exact same lot number. The question is, do you have any experience to know how many cans could have the same lot number? The manufacturer stamps the same lot number on there?
A. No. That's why we took the cans.
Q. Yeah. When a manufacturer manufactures something, they do it in lots and stamp the same number on there. Are you aware whether or not these particular ammo cans with that same lot number, there are hundreds and hundreds that were produced with the exact same number on it?
A. I'm not aware of that.
Q. Okay. A few questions. You guys found some medications. Is that right?
A. Yes.
Q. And they were prescriptions to Dr. Mann. Right?
A. Yes.
Q. Are you aware that he has had a significant back injury, broke his back at one point in riding a motorcycle --
A. I don't know.
Q. -- and he has to be prescribed pain medication --
A. I don't know anything about Dr. Mann, about that.
Q. Did you find other prescriptions for other family members?
A. There were others, but I couldn't tell you the names or anything.
Q. Okay. Let's move on to another topic real quick. You guys

took black plastic sheeting. Is that right?
A. Yes, sir.
Q. And can we pull up 100-FF? Do you see that?
A. Yes.
MR. HENDRIX: Your Honor, can I have just one-half second?
THE COURT: Yes.
BY MR. HENDRIX:
Q. When you look on this, Detective Sweet, I don't know if you can get it any bigger, but up here, I'll put my circle around it, it says "4 mill." Do you see that?
A. Yes, sir.
Q. Do you know what "4 mill" means?
A. No. No.
Q. Okay. You don't know anything about that?
A. No.
Q. You seized this. Where was this plastic, by the way?
A. It was in the, I guess, main garage, the garage that was attached to the house, that was part of the house.
Q. And other black sheeting was found too. Right?
A. Yes.
Q. Where was it?
A. In where the ammo cans were found.
Q. And you guys seized that and you ultimately turned it over to ATF. Right?

A. Yes, sir.
Q. You're aware ATF then submitted it for forensic comparison to black plastic or sheeting that was found at the bombing scene and the black plastic sheeting that the ammo --
MR. GORDON: I'm sorry, Your Honor. There's been no testimony there was any black sheeting found at the bomb scene.
MR. HENDRIX: I thought there was. But for the purposes of this question, I'll go ahead and limit it to this ammo tin.
BY MR. HENDRIX:
Q. This black plastic around this ammo tin, are you aware that this black plastic that you guys seized from the house was compared to the black plastic around this ammo tin? Are you aware of that?
A. I was assuming that had been done, but, no, I don't know the results or any of that.
Q. Then you are or are not aware that they did not match?
A. No, I didn't know.
Q. Moving on to the guns that were displayed here. You guys went down into that basement workout area where the gun collection is. Right?
A. Right.
Q. And did you estimate that there were like 110, we call them NFA weapons?
A. There was --

Q. Machine guns, exotic weaponry, and so forth?
A. Right.
Q. As a matter of fact, did you learn through the course of your investigation that Dr. Mann also has a business in the FFL, it's either in his name or in the name of Exotic Weaponry?
A. I don't know.
Q. You do not know that? Okay. Anyway, a substantial collection of guns. Right?
A. Right.
Q. And are you a gun guy?
A. No.
Q. I say that sort of -- I'm not either. Do you know what I'm talking about, people that are into them, collect them, like to shoot them? There's sort of a whole culture around that, isn't there?
A. Right.
Q. Particularly in your neck of the woods, it's a big thing. Right?
A. Right.
Q. Do you have any knowledge or experience to say whether these are expensive or not?
A. No. I would assume they are, but I couldn't give you a price on any of them.
Q. And they all look -- I mean, they were found essentially in pristine condition. Right?

A. Right.
Q. They're not dirty, they don't look like they've been fired, they clearly look like they're part of a collection. Right?
A. I couldn't tell you if they were fired or not.
Q. They look clean and new. Right?
A. They look clean.
Q. Now, y'all took how many of that 110 out that day?
A. I believe there was 18, and then with the exception for the detached grenade launcher in the briefcase.
Q. And you're aware there's never been an allegation in this case that the two grenade launchers were not lawfully kept? In other words, your information is they're lawful weapons, lawful for Dr. Mann to possess. Correct?
A. Well, I don't know.
Q. You don't know that? Okay. Assume that that's true, then I think we're left with either 16, 17, or 18 weapons that y'all seized. Why did you take them?
A. Why did I take them?
Q. Yeah.
A. During the search, I was -- I wasn't actually in the area where the four safes were. The ATF agents handled that part, because I couldn't tell you what weapons were legal to possess or not legal.
Q. There were ATF agents on the scene. Right?
A. Yes, sir.

Q. And isn't it true that you were told, "We've checked 17 of these weapons and they're not properly registered," and that's why you took those weapons? Right?
A. I took them at their direction.
Q. Because ATF was saying they were not registered. Right?
A. I couldn't say -- I don't remember if it was because they weren't registered, what reasons. I knew they weren't supposed to have them.
Q. Are you aware that today Dr. Mann is only charged with two weapons that the government says and that ATF says aren't properly registered?
A. Just now you told me.
Q. Yeah. Can you think of a reason -- are you familiar with ATF recordkeeping and whether it's accurate or not?
A. I'm not familiar with their recordkeeping, no.
Q. Well, if they say on the scene that there are 17 that aren't properly registered, but we now know that they only accuse him of two, recordkeeping may not be very good with ATF, is it?
A. I couldn't testify to that.
Q. Okay. The two grenade launchers, which I believe this is one, looking at Government Exhibit 109-A, and this is the launcher part. Do you have any idea whether that was submitted for any sort of forensic analysis to determine whether a 40-millimeter grenade had ever been fired from it?

A. I don't have that knowledge.

MR. HENDRIX: Judge, can I have just a minute?

THE COURT: Yes.

(Mr. Hendrix confers with co-counsel and defendant Randeep Mann.)

BY MR. HENDRIX:

Q. Final question. Are you aware that when you buy a weapon such as these -- and, again, I'm going to keep referring to them as NFA weapons -- that the transferor will oftentimes send the manual, the instruction manual with it, in other words, you buy both the weapon and the manual associated with it?

A. No, I'm not aware of that.

Q. Okay.

MR. HENDRIX: That's all I've got, Judge. Thanks.

THE COURT: Redirect?

MR. GORDON: No questions, Your Honor.

THE COURT: Okay. You can stand down.

THE WITNESS: Thank you.

THE COURT: Call your next.

MR. GORDON: United States calls Joe Carter. Your Honor, I don't believe Mr. Carter has been sworn.

THE COURT: Mr. Carter, come down and let's get you sworn in. Raise your right hand.

JOE CARTER, GOVERNMENT'S WITNESS, DULY SWORN

THE COURT: Mr. Carter, have a seat right here.

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good morning.

A. Good morning.

Q. Please state your name for the record.

A. Yes. Special Agent Joe Carter.

Q. And how are you employed, Agent Carter?

A. I work for the Arkansas State Police.

Q. How long have you worked there?

A. I have worked there since 1999. I spent seven years in the highway patrol division, and the last four years I've been in the criminal investigation division.

Q. Do you have any other prior law enforcement experience?

A. Yes. Seven years I worked for the Pope County Sheriff's Office in Russellville. Part of that time I was a jailer and part of that time I was a deputy.

Q. Tell the jury, please, how you got involved in this case.

A. I received a phone call from Special Agent Stacie Rhoads. She told me that she had gotten a search warrant for the defendants' residence, and she asked that I come and assist in the serving of that search warrant.

Q. Was that on March 4 of 2009?

A. Yes, it was.

Q. Do you know Dr. Mann?

A. No. I just know of him. I don't know him.

Q. You're not a patient of his?
A. No.
Q. Do you know his wife or any of his children?
A. No.
Q. When Agent Rhoads contacted you about helping her out on the search warrant, what did you do?
A. I drove to Russellville and I met with her, and she and I went to Dr. Mann's office. We went to the back of his office, and he met us out back. We went there to tell him that we had the search warrant, asked him to come to the house and open it up for us. When we arrived, Agent Rhoads talked to him briefly, and he didn't -- he said something like, "I've kind of expected this." Wasn't too awful surprised.

After we briefly talked with him, we went to his residence. He got in one of his vehicles and he drove. We followed him to his residence. He was on the phone on the way to the residence. Then when we arrived, he started opening up everything for us. And I stayed outside. Went in a little bit at the beginning. Agent Rhoads and Lieutenant Sweet started taking photographs, and I stayed outside with a couple of other officers and started a ground search around the outside of the residence.

Q. Agent Carter, let me cut you off. When you got to the house, was Mrs. Mann there?
A. No.
Q. Did she show up during the search warrant at all?

A. Toward the end of the search warrant, she showed up with a gentleman that I believe she picked up from the airport.
Q. You testified one of the first things you did was to search the outside of the house?
A. Yes.
Q. And during that search, did you find anything?
A. Around the back of the property, we found some duct tape, and we collected it as evidence.
Q. Was that handed over to Lieutenant Sweet?
A. Yes, it was.
Q. Did you search inside the house at all?
A. Yes. On the interior of the residence, upstairs, there was a master bedroom, or a bedroom upstairs. That was kind of the focus of my search. I searched that area.
Q. Let's look at Government's Exhibit 100-XXXX. Is that the room you searched?
A. Yes, it is.
Q. And what evidence did you find -- seize in this room?
A. There was a notebook, a three-ring binder there on the dresser that had some papers on it.
Q. Let's look at Government's Exhibit 100-ZZZZ. Is that the notebook?
A. Yes, it is. That's the notebook with the papers on top of it that we collected.
Q. Whose hand is that in the picture?

A. That would be mine.
Q. Was that black binder in that picture, and the paperwork on top, seized?
A. Yes, it was.
Q. Did you seize any other evidence from this room?
A. Yes. There was a nightstand by the bed. In the top drawer of that stand, there was some newspaper articles. We collected those as well.
Q. Is that what we're looking at in 100-DDDDD?
A. Yes. Yes, that was it.
Q. The bedroom you searched, was there a bathroom attached to it?
A. Yes. If you walked in the front door of the bedroom, to the left there was a bathroom. I did search that bathroom as well.
Q. Did you find anything unusual in there?
A. In the shower, I opened the shower door, and there was a spare, or a tire in there, a tire and wheel both sitting in the shower.
Q. Let's look at 100-EEEEE. Is that a picture of the shower and the tire?
A. Yes, it is.
Q. Did you talk to anyone about the tire?
A. I talked to -- I found the tire. I went out, and there were some other officers -- outside that bedroom was a dining

room area, and I had said, "Well, there's a tire in the shower in here." And by that time, Mrs. Mann had arrived, and she said that Dr. Mann had brought that in the house to clean it; it was dirty and it was too cold outside to clean it, so he brought it in the house to clean it.

Q. Was that tire seized?

A. No, it wasn't. It wasn't part of our search warrant.

Q. Thank you, sir.

MR. GORDON: No further questions. Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Agent, how are you?

A. All right.

Q. Good. Just two areas, actually. You testified that when you guys got there -- well, let me back up. It was you and Stacie Rhoads that actually met Dr. Mann at his medical clinic to say we've got a search warrant. Right?

A. Yes, sir.

Q. And he was, I gather, hospitable to you in every way?

A. Yes, sir.

Q. He didn't resist the warrant or anything like that?

A. No, sir.

Q. In fact, he voluntarily got in and came to the house and opened the doors for y'all, unlocked everything so y'all could

go in and do?
A. Yes, sir, that's correct.
Q. He was entirely cooperative with you?
A. Yes, sir.
Q. And was it at the clinic, I think you said, that he didn't seem too awful surprised for you guys to come?
A. No, sir.
Q. Are you aware that he'd been interviewed, like a lot of doctors, on February 4 is when his interview was, and I think Stacie Rhoads was part of that? Were you aware of that?
A. Yes, yes. Yes, I had talked with Agent Rhoads and she had told me that.
Q. And are you aware at the end of that interview he was told, "We may have additional questions and come back and want to talk to you," and he said "Fine"?
A. It wouldn't surprise me if that was said.
Q. Okay. And of course, this was a big -- a month later, there had been a significant bombing of a medical doctor in West Memphis, and everybody knew that doctors that may have had problems with the medical board were being interviewed. Right?
A. I would assume. I didn't know much about that case, but yes, sir.
Q. So if you assumed that, it's not a big surprise then that you guys would come back a month later and want to talk to him?
A. No, sir.

Q. On the tire -- and let's go over that. You guys -- and I don't need it. You saw a nice collection of automobiles at his house. Right?
A. Yes, sir.
Q. Okay. And they were well maintained. Right?
A. Yes, sir.
Q. Clean?
A. Yes, sir.
Q. Right? And the tires on those cars were all clean. Right?
A. I didn't inspect all the cars, but most of them did appear to be clean.
Q. Yeah. It's a nice collection. Obviously, a guy who took pride in two things. He had a nice gun collection. Right?
A. Yes, sir.
Q. And he had a nice collection of cars. Right?
A. Yes, sir.
Q. And it looked like energy and time was devoted to both of those things?
A. I would -- yes, sir.
Q. And it was cold. Right?
A. Let's see. It was March -- yes, sir.
Q. And so Sue was right when she said, "Well, yeah, he brought the tire in to clean it because it's too cold to take the hose outside to do it." Right?
A. I would assume.

Q. Okay. I don't have anything further. Thanks.

THE COURT: Anything else?

MR. GORDON: No, Your Honor.

THE COURT: You can stand down.

Call your next.

MS. WHATLEY: Cliff Dodson.

THE COURT: Mr. Dodson, come on down and let me get you sworn in.

CLIFF DODSON, GOVERNMENT'S WITNESS, DULY SWORN

THE COURT: You can come and have a seat right over here.

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good morning.

A. Good morning.

Q. Please state your name for the record.

A. Sergeant Cliff Dodson.

Q. Spell your last name.

A. D-o-d-s-o-n.

Q. Where are you employed?

A. Pope County Sheriff's Department.

Q. And how long have you been with Pope County?

A. Eleven and a half years.

Q. And you said your current position is sergeant?

A. Yes, ma'am.

Q. What area of the sheriff's office do you work in?
A. Criminal investigation division.
Q. And how long have you been in the criminal investigation division?
A. One and a half years.
Q. And what did you do for the sheriff's office before that?
A. Patrol.
Q. And how long did you work patrol?
A. From September 2001 till January 2009.
Q. And you're making me do math. You worked for the sheriff's office longer than that. What did you do before that?
A. I'm sorry. I was in the jail prior to that.
Q. Were you working on March 4, 2009?
A. Yes, ma'am.
Q. Do you recall Jason Smith bringing anything into the sheriff's office that day?
A. Yes, ma'am.
Q. And what was that?
A. A canister, green canister.
Q. Did you know what that canister was?
A. No.
Q. Did you know what was inside of it?
A. No, ma'am.
Q. What happened after those items were brought into the sheriff's office?

A. Some agents from, I believe, the ATF and State Police came out to the sheriff's office.
Q. And was the search warrant obtained?
A. Yes, ma'am.
Q. Did you help execute that warrant?
A. Yes, ma'am.
Q. During the execution of that warrant, were you sent back to the sheriff's office for any reason?
A. Yes, ma'am.
Q. What was the reason for that?
A. Take photographs of the canister.
Q. And why were you taking photographs of the canister at the sheriff's office?
A. I don't know. Had something to do with numbers.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government's Exhibits 117-A through 117-F. Have you seen these before?
A. Yes, ma'am.
Q. And what are they?
A. The photographs of the canister that I took that night.
Q. And do these fairly and accurately represent how the canister and the contents of the canister looked in the office

that night?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, we move to admit Government Exhibits 117-A through 117-F.
MR. HENDRIX: Do you mind if I just look at them?
MS. WHATLEY: I just showed you.
MR. HENDRIX: Got it.
THE COURT: They're received.
(Government Exhibits 117-A through 117-F received in evidence.)
Q. We'll start with 117-A. And what part of the canister is this?
A. The inside lid.
Q. And going to 117-B?
A. The outside of the canister.
Q. I believe you testified that the issue was numbers. So the purpose of all these pictures was to take pictures of any numbers that are located on the outside of the canister?
A. Yes, ma'am.
Q. Or anywhere in the canister?
A. Yes. Yes, ma'am.
Q. And is this the side of the canister in 117-B?
A. Yes, ma'am.
Q. Let's go to 117-C. Is this the end of the canister?
A. Yes, ma'am.

Q. 117-D, is this the side corner of the canister?
A. Yes, ma'am.
Q. 117-E, is this the other end of the canister?
A. Yes, ma'am.
Q. And 117-F, what is that?
A. The top of the canister, I believe.
Q. What did you do with these pictures after you took them that night?
A. Brought them back to the residence.
Q. Were you present when the evidence was collected that evening?
A. Yes, ma'am.
Q. What happened to the evidence that night?
A. It was loaded into a van that belongs to the sheriff's office.
Q. And was it taken anywhere?
A. Yes, it was taken to the sheriff's office.
Q. And was any of that evidence later transported to Little Rock?
A. Yes, ma'am.
Q. And who transported it?
A. Myself and Sergeant Jason Smith.
Q. Is this all the evidence that was obtained during the execution of the state search warrant?
A. I'm not sure if that was all of it.

Q. But whatever was in the van you transported down there?
A. Yes, ma'am.
Q. Did that also include the canister and the contents of the canister that had been located on March 3?
A. Yes, ma'am.
Q. Who did you turn those over to?
A. Agents with the ATF.

MS. WHATLEY: No further questions.

MR. HENDRIX: No questions.

THE COURT: You can stand down.

Call your next.

MS. WHATLEY: Lisa Barnhill.

THE COURT: Ms. Barnhill, come down and let me swear you in.

LISA BARNHILL, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good morning.
A. Good morning.
Q. Please state your name.
A. Lisa Barnhill.
Q. And how are you employed?
A. I'm an investigator with the Drug Enforcement Administration.
Q. And how long have you worked for the DEA?

A. Twenty-two years.
Q. And is there a certain area of the DEA that you work in?
A. Yes. It's --
Q. What's that called?
A. It's the diversion program, which is pharmaceuticals and chemicals are my expertise.
Q. And how long have you worked in the diversion program?
A. Twenty-two years.
Q. So your entire area of DEA has been in the diversion program?
A. Correct.
Q. And have you received any training in controlled substances?
A. Yes. My whole career.
Q. Tell us some of the classes that you've attended in order to know what controlled substances are and things of that nature.
A. Well, when first hired on with the DEA, we have a basic training school at Quantico, Virginia, the FBI Academy. Twenty-two years ago, that was an eight-week course, but now it's 12 or 16 weeks. I can't remember. But in that course, we're taught things about pharmaceuticals, auditing, controlled substances specifically because that is our area that we are tasked to investigate, and primarily the diversion of controlled substances out of the legitimate channels. But through out the

years, there's been ongoing courses, conferences that we go to. I've been a trainer as well. So just throughout the whole 22 years.

Q. Do you know what a DEA permit is?

A. Yes, I do.

Q. And what does it allow a person to do?

A. Depending on the category of the registration, it can allow a person to import, export, manufacture, distribute, prescribe controlled substances.

Q. I guess the basic question is, what is a controlled substance?

A. Drugs come in three different categories. There's over-the-counter, which anybody can go into a drug store and buy, things like your Tylenol, your headache medicines, cold medicines. The second category is legend drugs, and those are prescription drugs, but they don't -- they aren't considered abusable. And a controlled substance is a drug that is considered both abusable and addictive, and it has the highest level of regulation attached to it.

Q. And do prescription drugs sometimes qualify as controlled substances?

A. Yes.

Q. And can you give us some examples of some of those?

A. All controlled substances are prescription drugs. So it's a finite group. You can't have a controlled substance without a

prescription.
Q. Can you give us some examples of what those prescriptions would be, the brand name or the drug name?
A. Sure. Some common ones are OxyContin, Vicodin, hydrocodone, Xanax. Those are really highly abusable drugs that we see on the street, but the list goes on and on.
Q. I want you to look at what's previously been admitted as Government's Exhibit 82-L. It will be on the screen in front of you. I'm sorry.
MS. WHATLEY: Your Honor, may I approach to retrieve exhibits from the prior witness?
THE COURT: You may.
BY MS. WHATLEY:
Q. If we can go to page 3 of that document. Actually, go to the next page. And can you see what it says at the top, what kind of order this is?
A. It is an order from the medical board regarding Randeep Mann, a physician.
Q. Let's go to the following page. And if you can, please, read Section C(1) to the jury.
A. Okay. "As a result of the above violation of the Medical Practices Act, the license of Randeep Singh Mann, M.D., to practice medicine in the state of Arkansas will be revoked. Said revocation will be stayed for so long as Randeep Singh Mann, M.D. complies with the following conditions of stay: 1.

Randeep Singh Mann, M.D. will surrender his Drug Enforcement Administration permit authorizing him to prescribe scheduled medication in the state of Arkansas, and further Randeep Singh Mann will refrain from prescribing any scheduled medication for patients in the state of Arkansas as well as the legend drug Ultram."

Q. What is a scheduled medication?

A. It is the same thing as a controlled substance.

Q. What does it mean when someone surrenders their DEA permit?

A. It means that they are not allowed to handle controlled substances in any way, shape, or form. It allows them to still continue to handle over-the-counter medications and/or legend drugs, the antibiotics, you know, that middle category I told you about, but it doesn't give you authorization to handle the highest level of drug.

Q. At my request, did you check the DEA records to see whether or not there was a surrender of a DEA permit by Dr. Mann?

A. Yes, I did.

Q. And did he surrender his DEA?

A. Yes, he did.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. Just handed you what's been marked for identification purposes as Government's Exhibit 82-M. Have you seen that

before?
A. Yes, I have.
Q. And what is that?
A. This is a typical DEA voluntary surrender form, and this is an official form we hand to registrants. That's what we call licensees, registrants.
Q. Has this been signed by Randeep Mann?
A. Yes, it has.
MS. WHATLEY: At this time we move for the admission of Government's Exhibit 82-M.
MR. HENDRIX: No objection.
THE COURT: 82-M is received.
(Government Exhibit 82-M received in evidence.)
BY MS. WHATLEY:
Q. Is this the form where Dr. Mann surrendered his DEA?
A. Yes, it is.
Q. And what is the date of the surrender?
A. July 7, 2006.
Q. And if you can read the paragraph that's right above the name of registrant.
A. It says, "I understand that I will not be permitted to order, manufacture, distribute, possess, dispense, administer, prescribe, or engage in any other controlled substance activities whatever, until such time as I am again properly registered."

Q. Has Randeep Mann, since 7-7 of '06, ever been properly registered with the DEA?
A. No, he has not.
Q. So he has never had his DEA permit restored to him?
A. That's correct.
Q. Without a DEA permit, can he write prescriptions for controlled substances?
A. No, he can't.
Q. Can he distribute them, even without a prescription?
A. No, he can't.
Q. Can he possess them?
A. No.
Q. Can he possess --
A. Pardon me. Pardon me.
Q. Go ahead.
A. He can possess them if they're lawfully prescribed by another physician.
Q. Is a person allowed to purchase controlled substances, from whatever source, and give them to people, without a DEA permit?
A. No, he can't.
Q. We can look at Government's Exhibit 100-UUUU. Are any of the drugs in this picture controlled substances?

MS. CASSINELLI COUCH: Your Honor, may we approach?

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: All of our discussions about

the pictures and the drugs -- and Ms. Whatley hasn't gotten there, and I don't want to out it and discuss it up here before it comes out. Based on the Court's prior rulings, our prior objections, I just want to be clear where we're going here. If the testimony is going to be that some of these things were illegally possessed, I think that that is against the spirit of the Court's prior order. I think the Court's prior orders were based on the notion that we're not going to admit character evidence, we're not going to make him a bad man. The government's representations were that those drugs were admitted to tie to Rita and to bolster her testimony. So if we're going to have testimony that he was illegally in possession of controlled substances and those are the pictures, I would object to that.

THE COURT: What's the response?

MS. WHATLEY: Your Honor, my first response is, she's just going to go through -- I'm not asking her -- my plan is not to say, "So he was in illegal possession of these," or to have her say some of these are controlled, some of these are not controlled. It goes to motive, Your Honor. He knows he's in possession of these, he knows he's in violation of his DEA permit, and the consent order says, "If you violate your consent order, you're going to lose your license."

THE COURT: We've already had the testimony of the sister who said she reported him. Why do we have to show -- the

mere fact that he possessed the drugs is not motive to then commit the offense. The motive to commit the offense is based on the fact that he has been reported. I think that's what -- that's kind of where the case has gone. He knew he had been reported, he wanted to take action, he was angry. The mere fact that he possessed doesn't tie that together.

MS. WHATLEY: It also shows he had access to those so -- I mean, the argument at closing will be, he had access to drugs, Rita says she was getting drugs from him, he's in violation of his consent order, he knows he's been turned in to the board.

MR. GORDON: Your Honor, can I say something? This is what we talked about yesterday. We have only introduced the drugs that Rita said she had access to. From looking at the bottles, this witness will say that morphine sulfate is morphine, from looking at the bottle she can say that's morphine. She can also identify the big boxes in the picture that was just up on the screen, that's alprazolam, that's Xanax. Those are the words --

THE COURT: She's going to testify essentially as to what the drugs are?

MS. WHATLEY: Right.

THE COURT: These are the drugs -- we've already taken out all the other stuff. These are just the drugs that Rita has already identified that she was receiving?

MS. WHATLEY: Yes, sir.

THE COURT: And this goes, based on your argument yesterday, this is to rehabilitate Rita after her cross?

MR. GORDON: Yes, sir.

THE COURT: What's the response to that?

MS. CASSINELLI COUCH: I think we're going outside of that. It's one thing for the DEA agent to say I can identify these as Xanax and morphine and another thing to go through the whole picture to say this is this, this is this. And I'm concerned more with what Ms. Whatley first said, she's going to testify that these were controlled substances, that he shouldn't have possessed them, per the DEA, loss of his DEA license. Mr. Gordon, yesterday, when we were discussing it, represented that they weren't going to allege he was in illegal possession of the drugs, they were simply to tie to Rita. It is one thing for her to say here's the tie to Rita --

THE COURT: I think he also said, in that one picture you have, some that are not controlled substances, and I think she was about to essentially say they're not controlled substances. Right?

MS. WHATLEY: Yeah, there's a couple that are not. But there are a couple that are, which are Xanax, which I wouldn't even get into the other controlled substances on there.

MS. CASSINELLI COUCH: That's my concern, that we've asked this witness is he in violation of his order, is he

illegally possessing these things, and she's going to identify them, and we're not going to identify half of them?

THE COURT: She can identify what's in the pictures. Those pictures have already been received. They're going to go to the jury. She can explain what's in the pictures.

MS. CASSINELLI COUCH: I just don't want the implication he's in illegal possession of controlled substances and that that alone would violate the DEA permit requirements.

MS. WHATLEY: I wasn't planning on going that far. I had her explain what a DEA permit allows, and now I'm showing the pictures to say this is Xanax, Ambien is not a controlled substance, and this is --

THE COURT: Without her actually saying that he couldn't possess these, don't we kind of leave that inference in the air, that he wasn't supposed to possess --

MS. WHATLEY: Your Honor, it shows he's in violation of his DEA permit, so he's in violation of the order of the medical board, and he doesn't want to lose his license, and that's the next step.

THE COURT: I understand.

MS. CASSINELLI COUCH: That's simply a bad act. That's not what the government alleged. That's not the basis for the motive, and it's contrary to the representations that Mr. Gordon made yesterday when the Court considered the ruling on the photographs.

THE COURT: Well, the government's position is, it is to rehabilitate Rita. Now, I don't know -- I think I'm going to have to let you clean that up on cross-examination, because I think we've already walked down the path now. What can we do? We can't go back.

MS. CASSINELLI COUCH: I think they should limit the testimony to these are Xanax and morphine. That allows them to tie it to Rita, but not to give the improper inference that these are illegal substances that he illegally possessed.

MS. WHATLEY: We can identify the Xanax and morphine and be done.

THE COURT: What else?

MS. WHATLEY: That's it.

MS. CASSINELLI COUCH: There were pictures of other bottles --

MS. WHATLEY: You don't know what I was going to identify.

MS. CASSINELLI COUCH: That's what you said yesterday.

THE COURT: I thought we took out the other bottles.

MS. CASSINELLI COUCH: They're in that one picture. Remember Mr. Gordon said she could identify the other medications --

THE COURT: I thought the other medications weren't controlled substances.

MS. CASSINELLI COUCH: I believe some are and some

aren't. And that's what I don't want to go into.

THE COURT: Just identify the ones that Rita received, and I think that's what we were going to do anyway.

MS. WHATLEY: I'll have her identify the morphine and the Xanax and I'll sit down.

THE COURT: That's fine.

(Whereupon, proceedings continued in open court as follows:)

BY MS. WHATLEY:

Q. We can briefly look back at 100, the two boxes that are down in the very middle of the picture.

A. Okay.

Q. What are those drugs?

A. The generic name is alprazolam. It's like -- it is -- Xanax is a more popular name.

Q. And if we can look at 100-QQQ. The labeling says it's m-o-r-p-h, space, s-u-l-f, space, ER, 30-milligram. Please tell the jury what that is.

A. That's abbreviation for morphine sulfate. "ER" stands for extended release. And that's a Schedule II controlled substance. And the Xanax, or alprazolam, is a Schedule IV controlled substance.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: You may.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Hi. How are you?

A. Good. Thanks.

Q. Are you familiar -- you're familiar with the history, with Dr. Mann's history of not having his DEA permit?

A. Only that he surrendered it in July of '06.

Q. Are you aware that he surrendered it by agreement with the medical board?

A. Yes.

Q. I'm going to show you -- do you have this on your screen?

A. Yes.

Q. This is Government's 82-L, and this is a page of the consent order entered into between Dr. Mann and the medical board. And if you look at paragraph C(1), and in paragraph C(1), do you agree it says he will surrender his DEA permit authorizing him to prescribe scheduled medications in the state of Arkansas?

A. Yes.

Q. And that he will refrain from prescribing any scheduled medications for patients in the state of Arkansas?

A. Correct.

Q. When someone loses their DEA permit, their family members are still authorized to have controlled substances as

prescribed, are they not?
A. As long as they're prescribed by a lawfully licensed physician, yes.
Q. You wouldn't require them to clean out their whole medicine cabinet of all their family's prescribed medications as well?
A. Correct.
Q. Thank you.
THE COURT: Any redirect?
MS. WHATLEY: No, Your Honor.
THE COURT: Okay. You can stand down.
Call your next.
MS. WHATLEY: Bill Buford.
THE COURT: What's the name, Ms. Whatley?
MS. WHATLEY: I'm sorry?
THE COURT: What's the name?
MS. WHATLEY: Bill Buford.
THE COURT: Mr. Buford, come on down and let me swear you in. Raise your right hand.

BILL BUFORD, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:
Q. Good morning. Would you, please, state your name.
A. My name is Bill Buford.
Q. And where are you employed?
A. I'm with the Arkansas State Police.

Q. And how long have you been with the Arkansas State Police?
A. Six and a half years.
Q. What do you do for them?
A. I'm the bomb squad coordinator. I run the bomb squad for the state of Arkansas.
Q. What did you do before you worked for ASP?
A. I was a special agent with the Bureau of Alcohol, Tobacco & Firearms for 31 years.
Q. And at one point in time, for actually a long period of type, were you head of ATF here in Arkansas?
A. Yes. For over 25 years, I was the resident agent in charge for Arkansas.
Q. Through ATF and through Arkansas State Police, have you had explosives training?
A. Yes, I have.
Q. And please tell the jury the type of explosives training that you've had.
A. Well, my explosive training actually began when I was in the military. I was in the army, in a special forces unit, and received considerable training on the use of explosives, both in training and during the Vietnam War. After I came home, or got out of the army and finished school, I went to work for the Bureau of Alcohol, Tobacco, & Firearms, and at that time I became a certified explosives specialist for them. I did that for 31 years. And after retiring from ATF, when I went to work

for the Arkansas State Police, I went through the hazardous devices school at Redstone and became a certified bomb technician.

Q. On March 4, 2009, did you receive a call from Pope County about some ordnances that had been located?

A. I did. I received a call from the Pope County Sheriff's Office that they had recovered some 40-millimeter grenades and asked if I could respond there to assist them in processing those.

Q. And did you actually go to Pope County that day?

A. I did.

Q. And were you shown anything when you arrived?

A. I was shown a large metal ammo can, and upon looking inside, I was able to determine that there were 40-millimeter grenades inside the can.

Q. And how were you able to determine that?

A. We removed the lid. Actually, after I put on gloves, I took one of the shells from -- they come in a cloth bag that the military uses. I took one out, examined it, and saw it was a high explosive round.

Q. What does it mean by "high explosive"?

A. It is a round -- this particular round is an anti-personnel round. A high explosive actually detonates at a speed faster than 3,200 feet per second. In fact, these, with a comp B that they use for the explosive inside, probably somewhere around 23-

or 24,000 feet per second.
Q. Now, I believe you said that they were still in the canister when you got to Pope County?
A. Yes, they were.
Q. Did you ever see those grenades again?
A. Yes, I did.
Q. When did you see them next?
A. I saw them the next morning in the ATF office.
Q. And when they were at ATF, were the grenades actually removed from the canister?
A. Yes, they were.
Q. And where were they placed?
A. They were placed on a table in the conference room.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. Just handed you what's been marked for identification purposes as Government's Exhibits 118-A through 118-D. What are these?
A. These are photographs that were taken in the ATF office as we were removing the 40-millimeter grenades from the packing, the military packing, that they were found in.
Q. Do these fairly and accurately show how the grenades looked that day at ATF?
A. Yes, they do.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 118-A, -B, -C, and -D.

MR. HENDRIX: No objection.

THE COURT: They're received.

(Government Exhibits 118-A, 118-B, 118-C, 118-D received in evidence.)

BY MS. WHATLEY:

Q. Are these the grenades that were at ATF that day?

A. Yes, they are.

Q. And were these markings on the grenades at the time that you saw them that morning?

A. Yes, they were.

Q. I believe at the top it says, "40 mm HE." Is that correct?

A. That's correct.

Q. What does the "HE" stand for?

A. High explosive.

Q. Let's look at 118-B. Are these those pouches that you were talking about?

A. Yes. Those are the pouches that are used by the infantrymen to carry them when they're actually using them in a combat situation.

Q. And is that you in the picture?

A. Yes, it is.

Q. Let's go to 118-C. Are these just another picture of them coming out of the canister and of the carrying cases?

A. Yes, it is.
Q. And let's look at Government's Exhibit 118-D. Is this all of the grenades once they're laid out on the table?
A. That's all of them. There is the one practice grenade that was found inside the canister that's out front, with the blue top.
Q. And how many grenades were located inside the canister, not counting the practice grenade?
A. Ninety-eight.
Q. Did you do anything else with the grenades that day?
A. Yes. I assisted a special agent with the Bureau of Alcohol, Tobacco, & Firearms. We transported these to the Little Rock Police Department where they were processed for fingerprints and DNA.
Q. And who was the agent that you assisted with that?
A. Warren Newman.
Q. At some point in time, were numbers put on the grenades?
A. Yes, they were. As we processed each one, they were numbered so that if a fingerprint was found on the grenade or if DNA was recovered from it, we would be able to determine exactly which grenade it came from.
Q. And you say you took them to Little Rock Police Department. Is there a specific person that you worked with at LRPD?
A. Yes. Mickey Holloway was the officer there who assisted us in processing the grenades.

Q. Did you ever go back to the location where the grenades were originally located?
A. Yes, I did. I went there the same day that they were recovered.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. Just handed you what's been marked for identification purposes as Government's Exhibits 118-E and 118-F. You have seen these before?
A. Yes, I have.
Q. And what are they?
A. 118-C [sic] shows a cul-de-sac on Galaxy Lane. To the right hand of the photograph is the area where the ammo box was found.
Q. And I think you said 118-C. I think my handwriting is bad. Is that 118-E?
A. Yes, it is E. I'm sorry.
Q. What is 118-F?
A. This is a photograph that was taken standing back from the hole where the grenades were recovered from, looking towards Galaxy Lane.
Q. And does this fairly and accurately show the area where the grenades were located?
A. Yes, it does.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 118-E and 118-F.

MR. HENDRIX: No objection.

THE COURT: They're received.

(Government Exhibits 118-E and 118-F received in evidence.)

BY MS. WHATLEY:

Q. We can look at 118-E, please. Mr. Buford, if you can please touch on the screen the area that you were discussing where the grenades were found.

A. About right there (indicating).

Q. And we can look at 118-F. Is there anything in this picture that denotes where the grenades were located?

A. Yes. I had placed, actually, a stick in the hole that they were actually in. And there's a small, light bottle next to the hole. This is the hole where the grenades were actually found.

Q. Did you measure the distance from the road to where the grenades were located?

A. I did.

Q. And how far was it?

A. You know, I apologize. I've forgotten exactly what it was. Less than 50 feet, I believe.

Q. Did you send me a fax denoting how far it was?

A. Yes, I did.

Q. If I showed that to you, would it help refresh your recollection?

A. Yes, it would.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

A. It was actually 60 feet.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Special Agent, how are you doing?

A. I'm fine.

Q. Good to see you again.

A. Good to see you.

Q. It's been about six years since you were a SAC here. Right?

A. Well, actually, 2001 is when I retired from the ATF.

Q. For the jury's sake, we're talking about special agent in charge is what a SAC is?

A. I was actually the resident agent in charge, just for the state of Arkansas.

Q. Gotcha. Gotcha. Sixty feet -- those pictures were taken just recently. Right?

A. I believe those pictures were taken the day of.

Q. The day of?

A. Yes.

Q. You say you were recently out there and measured again?

A. I went back out and remeasured. The hole was still there. I went back out and remeasured it.
Q. Gotcha. And 60 feet is about 20 yards, which would be about, if a pace is a yard, about 20 paces in. Right?
A. That's correct.
Q. And it was in that clearing area?
A. Yes.
Q. And can we look at --
(Mr. Hendrix confers with Ms. Newton.)
Q. Can you see that one?
A. Yes, I can.
Q. Does that look freshly dug?
A. Yes, it does.
Q. Why?
A. Well, the sides are still crumbling in on it as it was -- as, obviously, the can had been taken out. And when I examined it after the can had been taken out, it was obvious that it was relatively freshly dug. I would suspect that it was no more than a day or two.
Q. And, again, can you give us objective reasons why? And let me ask you, one thing I notice is that, one, there are leaves in the hole already, which strikes me as fairly odd. And two, it strikes me as odd that the edges of it, it's sort of like in a U-shape, isn't it? There's no square angles like someone had just dug. Do those strike you as interesting observations or

bore you?
A. Well, actually, it would be difficult to dig a hole to bury a box that big and have square sides on it. You would always be digging -- having dug a few ditches in my day, you always have a little rounded part when you are burying something like that.
Q. Uh-huh. Okay. I want to take a little bit of time because of your unique position, having been the resident agent in charge of ATF, to talk a little bit about ATF. There are several divisions of ATF. Is that right?
A. That is correct.
Q. And so, for instance, what component of ATF were you in?
A. I was in the criminal enforcement end.
Q. Okay. And the criminal enforcement end of ATF, its function is to investigate, really, a wide variety of offenses. Is that right?
A. That's correct.
Q. I mean, ATF does firearms offenses, but, I mean, they also do cases like a person that is a felon in possession of a firearm. You guys can actually even do drug cases and stuff like that. Right?
A. Well, we would indirectly do drug cases if there was a firearm involved. We wouldn't work a drug case strictly as a drug case.
Q. And it's Alcohol, Tobacco & Firearms, and it's the old revenue days, as I understand ATF, you all were the revenuers.

Right?
A. This is correct.
Q. Now, there's a separate branch that deals then with the regulation of firearms. Is that right?
A. That's correct.
Q. And is that the National Firearms Act branch, what we call the NFA branch?
A. No, that's actually a separate branch. The NFA branch works only with firearms that are required to be registered, such as machine guns, sawed-off shotguns. There's another branch, a compliance branch, that handles more of the recordkeeping requirements.
Q. Right. And they have inspectors, field agents that go out and do like annual audits for people that hold a federal firearms license. Right?
A. That is correct.
Q. Okay. And then the NFA branch -- and when I say "NFA," we're talking about the National Firearms Act of 1934. Right?
A. Yes.
Q. That's the act that regulates very specific types of weapons, like machine guns, destructive devices, and that sort of thing. Right?
A. That's correct.
Q. Is the NFA branch in West Virginia?
A. When I retired, I believe they were still in Washington,

D.C. They may have moved. I'm not sure.
Q. And you weren't in the NFA branch. Right?
A. No, I was not.
Q. But you're aware of their functioning and so forth?
A. Yes.
Q. And I guess in criminal investigation, you actually did some work with the NFA branch. Right?
A. Right. Any time we would recover a firearm that we felt like might be illegal, we had to verify it through NFA that it was a registered weapon.
Q. And the point of all that regulation is the government's trying to strike a balance between the freedom of the Second Amendment for everybody to keep and bear firearms, right, but to have certain types regulated because they are exotic and dangerous weapons? Right?
A. That is correct. They referred to them as gangster weapons back in the 1968 when they passed a revision to the law.
Q. Right. And I think the NFA was actually passed in 1934, and that's when it was the whole gangster thing and they wanted to regulate the Dillingers and all that sort of stuff?
A. That's correct.
Q. So we come to a weapon like this, and I'm looking at Government's Exhibit 109-A, it's an M-16, and on the undercarriage is attached a grenade launcher. Right?
A. Yes.

the computer, go, Blake Hendrix, whatever, M-16, has he registered this thing. Right?

A. That's correct.

Q. In your experience, has NFRTR had problems with its accuracy?

A. Not that I'm aware of, no.

Q. Would you tell the ladies and gentlemen what the Office of the Inspector General is?

A. Well, they are -- the Inspector General for the Justice Department?

Q. Yes.

A. They kind of regulate the regulators. If there's a problem that comes along and they don't want an agency investigating themselves, then the Inspector General would step in and do it as a separate body.

Q. Right. Office of Inspector General will go in and --

MS. WHATLEY: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MS. WHATLEY: Your Honor, I object to this line of questioning. This is way far afield of where we were. There will be an expert from NFA here tomorrow, and Mr. Hendrix can have a heyday crossing the actual expert as opposed to Mr. Buford who testified he was on the criminal side of the house.

MR. HENDRIX: And here's where I was getting to. There are two sentences from the OIG report I was going to ask him about, and if I can be allowed to ask him, he may or may not be aware of it. I suspect he's going to go, "I'm not aware of that," and then I'll cross -- it's an NFA guy?

MS. WHATLEY: An NFA guy tomorrow. I don't know what you're about to show Bill.

MR. HENDRIX: Let me read it to you.

MS. WHATLEY: This may be things from the OIG after he retired in '01.

MR. HENDRIX: June 2007. Then again it was a question, are you aware of this, yes or no? And if he says no, he's not aware of it --

THE COURT: What would be the objection to him asking a question, the fact that he's trying to qualify him as an expert to testify on his behalf?

MS. WHATLEY: Well, I don't care about that. It's just that Mr. Buford was not employed by ATF in 2007.

THE COURT: He was with the State Police by that time.

MR. HENDRIX: Yeah.

THE COURT: Okay. You can ask him. But if he says, "I don't know anything about it," then move on.

MR. HENDRIX: Sure.

(Whereupon, proceedings continued in open court as follows:)

BY MR. HENDRIX:

Q. OIG is sort of cops for the cops, in a way?

A. That's correct.

Q. It's a little bit more regulatory, though. It's an exaggerated way to say it. But OIG comes in and inspects other governmental agencies. Is that right?

A. That's correct.

Q. What I want to do is read to you two sentences from an OIG report from the NFRTR and see if you're aware of this or not.

MS. WHATLEY: Your Honor, I thought he was going to show it to him and see if he recognized it before he read it before the jury.

MR. HENDRIX: Whatever.

THE COURT: You can show it to him.

(Witness reviews document.)

THE WITNESS: No, I've never seen it.

BY MR. HENDRIX:

Q. Are you aware, though, of that?

A. No, I wasn't.

Q. Okay.

MR. HENDRIX: And, Judge, so the jury doesn't keep guessing, what I was inclined to do was read those statements. He's going to say, "I'm not aware of this," but I kind of left the jury a little bit in the dark right here.

THE COURT: We have someone who you can, I think,

either the next witness --

MR. HENDRIX: Do it with the next witness?

THE COURT: Do it with the next witness.

MR. HENDRIX: Bill, good to see you again.

THE WITNESS: Good to see you.

THE COURT: Any redirect?

MS. WHATLEY: No, Your Honor.

THE COURT: Call your next.

MS. WHATLEY: Actually, at this time the United States would like to read two stipulations.

THE COURT: Okay. These are fact stipulations?

MS. WHATLEY: These are stipulations that we've entered into with the defense, and Mr. Hendrix would like to grab them before I read them.

MR. HENDRIX: Got them, Judge.

MS. WHATLEY: The first stipulation reads as follows:

"The United States Attorney for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person and through undersigned counsel, hereby agree and stipulate that if Mickey Holloway was present and testifying under oath, he would testify as follows:

"Mickey Holloway, a certified latent print examiner who recently retired from the Little Rock Police Department, assisted ATF Special Agent Warren Newman and Arkansas State Police Investigator John William 'Bill' Buford with the

processing of 98 live 40-millimeter grenades on March 5, 2009. Mr. Holloway fumed 70 of the 98 40-millimeter rounds with" -- and I'm going to spell this because I can't pronounce it -- "cyanoacrylate ester (superglue-CAE) to fix any latent prints into place. (The remaining 28 rounds were swabbed for DNA.) The rounds were then dusted for latent prints. Partial latent prints and an additional pattern type print which was not a finger or palm print were extracted from four of the rounds. However, those latent prints were not suitable for comparison with known prints.

"After Mr. Holloway completed his work with the grenades, they were returned to the Bureau of Alcohol, Tobacco, Firearms & Explosives."

This stipulation has been signed by Mr. Gordon, defendant Randeep Mann, Mr. Lassiter, defendant Sangeeta Mann, and Tim Dudley.

THE COURT: Ladies and gentlemen of the jury, earlier we had a stipulation, we had two -- we had three stipulations as to fact. This is what is called a stipulation as to testimony. The government and the defendants have stipulated, that is, they have agreed that if Mickey Holloway were called as a witness, he would testify in the way counsel has just stated. You should accept that as being Mickey Holloway's testimony just as if it had been given here in the courtroom by the witness on the stand.

MS. WHATLEY: And the second stipulation, Your Honor, is a stipulation as to facts.

"The United States Attorney for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person and through undersigned counsel, hereby agree and stipulate as follows:

"1. Government's Exhibit 119-A is a set of swabs taken from the 40-millimeter HE grenades depicted in Government Exhibits 118-A through -F. These swabs were taken by Agent William 'Bill' Buford, Arkansas State Police, and Special Agent Warren Newman, Bureau of Alcohol, Tobacco, Firearms & Explosives.

"2. Government's Exhibit 119-B is a set of swabs taken from the mouth of the defendant, Randeep Mann. These swabs were taken by Special Agent David Oliver, an agent with ATF.

"3. Government's Exhibit 119-C is a set of swabs taken from the mouth of Special Agent Warren Newman, ATF. These swabs were taken by Special Agent David Oliver, an agent with ATF.

"No. 4. Government's Exhibit 119-D is a set of swabs taken from the mouth of Agent William 'Bill' Buford, Arkansas State Police. These swabs were taken by Special Agent David Oliver, an agent with ATF.

"No. 5. Government's Exhibit 119-E is a set of swabs taken from the mouth of Gerald Riley. These swabs were taken by Special Agent David Oliver, an agent with ATF.

"No. 6. Government's Exhibit 119-F is a set of swabs taken from the mouth of Timothy 'Tim' Harrell. These swabs were taken by Special Agent David Oliver, an agent with ATF.

"No. 7. Government's Exhibit 119-G is a set of swabs taken from the mouth of Mark Rinke. These swabs were taken by Special Agent David Oliver, an agent with ATF.

"No. 8. Government's Exhibit 119-H is a set of swabs taken from the mouth of Ryan Kimbell. These swabs were taken by Special Agent David Oliver, an agent with ATF.

"No. 9. Government Exhibits 119-A through -H were submitted to ATF's Forensic Science Laboratory in Ammendale, Maryland, for DNA analysis."

The stipulation is signed by Mr. Gordon, defendant Randeep Mann, Mr. Lassiter, defendant Sangeeta Mann, and Mr. Dudley.

THE COURT: Here again, the government and the defendants have stipulated, that is, they have agreed that certain facts are as counsel has just stated. You must therefore treat those facts as having been proved.

Now, with regard to Exhibits 119-A through -H, is there any objection to receiving those?

MR. HENDRIX: No, sir.

THE COURT: Those are received.

(Government Exhibits 119-A through 119-H received in evidence.)

MR. GORDON: United States calls Todd Bille.

TODD BILLE, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Please state your name for the record.

A. Todd Bille. Last name is B, as in boy, i-l-l-e.

Q. How are you employed, Mr. Bille?

A. I work for the Bureau of Alcohol, Tobacco, Firearms & Explosives laboratory in Maryland.

Q. How long have you worked there?

A. About four years.

Q. What's your position with the lab?

A. I'm the DNA technical leader.

Q. Please tell the jury what that is.

A. Basically, I'm a DNA, forensic DNA analyst there, but I'm also in charge of all the technical aspects of DNA analysis out at the laboratory.

Q. Please tell the jury what training and experience you have that qualifies you to hold that position.

A. I got my bachelor of science degree in biochemistry from Purdue in 1990. I got my master's degree in biology from Purdue in 1998. I started with the Indiana State Police Laboratory back in 1991. I was there for about ten years. I started in the trace unit, but when they started their DNA unit a few months after that, because of my background in biochemistry, they asked me if I wanted to be in the newly formed DNA unit.

So I started in the DNA unit and ended up being the supervisor and technical leader there before I left, went to a private lab, the Bode Technology Group on the East Coast, in Washington, D.C., as the assistant lab director. And also left there as vice president of special projects. Over time, I worked on projects, both case work and also mass disasters. So I went to Thailand after the tsunami there and helped with the victim identification. I was -- also one of my main projects at Bode Technology Group for four years was working on identification remains from the World Trade Center. And then after that, I went to Bureau of Alcohol, Tobacco, Firearms & Explosives laboratory, started with the DNA unit there. I've been to over 50 training seminars, classes, in the 19 years I've been in the field. I've presented, or I have about 30 -- well, over 30 publications or presentations in that time as well.

Q. Have you testified as an expert before in the field of DNA?

A. Yes, sir.

Q. And in state court?

A. Yes.

Q. Federal court?

A. Yes.

Q. Approximately, how many times?

A. About 80 times now.

Q. Please tell the jury what DNA is.

A. DNA stands for deoxyribonucleic acid, which is why we call

it "DNA." It's the substance in most of the cells of your body that codes for almost all your physical characteristics. It's not going to code for scars or tattoos, but it codes for hair color, eye color, height, things like that. Over 90 percent of our DNA is the same between us, which is why we all have two ears, two eyes, a nose, et cetera. But there are slight differences between our DNA samples that can help distinguish us, so that's what we look at, as forensic DNA scientists, we look at these differences within the DNA and try to distinguish between different individuals.

Q. Where is DNA found in the body?

A. It's found in the nucleus of your cells. It's almost all the cells of your body. The only cells in your body that do not contain DNA are actually red blood cells.

Q. Does DNA differ between cell to cell within a body?

A. No. That's one of the nice things about DNA, it is the same throughout your body. So if I have a DNA sample from a hair versus a sample from a swab from the side of the cheek, it's going to be the same. So no matter what tissue type we get from the body, the DNA will be the same throughout.

Q. What about from person to person?

A. Other than identical twins, the DNA will differ between individuals.

Q. Have you heard the term "touch evidence"?

A. Yes, sir.

Q. Would you explain that to the jury, please.
A. This is a term that we use to describe a specific type of analysis. We try to use it to distinguish between what people typically think of with DNA analysis. A typical laboratory will look at blood stains, sexual assaults, things like that. A blood stain, you're going to get plenty of DNA. And as I said before, there's no DNA in red blood cells, you have to get it from the white blood cells that's in the blood. But typically a single-source sample, meaning the DNA in that sample came from a single individual. There's usually a high quantity of DNA there. The analysis we show get an entire genetic profile. We like to use the term "touch evidence" just mostly to give people the right expectation of the type of result we're going to get. Touch evidence describes the type of evidence where we're looking at objects that have been handled or come in contact with the body. Any time someone touches something, so if I pick up a pen, there's a chance that on that transfer some of those skin cells from my fingers go to that pen. If I smoke a cigarette, just the touching of the cigarette butt to my lips, I may transfer some DNA to the cigarette butt. The collar of my shirt, because it's in contact with my neck, I may leave some skin cells on the collar of my shirt. The reason we like to talk about touch DNA is the levels of DNA we typically get from touch DNA are much, much smaller than what we would get from a blood stain and something like that. And also touch DNA from

something like this, this pen, obviously, I'm probably not the first person to touch this pen. So anyone who's potentially touched this pen in the past may have also left skin cells on that pen, so, therefore, you end up getting what we call a mixed sample, or you have multiple contributors of DNA to that pen. And so when we collect that and we do our DNA analysis, it's possible we could pick up DNA from multiple people and we get this mixture, and it gets a little more difficult to analyze that and draw conclusions from that.

Q. Will you, please, explain how DNA testing is performed?

A. The first thing, obviously, if we're going to do DNA analysis, we have to collect the biologic material or the cells off of the object. This is typically done with just a cotton swab, wet swab followed by a dry swab. You basically swab the area, and then take a cutting of those swabs, and through a series of chemical steps you purify the DNA, just meaning you're separating the DNA from the rest of the cellular debris and other dirt or material that may be on that swab.

Once we've extracted the DNA and purified it, we need to find out how much DNA we have in that sample, so we do a quantitation step, which just means we're measuring the amount of DNA in that sample.

After that, we use a process called PCR, or preliminary chain reaction, which is basically a molecular biology tool that just makes billions of copies of specific regions of the DNA.

We don't want to look at the entire region or entire DNA sample from a person. We really look at very specific parts of the DNA that we know differ from individuals. And so we use PCR, or preliminary chain reaction, to make billions of copies of those specific regions of DNA.

Then we go from there, we end up doing our genetic analysis or genetic typing where we visualize those different fragments of DNA that we've just amplified, and from that, we develop this genetic profile. A genetic profile can be considered similar to a physical profile. So if you take my physical profile, six-two, brown hair, brown eyes, those three characteristics would probably distinguish me from everybody in this room. If you just look at brown hair, some of the people in this room will have brown hair, but it's going to exclude anybody who's bald, blue hair, black hair, blond hair, et cetera. If you look at the next characteristic, brown eyes, you would take all the people that have brown hair and determine if they have brown eyes. If they have brown eyes, they still fit within that physical profile. If they have blue eyes, they're excluded. If they have green eyes, they're excluded. If they have red eyes, they're excluded. So each characteristic that we're looking at in this physical profile, you can narrow down the population that fits within that description. It's the same thing what we do with a genetic profile. We look at a series of genetic characteristics, develop this genetic profile. If we look at

the entire profile and there's one or more differences within that profile, a person would be excluded as being a potential contributor of that DNA. If we look at all of the genetic characteristics we're looking at this genetic profile and there are no differences, then the person would be excluded as being a potential -- I'm sorry -- would be included as being a potential contributor, just meaning they fall within a small population that would potentially be a contributor of that DNA.

MR. GORDON: And may I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'll hand you what's already been admitted as Government's Exhibit 119-A, and can you tell us, did you analyze that exhibit?

A. Yes, sir. It's got my marks, case number, et cetera, on it.

Q. What's inside that package?

A. This was a set of 28 swabs.

Q. Will you tell the jury what you did with those swabs?

A. The first step, as I described earlier, of DNA analysis is actually swabbing the object. In this case, the swabs were actually taken. So from this point on, I took the cuttings of the swabs and then performed a DNA analysis after that. With these swabs, because there were 28 of them and they were all

from a similar type of exhibit, it was a series of objects within one container, I combined two series of two swabs for each, so there were 28 swabs. So I combined one and two, three and four, five and six, et cetera. So from those 28 swabs, I created 14 DNA extracts, or DNA samples.

Q. When these swabs were sent to you, how familiar are you with the case these swabs come from?

A. I really just knew basically a general description of what the swabs were taken from.

Q. What was your understanding of what the swabs were taken off of?

A. I believe it's just under a hundred grenades from a container.

Q. Okay. And so with the 28 swabs, you coupled them into 14 DNA samples.

A. Correct.

Q. And were you able to obtain a DNA profile from those 14 samples?

A. What I did after I created those 14 samples, I said the next step in the process is we quantitate, or try to determine how much DNA is in each of those. For 13 of the 14 DNA samples, it was below our detection levels.

Q. What does that mean?

A. Just means either there was no DNA in the extract or it was below the detection level, the instrumentation we use. So those

13 of the 14 I combined into one sample, into a single sample, concentrated those down, and so that became -- I believe that was 75.Q combo, my name for that. And then the other sample, the combination of two, I believe it was 13 and 14, or 17 and 18, I went forward with that on its own because it did have a detectable amount of DNA in it.

So, basically, I had those 14 DNA samples, 13 of those 14 had little to no DNA in them, so I combined those into one, and then the one DNA sample that had at least a trace amount of DNA, I proceeded forward from there. That combined DNA sample, I obtained a mixture from that, and that DNA profile was consistent with a mixture of at least two people, one of which was a male.

Q. What effect -- you combined 13 samples into one. What effect does that have on the testing or the analysis?

A. What we typically try to do, and why we take multiple sets of swabs, is we try not to actually create a mixture by combining multiple samples. So, for instance, if we swab a gun, we'll take multiple sets of swabs from that gun because multiple people may have touched that gun at different areas. So we'll swab the grips, we'll swab the front sides, we'll swab the slide with different sets of swabs, in the hopes of trying to get a single-source profile from that. If we have very little to no DNA, then we may combine all those into one sample. By doing that, if there were three different people who had touched that

gun in different areas, when we combine it, we may actually create a mixture. But because of the low levels of DNA, we potentially may not have gotten a result from those individual samples, so we try to combine them to try to get at least eight DNA profiles from the overall exhibit. So in this case where we had 28 different swabs, because there was very little DNA on almost all those swabs, by combining it we may have created a mixture, but if we hadn't combined it, we probably wouldn't have gotten any result at all.

Q. And by creating this mixture in your gun example, person A, person B, and person C touched it, and you have low levels of DNA, and you combine those three, is it possible that someone other than A, B, and C could be included?

A. Yeah. Once we get a mixture like this, especially at low level, it is very difficult to determine who could or could not be a potential contributor to that.

Q. But from the 13 samples that were combined into one, you obtained a partial DNA profile consisting of a mixture of at least two individuals, and at least one of the contributors was a male?

A. Correct.

Q. What about the other sample that you had?

A. The remaining sample that we took for on its own we were not able to get a DNA profile from.

Q. Now, did you compare the DNA profile from the combined

samples of 119-A with any known DNA samples?
A. Yes, sir.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to hand you Government's Exhibits 119-B through 119-H. Are those the known DNA samples that you made a comparison with?
A. Yes, sir. Each of these have my markings on them.
Q. Okay. And if you would, just read the names off. Who was on Government's Exhibit 119-B?
A. It's identified as recovered from Randeep Mann.
Q. 119-C?
A. Identified as coming from Warren Newman.
Q. 119-D?
A. Identified as recovered from William Buford.
Q. 119-E?
A. Identified as recovered from Gerald Riley.
Q. 119-F?
A. Identified as recovered from Timothy Harrell.
Q. 119-G?
A. Identified as recovered from Mark Rinke.
Q. 119-H?
A. Identified as recovered from Ryan Kimbell.
Q. And what were the results when you compared those known

samples to the DNA from 119-A?
A. The DNA profiles from Randeep Mann, Gerald Riley, Timothy Harrell, Mark Rinke, and Ryan Kimbell were all excluded as being contributors to the mixture.
Q. What does that mean?
A. Just means there was no evidence comparing those to, or comparing the profiles to the mixture of them being contributors to that mixture.
Q. Does that mean that Randeep Mann, Gerald Riley, Tim Harrell, Mark Rinke, Ryan Kimbell never handled the grenades that those swabs came from?
A. No, not necessarily. Just means we did not detect any of their DNA profiles in the mixture that we observed.
Q. Explain for us, please, how a person could handle an object but not leave DNA behind.
A. Well, there are many reasons why you may not pick someone's DNA up on the actual objects. One, they didn't handle it, or two, they handled it or left a very small amount of DNA there. Once that DNA was there, it could have either degraded over time. DNA does degrade over time, especially if it's been left on an object, depending on the storage conditions. It could have been -- you could handle something, leave DNA there, and then it gets subsequently wiped off during handling by other individuals. It could just be at such a low level that it's below our detection levels as well.

Q. What's a shedder?
A. Some people -- it's kind of a term within our field -- are known as shedders and some are known as nonshedders. Shedders are individuals we consider to leave a significant amount of DNA behind when they touch something. A nonshedder, such as myself, I can touch an object and leave very little to no DNA behind, where a shedder could come up and touch the object the exact same way and leave a significant amount of DNA behind.
Q. Okay. And did you have any further results when you made the comparison?
A. Yes.
Q. Tell us those, please.
A. Warren Newman and William Buford can neither be included nor excluded as potential contributors to that biologic material.
Q. Warren Newman and William John Buford, or John William Buford, can neither be included or excluded as contributors.
A. Yes, sir.
Q. How in the world can that be? Is that like you're pregnant or you're not pregnant? How does that work?
A. This is basically our way of saying it's inconclusive. And we distinguish between having an inconclusive result on the actual genetic profile from the object versus having an inconclusive result for the comparison. So if we had a conclusive result, meaning we were able to obtain a genetic

profile from the actual objects, in this case the combined swabs, but the actual comparison of comparing that mixed genetic profile to these two individuals was inconclusive.

So the bottom line is, we say they neither can be included or excluded as potential contributors.

Q. So you can't say it was their DNA, you can't say it wasn't their DNA?

A. Correct.

Q. Is it unusual for your lab to have results that are inconclusive when dealing with touch evidence?

A. No. Our lab is a little bit different than most crime labs, where almost all of our work is touch DNA. And like I said before, when we do touch DNA analysis, we're looking at very low levels of DNA and almost always mixtures. And whenever you do that type of work, you have a lot of these instances where you can have inconclusive comparisons.

Q. Is it unheard of for DNA from an agent who collected or handled evidence to end up on the evidence?

A. No, sir.

Q. And did that actually even recently happen to you in a study that you conducted?

A. Yes. We actually were doing a research project on recovery of DNA from IEDs, in this case pipe bombs. And so we created a series of pipe bombs, placed DNA on those objects, detonated them, and then during the collection we had multiple individuals

helping us collect the pieces from the pipes. We all had proper gowns on, or proper equipment on, wearing gloves, et cetera. Even knowing that we were going to be collecting these objects for DNA analysis, we still picked up DNA from one of the people that was collecting the evidence, or collecting the fragments of the pipes during our subsequent analysis.

Q. And does the lab that you work at, does that lab maintain a database for the DNA for its employees?

A. Yes. Almost every lab in the country now has what we call a staff DNA database. It's basically a database of everyone who works in the laboratory, in case they do leave DNA behind on evidence while they're processing it, we want to be able to detect that DNA profile before it's thought of as being an evidentiary profile.

Q. Did you also perform DNA analysis on some swabs from the lid of an ammunition canister in this case?

A. Yes, sir.

Q. Were you able to obtain a DNA profile from those swabs?

A. No.

Q. So with no DNA profile on the swabs, you can't do a comparison?

A. Correct.

Q. Thank you.

MR. GORDON: Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Mr. Bille, just to make sure we're all on the same page, DNA is yet another forensic comparison test. Is that right?

A. Correct.

Q. All you're doing is, like fingerprints -- I know this is analogized to fingerprints all the time. But it's a simple process of taking a known DNA profile, comparing it against an unknown to determine whether the unknown matches the known. Correct?

A. Correct.

Q. The process of getting to the DNA profile is what is complicated, and this is a very precise science, is it not?

A. I'd like to think so, yes.

Q. Sure. So in this case, let me begin with the proposition -- you guys were talking about touch DNA, touch evidence. And an example is, when I put my palm on this surface, I am likely shedding epithelial cells. Correct?

A. Correct.

Q. And epithelial cells are skin cells?

A. Correct.

Q. And within our skin cells we have our DNA, correct, our coding instructions? Right?

A. Correct.

Q. And so job number one, you get a piece of evidence relating

to a crime scene, you're first doing a screening test, or maybe some other person in your agency has done that, but you're doing presumptive testing to first see is there a biologic material on the item of evidence. Correct?

A. Typically with touch DNA, we don't do that. If it's something that may involve a biologic material such as blood or semen, there are presumptive chemical tests that can indicate whether or not that stain on an object is blood, semen, saliva, et cetera. With touch DNA, there really aren't any presumptive tests to determine what those cells are, if there are cells present on the object.

Q. And so what's the process then? You have to identify cellular material which contains the DNA. Right?

A. You can, or you can just go straight to swabbing an area. If you look at this pen, I would swab the area where it would typically be held, so there's no reason to try to determine if there's cells there. It's just easier to go ahead and take the swabs over the areas where you believe it's been touched and then proceed forward from there.

Q. Understood. And there you find the biologic material and then you go through the DNA extraction phase. Correct?

A. Correct.

Q. And limiting this right now then to the item of evidence, the exhibit -- there's no reason to get too far into this. The first thing is, you need to amplify, because we're talking about

microscopic material, right, or, I mean, undermicroscopic, that we can't see ourselves? Right?
A. Right, very limited material.
Q. And that's the PCR process. Right?
A. Correct.
Q. And then what is STR, short tandem repeats?
A. Short tandem repeats are the specific genetic markers or characteristics that we look at during our analysis.
Q. Oh, I'm so sorry.
A. You can think of them as if you go to a train yard, you see all these trains in the train yard; they've got a caboose, they've got an engine, and then they've got these identical boxcars in the middle. Short tandem repeat, we're looking at repeat units of DNA that are just repeated tandemly any number of times. At a particular marker it may be repeated five times, it may be repeated eight times. So we can look at these different lengths of DNA, the same way that a train would be different lengths if it had ten boxcars or eight boxcars.
Q. And so you're amplifying these areas on the DNA, the DNA strand, the so-called double helix that we're familiar with. And generally, as a protocol, there are 13 sites, or loci, that you're going to use for comparative purposes?
A. We look at 16. There's a core of 13 that every lab in the country looks at. So if I'm doing a comparison on my sample to something to California, we're comparing apples to apples, so

you also look at a couple -- well, three other locus.
Q. Gotcha. And so ultimately on your exhibit, the crime scene evidence, you've gotten through that part -- I know it got a little more complicated in this case because you ended up having to combine mixtures. Right?
A. Yes. Samples.
Q. You were able to get a DNA profile?
A. A partial profile, yes.
Q. A DNA partial profile. And tell us what a partial profile is.
A. Just means of those 16 characteristics we were attempting to examine, we only got results on part of those, or a few -- well, a limited number of those genetic markers.
Q. Do you know how many?
A. Looks like 14 of the 16 gave us at least a partial result. Again, when we're looking at low levels, especially a low-level mixture like this, we may not get complete representation at a specific marker when there's a mixture of everything that was involved. So if two people were contributing to a mixture, person 1 was an AB, person 2 was a CD, we may only pick up the A and the D just because of the low levels and what happens when you look at low-level amounts of DNA.
Q. So 16 sites, and on this DNA profile you got 14. Correct?
A. We had at least partial results of 14 of the markers.
Q. Okay. Good. Now, you finished that and you have that

partial DNA profile, and now you need to take your known samples -- correct?

A. Correct.

Q. -- to compare them to see if the DNA matches. Right?

A. Correct.

Q. And one of those was Randeep Mann's. Correct?

A. Correct.

Q. And what we do is -- we call them buccal swabs. Right? Somebody just goes to the person and takes these skin cells and saliva cells, and then you go through the same process of taking a DNA profile from that cellular material. Right?

A. Correct.

Q. And you've got a full, accurate DNA profile on a Randeep Mann. Correct?

A. Yes, sir.

Q. And you compared it to the first step, the unknown that you got from the crime scene. Right?

A. Correct.

Q. And you excluded Randeep Mann as the contributor of that. Correct?

A. Correct.

Q. And there were a handful of other people that you excluded. You excluded Gerald Riley, Timothy Harrell, Mark Rinke, Ryan Kimbell as the contributors, right, of that biological material?

A. As essential contributors to the mixture, correct.

Q. Not their DNA?
A. Correct.
Q. It was not Randeep Mann's DNA?
A. Correct.
Q. You just didn't know, it got a little bit squiggy there on Warren Newman and Bill Buford, and you had an inconclusive result. You could neither exclude them nor include them. Right?
A. Correct.
Q. Understood. Nothing further. Thank you very much.
A. Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. GORDON:
Q. But that does not mean Randeep Mann never handled these grenades. Correct?
A. Correct.

MR. GORDON: No further questions.

MR. HENDRIX: May I follow up on that?

RECROSS-EXAMINATION

BY MR. HENDRIX:
Q. From a forensic -- and forensics just means criminal. Right? We're all involved in forensics. Yours is forensic science. Correct?
A. Correct.

Q. And what the function of your job is to do and what our function in this forensic criminal setting is to present facts and proof for our jury in order for them to make a determination of the disputed fact in this case, whether a person is guilty or not guilty. Correct?
A. Correct.
Q. And so what you're here to say is, based on what Mr. Gordon was saying, you simply don't have a fact to present to this jury of whether Randeep Mann is innocent or guilty based on the DNA profile because you don't have a DNA profile that matches him. Correct?
A. Yes.
Q. A little bit wordy. And all I'm trying to suggest here is, you've been asked just because you didn't get a DNA profile of Randeep Mann doesn't mean he didn't touch this item. Right?
A. Correct. I have no evidence one way or the other.
Q. But in a criminal trial setting where the issue is proof, facts, you don't have a fact to present to us. Right?
A. I guess the only fact would be is that I don't have a profile that he's a potential contributor to.
Q. You don't have a fact, you don't have any proof to this jury that Randeep Mann touched anything. Right?
A. Correct.

THE COURT: Anything further?

MR. GORDON: No, Your Honor.

THE COURT: Okay. Mr. Bille, you can stand down. This is a good time to take our morning break. We will recess until 1:45, and I'll leave you with the same admonitions I've given you all along. Thank you.

(Lunch recess at 12:32 p.m.)

C E R T I F I C A T E

I, Eugenie M. Power, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Eugenie M. Power, RMR, CRR, CCR Date: February 22, 2011
United States Court Reporter

(Proceedings continuing at 1:45 p.m.; jury not present.)

THE COURT: Do we have anything we need to take up before we bring the jury back?

MR. HENDRIX: I don't think so.

MR. GORDON: Your Honor, I would just advise the Court, though, that we intend to introduce an inert 40-millimeter grenade, practice grenade, just so the Court is aware. We'll do that with the next witness.

THE COURT: Okay. We can bring the jury in. How many witnesses do we have this afternoon who are here?

MR. GORDON: Actually we have four.

THE COURT: Can we bring them in and swear them all in now?

MR. GORDON: Judge, we only have two of the four here right now. Mr. Shelley has already been sworn and testified earlier. This is Ron Neff. He will be after Mr. Shelley.

THE COURT: Mr. Neff, come forward. I will get you sworn in.

(Jury present; Mr. Neff sworn.)

MR. GORDON: The United States calls Stephen Shelley, I guess recalls Stephen Shelley.

STEPHEN SHELLEY, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Please state your name for the record.

A. Stephen Shelley.
Q. Are you the same Stephen Shelley that testified in this trial earlier?
A. Yes, sir.
Q. And I remind you that you are still under oath. Tell us again what you do, please.
A. I am an explosives enforcement officer with the Bureau of Alcohol, Tobacco and Firearms. Part of my job is to provide direct and technical support to special agents in the field. That basically involves giving training classes, evaluating reports, physical evidence, and making determinations on explosive devices. We also go out and do postblast investigations, where we go out and collect and preserve evidence from bombing scenes.
Q. Did you testify last week about Government Exhibit 69?
A. Yes, sir.
Q. Did you participate in the investigation of some military explosives that were discovered in London, Arkansas, on March 3rd, 2009?
A. Yes, I did.
Q. When and how did you get involved?
A. After the military explosives were discovered, I was called from Atlanta to drive down to Little Rock to meet with the agents to examine those grenades.
Q. And did you examine the grenades?

A. I did.
Q. Where did you do your examination?
A. Initial examination was done at the ATF explosive magazine at Camp Dobbins, I believe.
Q. Was it a bunker?
A. A bunker.
Q. And when you did your examination, did you take some pictures?
A. I did.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to hand you what's been marked as Government's Exhibit 120-A through 120-H. Are those some of the pictures you took during your examination?
A. Yes, sir.
Q. And do they fairly and accurately depict the device that you were examining?
A. Yes.
MR. GORDON: Your Honor, I would offer Government Exhibits 120-A through 120-H.
THE COURT: They are received.
(Government's Exhibits 120-A through 120-H received in evidence.)
BY MR. GORDON:

Q. Actually, before we get to those, let's go to 118-D, please. Just so we're clear, are those the devices that you were examining?
A. Yes, they are.
Q. How many devices were there?
A. There was 98 high-explosive grenades and one practice grenade.
Q. Let's look at Government Exhibit 120-A. What is that?
A. That's an M406 40-millimeter grenade.
Q. 120-B, what are we looking at here?
A. That's also -- that's the same grenade. That's an M406.
Q. 120-C?
A. That's also an M406.
Q. 120-D?
A. Again, it's the same M406.
Q. 120-E. What are those yellow markings on 120-E?
A. Those are the lot number.
Q. What's the lot number?
A. The lot number is the designation that the manufacturer assigns to a run or a specific lot or amount of grenades that are produced for the end user by that order.
Q. Let's look at 120-F. What are those black markings?
A. The black markings, that's the designation for the casing, the actual shell casing that the grenade is loaded into.
Q. Let's look at -- jump back to 120-A. In 120-A, which part

of the grenade here is the casing?
A. The casing is this part right here, like you would find in a standard handgun or rifle cartridge ammunition.
Q. Okay. For the record, it's not the yellow nose. It's not the blue ring. It's the bottom part of the grenade.
A. Yes, sir.
Q. Let's jump back to 120-F. Tell us again, what are the black letters?
A. These black letters right here, this is the designation for the casing. It's called an M118 is the shell casing, this part right here. And the 40 millimeter is the caliber for the weapon system.
Q. Let's look at 120-G. When you examined the grenades and the black markings on these grenades, the casing number, was that number complete?
A. No. This is where the casing number is. It's M118 right here. This right here is a lot number for the casing itself, not necessarily for the grenade, because it's obviously different from the lot number up here. Usually the lot number down here on this casing, it says ACN-11-14-11. Then after that, there would be some numbers that should be here, indicating a date of manufacture, a year.
Q. And were those numbers on the casing?
A. Not on this one, no.
Q. Do you recall, was the year on any of the casings of the 98

grenades?
A. Some of the casings that I examined I came back to do a reexamination later on. In some of the casings, you could see where the number had been rubbed off, but there was a shadowing in the anodizing of this casing. You could see where there was a number there, but the ink had been rubbed off.
Q. Let's look at 120-H. What is that?
A. This is the underside of the shell casing. You see the primer right here the firing pin from the grenade launcher would impact.
Q. When you examined these devices, how did you conduct your review?
A. The first thing I do is take photographs of the items. I document all the lot numbers, any nomenclature or lettering that's written on the grenade. I measure it. And then I compare it to literature that the military has, training manuals, field manuals, and make a determination off of that.
Q. Did you x-ray any of these devices?
A. Yes, sir, I did.
Q. Why?
A. To determine the contents of it. Because a grenade may say it's an M406 on it, it doesn't necessarily mean it is. I take an x-ray image of it to look at the internal components. And that will tell me if it is, in fact, an M406. I can see the fusing system, the explosive package, and the other components

that are indicative of an M406.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you Government Exhibit 121. Is that the x-ray that you took of one of the devices in this case?

A. Yes, sir.

MR. GORDON: Your Honor, I would offer Government Exhibit 121.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 121 received in evidence.)

BY MR. GORDON:

Q. Agent Shelley, if you would, take a look at 121 here with us and tell us what we're looking at.

A. This is an x-ray image of the M406. When x-rays are taken, the denser material or the thicker material shows a darker image. Where you see the O, this is called an ogive up here. This is basically a windshield, a light aluminum sheet metal. And so is -- the casing is also a light metal. That's why you can see through it very easily.

This ball right here, this fragmentation ball, is what the actual grenade is inside this projectile. This is what does the damage. This is the actual weapon right here. This part up here on the top part, this is the M551 fusing system. Once that

fusing system is threaded into this ball, the windshield attached, then the whole projectile is press-fitted into this casing, this casing right here we talked about earlier.

Q. Based upon this x-ray, what can you tell us about these devices? Were they live?

A. They were live. And the reason why it's live, the reason why it's live is because of this steel ball. They don't put these steel balls in practice grenades. And also, this fusing system up here, you can see these weights right here. On the top up here, this dark steel, these are called inertial weights.

The way it works is, when the grenade is fired, it spins like a rifle bullet. As it spins, these weights pull apart. And that's what arms up the grenade inside. If it's not fired, you can drop the grenade. It's safe. It will not explode. But it has to be fired out of the weapon system and exit the barrel with the spin imparted on it so that these weights will pull apart to line up the fusing mechanism inside to make that grenade armed.

Q. When you examined these devices, did it appear as if someone had already handled them?

A. They were handled, yes.

Q. What made you think that?

A. They had fingerprint powder on them, and they were also numbered with a Sharpie type --

Q. Let's look at 120-B. Is that one of the markings you were

talking about?
A. Yes, sir, the 1 and 7.
Q. Did those markings or the fingerprint residue affect any of your examination?
A. No, not at all.
Q. After reviewing these devices, did you form an opinion about what they were?
A. I did.
Q. What is that opinion?
A. These were M406 40-millimeter high-explosive military grenades.
Q. And are you familiar with this type of grenade?
A. Yes, sir, I am.
Q. How?
A. I have fired them. I have destroyed them. I've done pretty much everything to do with them except manufacture them and tear them apart by hand.
Q. How many times have you seen them?
A. Hundreds if not thousands of times.
Q. And can you identify them by sight?
A. I can.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:
Q. I'm going to show you what's been marked as Government

Exhibit 122. Do you recognize that?
A. Yes, sir.
Q. What is it?
A. This is a practice 40-millimeter grenade.
Q. Is that similar to a 40-millimeter high-explosive grenade?
A. In size and weight and appearance, yes.
Q. How is it different from an HE, a high-explosive grenade?
A. These practice grenades do not contain a high-explosive package. These are not designed to kill. These are not weapons. These are designed for soldiers or troops to fire and simulate trajectory of the round itself, to practice using a cheaper nonweaponized round.
Q. The coloring, is that different as well?
A. It is slightly different, yes.
Q. But it is a fair representation of the size and shape of a 40-millimeter high-explosive grenade?
A. It is.
Q. Why didn't you make an inert 40-millimeter grenade like you did with the MK3A2?
A. The difference between these 40-millimeter grenades and that hand grenade is this is a more complex fusing system, where that fusing system is just simply threaded into the grenade body. It's a very simple process to inert one of those. These are pressed together when they are manufactured. For me to tear one apart, first of all, it would destroy the grenade. It would

not look the same once I was done with it because there's no easy way to disassemble it. Secondly, and probably the most important reason is, because it would not be safe to do because it is a complex fusing system. If I were to gouge something into it or to drill into it, I may hit one of the detonators or the detonator assembly and cause it to function, which would not make my wife happy, so that's why.

MR. GORDON: Your Honor, I would like to offer Government Exhibit 122.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 122 received in evidence.)

MR. GORDON: Your Honor, would the Court allow me to publish it to the jury where they can feel it and handle it?

THE COURT: I have no objection to that.

BY MR. GORDON:

Q. And that's not going to explode on us. Right?

A. No.

Q. Don't make a liar out of me. Let's look at -- may I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government Exhibit 123. Do you recognize that?

A. Yes.

Q. What is it?
A. That's a cutaway representation of an M406.
Q. The insides?
A. It is.
Q. And would this picture help you in giving your testimony to the jury?
A. Yes.
MR. GORDON: Your Honor, I would offer Government Exhibit 123.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 123 received in evidence.)
MR. GORDON: Before we go further, may I approach again, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Let me show you what's been marked as Government Exhibit 124. Do you recognize that?
A. I do.
Q. What is it?
A. It's a diagram of the internal of the M406.
Q. Would it aid you in giving your testimony to the jury to use this diagram?
A. Yes.
MR. GORDON: Your Honor, I would offer Government

Exhibit 124.

THE COURT: It's received.

(Government's Exhibit 124 received in evidence.)

BY MR. GORDON:

Q. Agent Shelley, what I would like you to do is please tell the jury how a 40-millimeter grenade is constructed. There we go. And you can use those diagrams as needed.

A. Okay. As we talked about earlier, this right here -- I'll just draw a little line. This is the casing. It's shaped like a cylinder. Obviously, this is cut in half.

Down here, this is a high-pressure chamber. This is filled with propellant. You see this hole. There's a hole right back here. This is a vent hole, the primer assembly right here.

This is the fragmentation ball right here. And in this fragmentation ball, you can see how it's scored. And that's to aid -- when the explosive is contained inside this frag ball, it explodes. It breaks. These little squares that are scored will break apart into fragmentation. That's what is designed to do damage. That's what's designed to cause casualty and kill other soldiers.

This part right here that's shrouded into this fragmentation ball, this is the booster. This is a smaller explosive charge inside here, this white. This booster is what sets off the explosives that's contained inside the frag ball.

On top of that is the fuse assembly. These right here are

the inertial weights I talked about earlier that spin out of the way when the grenade is fired from the barrel, and it spins apart on it. This fuse assembly is threaded with this booster into the fragmentation ball. And then this windshield is basically all this is right here, just to make it more aerodynamic so it will load easier into the weapon system. It's pressed onto the top of the grenade assembly.

Once the grenade assembly is finished, that assembly is then pressed into this casing we talked about earlier. Once that happens, all the stenciling is applied, and it is a complete grenade.

Q. If you would, tell the jury how this 40-millimeter grenade is fired or used.

A. Okay. These 40 millimeters, they are designed to be fired. They are a single-fire weapon system. Basically, it's an M203 which is attached to the bottom of an M16 rifle that soldiers carry, or an M79, which it's kind of like a break-action shotgun. Most soldiers shoot them from the M203. It is loaded into the breech of the weapon, and it is fired like any other rifle, fired from a shoulder.

Once it's fired, the projectile leaves. It leaves the barrel. It's like a regular bullet. The barrel is rifled, which means it has lands and grooves inside it, which imparts the spin onto the projectile.

The spin is important for two reasons. First, it

stabilizes the bullet in flight. There's no fins on this like there would be for a rocket. So that's how it stays on track, by the spin, kind of like throwing a football. That spin, like I said, moves these inertial weights up here out of the way.

Then there's also a cam system in here, in this fuse, that rotates and allows everything to line up. While it's spinning -- actually, as it is being fired, it's called setback. It's the same kind of thing, if you were in a vehicle and whoever was driving punches the gas pedal and it pulls you back into your seat, that's the setback. There's a pin in here called the setback pin. You can't really see it in here. But the actual setback of launching that grenade out of the barrel pulls that pin out of the way, which unlocks the fusing system so everything can rotate.

Now, once it has rotated and everything is in a line, it lines the firing pin up. The firing pin inside this fuse system will line up with the detonator and the booster. It takes -- there's a cam system in it, like I said, a gearing system that prevents the grenade from arming until it has traveled at least 14 meters away from the soldier. That's a safety mechanism, so if you were to shoot a target that was too close, it doesn't explode too early and hurt the user, the shooter. So it takes about at least 14 meters, maybe up to 30, 27, 30 meters, to arm. Once it's armed, it will stay armed until it impacts the ground or a target. Once it impacts, it could impact sideways. It

could impact dead on its nose. And that's when it will explode.
Q. And you said it's fired using a what?
A. An M203 or an M79 grenade launcher.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I show you what's been admitted as Government Exhibit 109-B. Is that an M203 grenade launcher?
A. Yes. Yes, it is.
MR. GORDON: May I approach again, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 109-A. Is there an M203 grenade launcher here?
A. Yes, sir.
Q. Where is it?
A. It's on the underside, underneath the fore-grip of that AR-15.
Q. I'm going to ask you to take 109-A. And just show us how you would load and fire a 40-millimeter grenade with this exhibit.
A. Okay.
Q. And don't point it at the jury.
A. The weapon system is opened as such. The grenade is obviously inserted nose first into the barrel, and it slams

shut. It won't close because of this zip tie in the way. But it will close. And now it is cocked and ready to go. If there's a magazine that extends from the bottom of the weapon system, you grab the magazine, like you would this pistol grip. And then you use this trigger right here. There's a separate sighting system on top that's used for the grenade launcher itself. And that's what you aim the weapon system with.

Q. Thank you. And when the grenade is fired from an M203 grenade launcher, what kind of range does it have? How far will it go?

A. It has a maximum range of about 400 meters.

Q. What's the purpose of the grenade?

A. To cause casualties or kill enemy soldiers.

Q. Is it capable of causing property damage?

A. It is.

Q. Within what radius?

A. It can cause property damage within 130 meters.

Q. And is it capable of causing serious bodily injury or death?

A. Yes. It was designed for that purpose.

Q. Within what radius?

A. It has a kill radius of 5 meters.

Q. What about injury?

A. Injuries could be anywhere out to a hundred yards.

Q. And how is an M406 40-millimeter high-explosive grenade

classified?
A. It's classified as a destructive device.
Q. And I believe you did that for the MK3A2. Tell us how or why it's classified as a destructive device.
A. Like the MK3A2, for something to be classified as a destructive device, it has to meet three criteria. First of all, it has to be designed or used as a weapon. The M406 was designed as a weapon.

It has to contain either a high explosive, an incendiary, or a poison gas. It contains an explosive. It contains 32 grams of Comp. B.

Third, it has to fit one of the categories. Is it a mine, rocket, missile, grenade, anything such as that, like ordnance or a bomb? It's classified as a grenade.

So we have an item that's designed as a weapon. It contains explosives. And it meets the criteria for a grenade, so it meets all three, so therefore it's a destructive device.
Q. As a destructive device, is it also classified as a firearm that is required to be registered?
A. Yes.
Q. When you examined these grenades, was there another device amongst them?
A. There was a practice grenade.
Q. Let's go back and look at 118-D. Is there a practice grenade in this picture?

A. There is. It's this blue-topped one, the stand-alone one.
Q. Are you familiar with that type of grenade?
A. I am.
Q. How is it fired?
A. It's fired in the exact same manner as the M406.
Q. Tell us what's its purpose and how it operates.
A. Okay. The purpose of these is -- they are fairly expensive. Where these M406s, an explosive round like that, can cost anywhere from 50 to a hundred dollars apiece -- it's pretty expensive to use, especially for training -- where these practice ones, these blue ones, they might be 5, $10 apiece to fire.

They have basically the same trajectory, the same flight characteristics, as an explosive grenade, except instead of being filled with explosives, these are filled with an orange dye. When it hits the target or hits the ground at a distance, this blue projectile, it's a fairly fragile plastic. It breaks apart on impact and shoots orange dye, kind of an orange poof of smoke if you would.
Q. What's the difference between the one in the picture here and the inert one that you brought that we showed the jury earlier?
A. The big difference is these are -- this uses a dye, where that one may use a smoke inside. This actually uses the physical dye, not real smoke. Then the casing on this practice

one in this picture is made of like a nylon or a plastic.

MR. GORDON: Thank you, sir.

Pass the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Are practice rounds destructive devices?

A. No, sir. Usually not.

Q. And by that I mean, destructive devices are regulated by the NFA and have to be registered, properly transferred. Correct?

A. Yes, sir.

Q. Practice rounds don't. Right?

A. Not necessarily. It depends on the practice round. Some practice rounds may be considered destructive devices depending on what they contain and how they are used.

Q. Yeah. You can go to eBay. I can go to eBay and order a practice round. Right?

A. These particular ones, yes, you probably could.

Q. There are fragmentation grenades and concussion grenades. Right?

A. For the 40 millimeter?

Q. No. Just in general, grenades --

A. Yes, sir.

Q. -- universal.

A. Yes, sir.
Q. And can you explain the difference between the two?
A. The fragmentation grenade is designed to cause casualties or injury or death through the actual fragmentation of the grenade body. Like that frag ball I showed you where it's scored, that's the fragmentation designed to do that. A concussion grenade is more like the MK3A2, where it's a soft body. It's made to cause injury or death through the use of the blast overpressure and not necessarily through fragmentation.
Q. Are fragmentation then, because they expel shrapnel -- I don't know if this is a correct terminology or not -- but have a larger kill radius?
A. It depends on how they are used. The concussion grenade or the offensive grenades are used in a closed quarters kind of area. They contain more explosives to generate that blast overpressure, where a fragmentation grenade will have less explosive and use -- the fragmentation is the workhorse, I guess, if you would.
Q. The National Firearms Act is contained in Title 26 of the United States Code. Is that right?
A. Yes.
Q. Are you familiar with it?
A. The explosive part, yes.
Q. It's complicated, isn't it?
A. It can be.

Q. The regulation of firearms in this country has grown very complicated, has it not?
A. It may have.
Q. It's sort of -- you are familiar with sort of your area. I assume you've looked at the statutes.
A. In general, the explosives, yes.
Q. Here's an example of what I'm getting at. Just on the M16, is this -- would this be considered a grenade launcher attachment?
A. It would be a grenade launcher.
Q. Is there a difference between a grenade launcher and a grenade launcher attachment?
A. I'm not sure if there is or not. I may not be familiar with the terminology.
Q. The reason I ask -- and I'm going to walk over here -- is while on direct examination, I got on the ATF website. I understood that the launcher and its attachment is a destructive device. Is that your understanding?
A. The 40-millimeter grenade launcher is, yes.
Q. Yeah. It has to be regulated and registered. Right?
A. Yes, sir.
Q. I was just on the Internet on the ATF website on the frequently asked questions. And it says: "Are grenade and rocket launcher attachments destructive devices?" And the ATF website says: "Grenade and rocket launcher attachments for use

on military-type rifles generally do not come within the definition of destructive devices." Do you know why the ATF website would say that?

A. The only thing I can think of, if the question was involving 37-millimeter civilian grenade launchers.

Q. So 37 millimeters would not be destructive devices?

A. As long as they do not fire antipersonnel ammunition. If they fire smoke, flares, line throwers, basically a tool-type thing, it's not a destructive device. If a 37 were to fire like, say, a buckshot round or explosive round or something that's antipersonnel, then that grenade launcher would be deemed a destructive device.

Q. Got you. And like the 37 millimeter, is a 40 millimeter capable -- it is obviously capable of firing practice rounds; right, the 40-millimeter practice rounds?

A. Yes.

Q. And are there flares that are 40 millimeter?

A. There are.

Q. And can you tell us what a flare is?

A. A flare is basically a candle that's shot up into the air, used for signaling. It depends on what the war or battle requires. A red flare can mean something. An orange flare can mean something else. They can have other flares that are parachute suspended to illuminate the battlefield. They have infrared flares that are used to help out with night vision

capabilities.
Q. Are they destructive devices?
A. Those would not be.
Q. They are not?
A. No.
Q. Thank you.
THE COURT: Any redirect?
MR. GORDON: No, Your Honor.
THE COURT: You can stand down.
Call your next.
MR. GORDON: United States calls Ron Neff.

RON NEFF, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON:
Q. Good afternoon, sir.
A. Good day.
Q. Please state your name for the record.
A. My name is Ron Neff.
Q. How do you spell your last name?
A. N-e-f-f.
Q. Where do you work, sir?
A. Milan Army Ammunition Plant.
Q. M-i-l-a-n?
A. Yes, sir.
Q. And where is that located?

A. Milan, Tennessee.
Q. What do you do at the ammunition plant?
A. I'm the chief of safety and security.
Q. How long have you held that job?
A. Since 1987.
Q. What is the Milan Army Ammunition Plant?
A. It's a load, assemble, and pack facility producing military munitions for American war fighters.
Q. Explain for us what you do there.
A. We manufacture 40-millimeter grenades, C-4 products, and 60-millimeter mortars that goes from Milan to the war fighter in the theater.
Q. What do you specifically do there?
A. My job is to make sure that the employees are safeguarded against potential hazards. We engineer in blast walls and other mechanical devices to protect the operators. We have a very unforgiving product.
Q. And do you also handle requests for records?
A. Yes, sir.
Q. Tell us about that. What do you do?
A. On occasion, I will get contacted by ATF or FBI or, in some cases, the U.S. Embassy regarding a particular product with our lot number and asked to run the lot history on it.
Q. If you would, I would like you to look at some pictures real quick. We'll just flip through these. Government

Exhibit 120-A. We're going to run through about eight of these, and then I'm going to ask you a question. 120-B, 120-C, 120-D, 120-E, -F, 120-G, 120-H. Do you recognize what's depicted in those photographs?

A. Yes, sir.

Q. What is it?

A. It's an M406 40 millimeter.

Q. And is that ammunition that you make there at Milan?

A. Yes, sir. It has our lot number on it.

Q. Let's look at that. Let's look at 120-E. Does this photograph contain a lot number from your plant?

A. Yes, sir.

Q. How do you know that lot number is from your plant?

A. The MA stands for our facility.

Q. Does each facility that manufactures components for ammunition have a different designation?

A. Yes, sir.

Q. And MA is the designation for the Milan Ammunition Plant?

A. Yes, sir.

Q. Tell us what a lot number is, please.

A. A lot number identifies a specific round. Each item we produce are based in lots. Those lot sizes are determined by a number of factors. But everything that's in that lot will have that number. And all the subcomponents that went into it will be listed in that lot number.

Q. If you would, go ahead and read into the record the lot number on picture 120-E.
A. MA-119-242.
Q. Did I provide you with a subpoena to produce records pertaining to that lot number?
A. Yes, you did.
Q. Did you do so?
A. Yes, sir.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 125. Are those those records?
A. Yes, sir.
MR. GORDON: I would offer Government Exhibit 125.
THE COURT: They are received.
(Government's Exhibit 125 received in evidence.)
BY MR. GORDON:
Q. Mr. Neff, I would like to look at the first page of this exhibit. First of all, what do you call Government Exhibit 125? Is there a name that you have for it?
A. That's lot history data cards.
Q. Ammunition data card?
A. Yeah.
Q. Tell us, generally speaking, what's contained in these

records.
A. The details of everything that went into that and how many were made.
Q. All right. From looking at Government Exhibit 125, how can we tell that this is the ammunition data card that relates to the grenade in Government Exhibits 120-A through -H?
A. The lot number is located in the upper right corner.
Q. Then how do we know that -- how do we know what type of ammunition is covered by this data card?
A. Over on the left side, cartridge, 40-millimeter HE M406.
Q. Can you tell us when this lot of 40-millimeter grenades was manufactured?
A. In June of 1979 -- '75.
Q. Is that on the data card?
A. Yes, sir.
Q. Show us where, please.
A. The start date and the completion date.
Q. And there's two boxes. One says date started?
A. And date completed.
Q. And how many 40-millimeter grenades were created in that lot?
A. There was a total of 98,784.
Q. Would all 98,784 of them have these same lot numbers stamped on them?
A. Yes, sir.

Q. And once all of those were made, what about grenades that were made in the future?
A. They would have a different lot number.
Q. Were any of those original 98,784 grenades tested?
A. Yes, sir.
Q. How many?
A. 144.
Q. So that means how many were left over?
A. Well, 98,640.
Q. What happened to those 98,640 grenades?
A. They were placed in one of our earth-covered magazines until such time as we were directed to ship them.
Q. And when the grenades are prepared for shipment, how are they packaged?
A. It's identified here on the lot. There's six rounds to a bandolier, 12 bandoliers to a fiber carton, and one carton to a wire-bound box, and 36 wire-bound boxes to a four-way pallet.
Q. And is that on Government Exhibit 125 in the top right corner?
A. Yes, sir.
Q. What's a bandolier?
A. That's a cloth device with an insert in it. The rounds are inserted into it. And the soldier carries them over his shoulder, around his neck, however he wants to wear them.
MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as -- admitted as Government Exhibit 99-A1. Is that a bandolier?

A. Yes, sir.

Q. And each bandolier holds six grenades?

A. Yes, sir.

Q. Then you take 12 bandoliers and put them in one fiber carton?

A. Yes, sir.

Q. Then one carton goes in a wire-bound box?

A. Yes, sir.

Q. Thirty-six wire-bound boxes go onto a pallet?

A. Four-way pallet.

Q. What's a four-way pallet?

A. It's a wood pallet that can be accessed by a forklift from either side.

Q. Can you see where you are seated Government Exhibit 99-A, 102-A, 102-D and 102-E? Can you see those right there?

A. Yes, sir.

Q. When the grenades are shipped from the Milan Army Ammunition Plant, are they shipped in containers like these?

A. No.

Q. After the grenades are manufactured, how long do they remain in storage?

A. They don't stay with us long.
Q. Okay. And does the plant keep track of when and where each lot is shipped?
A. Yes, we do.
Q. Before we move on, let me cover one more thing. Government Exhibit 125, let's go back to that, the data card. There we are. Towards the bottom, there's a section that says "components." What's the information down in that section?
A. The components speak to the lot numbers on the subcomponents that went into the completed round and who manufactured them and what their lot numbers were.
Q. Let's look at the first one. It says, "cartridge." Can you read that there?
A. Yes, sir. Cartridge. It gives a drawing number. It's a M118 cartridge case made by Amron in November of '74, shows a lot number and that they sent us -- that we used 98,784 of them in this process.
Q. Let's look at Government Exhibit 120-A. Which part is the cartridge case?
A. This lower green section.
Q. Let's look at 120-G, the black number, numbers and letters on the cartridge casing?
A. Yes.
Q. What's the "ACN" stand for?
A. Amron.

Q. Is that their plant designation?
A. Yes, sir.
Q. Like yours is MA?
A. Yes.
Q. What's the M118?
A. M1 -- M stands for model, and 118 is the model. That's for a low-velocity shoulder-fired round.
Q. If you look at 125, it says lot number for this cartridge case, ACN-11-14?
A. Yes, sir.
Q. And we see that. That's marked on the casing. Correct?
A. Yes, sir.
Q. It says, "date of manufacture, November of 1974."
A. Yes, sir.
Q. Should that also be stamped on the casing?
A. Typically not.
Q. Typically not?
A. Yeah.
Q. Do you know what this 11 is --
A. No, sir.
Q. -- after the lot number?
A. No, sir.
Q. Okay. You've testified that y'all maintain records that show where the grenades are shipped, where and when they are shipped?

A. Yes, sir.
Q. Did you provide me with that documentation for this lot number?
A. Yes, I did.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 126. Do you recognize that?
A. Yes, sir.
Q. Is that the lot shipment history for the grenades that we've been talking about?
A. Yes, it is.
MR. GORDON: Your Honor, I would offer Government Exhibit 126.
THE COURT: It's received.
(Government's Exhibit 126 received in evidence.)
BY MR. GORDON:
Q. Let's look at Government Exhibit 126. How do we know that this record pertains to the lot number that we've been talking about?
A. The lot number is in the upper right-hand corner.
Q. Does it also identify the type of ammunition we're dealing with?
A. Yes, sir. Cartridge, 40-millimeter HE M406.

Q. Okay. Then what I want to do is there's a bunch of rows down below. Let's talk about what that means. Start with the column that says "date." What's that?
A. That's the date that it was entered into the official records.
Q. Next to that, there's a c-o-n-d. What is that?
A. That's a condition code that will have different alpha characters in it. A means it's good to go.
Q. A means it's good to go?
A. Yes, sir.
Q. And action quantity and total quantity lot?
A. Yes, sir. That's where it's transferred into or out of the magazine, earth-covered magazine, in this case into Delta 901.
Q. Delta 901 is where this lot was stored?
A. Right.
Q. Tell us what happened on June 24th, 1975. What happened with this lot?
A. They put 50,435 into Delta 901.
Q. And what happened the following day?
A. Another 48,205, reflecting a total of 98,640.
Q. So as of that date, the entire lot was now stored at Delta 901?
A. Yes, sir.
Q. Tell us what happened. What are the next four entries on this?

A. Those are annual inventories, where they have gone in and verified that the 98,640 are still present.
Q. When is the first time that any of the grenades in this lot were shipped out?
A. I believe the 2nd of May, 1980, to Fort Benning, Georgia.
Q. How many were shipped out?
A. 11,667.
Q. That left how many behind?
A. 86,973.
Q. All right. Let's do one more just to make sure we understand how this works. When was the next shipment?
A. On the 8th of May, to Fort Richardson, Alaska. 5,446 were shipped, leaving a balance of 81,527.
Q. When were the last shipments of the grenades from this lot shipped out?
A. The last shipment was on the 20th of June, 1980, went to Fort Sill, Oklahoma. There was 4,217 shipped, leaving a zero balance at Milan.
Q. When you look back at all the other shipments for this lot, were all of the grenades shipped to military installations?
A. Yes, they were.
Q. Is that typical for Milan, that y'all only ship to military installations?
A. Yes, sir.
Q. Do you know what the military uses a 40-millimeter grenade

for?
A. To defeat our enemy whomsoever.
Q. Are these for military use?
A. Yes, sir.
Q. Therefore, theoretically they should stay in the channels of military supply?
A. Yes. We only ship to those who we're directed to by the government. They tell us when and where and how.
Q. Have you ever heard of these 40-millimeter grenades getting out of military channels and into civilian hands?
A. Not that I'm aware of.
Q. In your job -- since 1987 was it?
A. Yes.
Q. Are you the person that would know?
A. I'm the person they call for traces, yes.
Q. Okay. Typically, how many times a year do you get a phone call with someone wanting you to identify some military munitions that have ended up in civilian hands?
A. One to two a year.
Q. And is that for all the ammunition that the plant manufactures?
A. Just -- if it's just got our lot number on it.
Q. Okay. But you testified y'all make mortar rounds, C-4?
A. Yes, sir.
Q. So one to two phone calls per year about anything that

y'all make in the plant?
A. Yes. If it's got our lot number on it, they will contact us for the lot history information.
Q. In your 30 years at Milan, how many inquiries have you had about 40-millimeter grenades?
A. I believe this is the first.
Q. This case?
A. Yes.

MR. GORDON: Thank you, sir.

Pass the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HENDRIX:
Q. Mr. Neff, how are you, sir?
A. Just fine.
Q. Just a few questions, mainly just to clear some things up with me. These 40-millimeter grenades at issue in this case with this specific lot number were all manufactured at Milan. Is that right?
A. Yes, sir.
Q. And where is Milan?
A. North about -- halfway between Memphis and Nashville and north of Jackson.
Q. Down I-40?
A. Yes, sir.

Q. About halfway to Nashville?
A. Yes, sir.
Q. Then up?
A. Then up.
Q. Got you. Is that the only function of Milan is as a manufacturing plant?
A. Yes.
Q. Okay. And where I got a little bit lost is on this particular lot number. It went from -- these were manufactured in 1975. Right?
A. Yes, sir.
Q. And I assume Milan has manufactured 40-millimeter grenades since 1975?
A. We do them today.
Q. Is it one lot per year?
A. Oh, no.
Q. Per order?
A. No. That's based on the components. And the QA people control what goes into a lot. If they start having trouble with a fuse manufacturer, they may stop that lot and start another one with a different manufacturer until they can clear the problem up.
Q. I think I got that. But at least we know from 1975 to today Milan is still manufacturing 40-millimeter projectile grenades. Is that right?

A. Yes, sir.
Q. Have the components -- has the powder changed over the course of the years?
A. Typically we're using the same stuff. I would have to look back at all the data on it. But we're using the 118 and pretty much the same propellants.
Q. What is the propellant?
A. I would have to look at my paperwork.
Q. Is it TNT?
A. No, no. TNT would be a part of the filler.
Q. Okay. If you wouldn't mind.
A. Let me look at my notes a minute.
Q. I'm really just interested in knowing, has the powder and so forth in it changed over the course of the years?
A. We have improved over the years. That is an obsolete round, and there's rounds that have replaced that that have much more results.
Q. If an old one from 1975 were to be fired from a millimeter launcher, would it leave characteristics that could be tested to determine that, in fact, that particular 40-millimeter round or from that lot had been fired from that weapon? Does that make sense?
A. Would you say that again?
Q. Sure. Is there any testing that you are aware of that if -- let's use this example. The 40-millimeter rounds that

were manufactured in 1975 with that lot number, or just say 1975 at Milan, is there any testing that could be done on a launcher to determine whether a 40-millimeter grenade manufactured in 1975 was shot from that particular launcher?

A. I'm not certain of that. I know the 203 has a -- 79s have riflings in them, and there's an operating band. I don't know if it leaves a signature like a firearm or not.

Q. Well, and that's why I was asking you about the powders and so forth, have they changed over the course of the years, because if, for instance, one type of powder was used in '75 but not in '79, if you found the residue from the 1975 version, you could say that 1975 version had been shot. Does that make sense?

A. (Witness nods head.)

Q. But we don't know the answer?

A. Right.

Q. What is the shelf life of these grenades?

A. I'm not certain of that. The magazines, the storage -- the shipping procedures we have, they last numerous years.

Q. Are we talking ten or a hundred?

A. I'm sure them rounds will fire today.

Q. From '75?

A. Right.

Q. Do you have an idea of how far back they would go before they wouldn't really be functional?

A. No, sir.
Q. Mr. Neff, thanks.
THE COURT: Any redirect?
MR. GORDON: No, Your Honor.
THE COURT: Mr. Neff, you may stand down.
Call your next.
MS. WHATLEY: Cecil Norwood.

CECIL NORWOOD, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:
Q. Good afternoon.
A. Hello.
Q. Would you please state your name.
A. Cecil Norwood.
Q. Spell your last name for us.
A. N-o-r-w-o-o-d.
Q. Are you currently incarcerated, Mr. Norwood?
A. Yes, I am.
Q. On what charges?
A. Two counts of possessing a firearm and then a possession of a silencer.
Q. And possession of the firearm, is that felon in possession?
A. Yes.
Q. Since you are charged with felon in possession, you obviously have prior offenses. Correct?

A. Yes, ma'am.
Q. What are those prior offenses?
A. Theft charges.
Q. How many theft charges do you have in your past?
A. I believe it's four or five. I believe five.
Q. Have you gone to trial yet on the current charges?
A. No, ma'am.
Q. When are you currently scheduled to go to trial?
A. Currently it's in January of next year.
Q. When were you indicted?
A. I believe that was April 21st, 2009.
Q. When were you arraigned?
A. I believe I was arraigned on April 21st, 2009.
Q. So you were indicted in April of 2009?
A. Well, my first appearance in the federal court was on April 21st.
Q. And were you incarcerated at the time of your indictment?
A. Yes, I was.
Q. You said you were arraigned on April 21st.
A. Yes, ma'am.
Q. Was that here in the federal courthouse?
A. Yes.
Q. Did you meet the defendant Randeep Mann that day?
A. Yes, I did.
Q. And where did you meet him?

A. It was in the holding cells.
Q. The holding cells of the Marshal's Office or in one of the holding cells right next to the courtroom?
A. It was in this building.
Q. Did you have a conversation with Randeep Mann that day?
A. Yes, ma'am, I did.
Q. Why did you have a conversation with him?
A. I didn't intend to have a conversation with him at first. When they moved several of us into a holding cell, some of the other inmates were pointing him out, saying he was the one with the grenades or something like that. Then I sat down beside him. And after that, one of the other inmates asked him if he was the one with the hand grenades. And he said that, no, it was not hand grenades, it was like 40-millimeter rounds.
Q. And did you talk to him after that?
A. Well, yes. I was a Marine for four years, and one of my weapons fired 40-millimeter rounds. So I asked him if it was 119 rounds. He said, no, it was M203 rounds.
Q. Did you have any discussions with the defendant regarding where the rounds were located?
A. Yes. He said that -- I believe it was electrical workers had found them in some bushes just off of his property. And he didn't believe that they were just accidentally found.
Q. Did you ask him about why they were located, where they were found?

A. Yes. I asked him why he would bury them off of his property. And he said that he knew that he would be a person of interest in the bombing of Trent Pierce.
Q. How long did you talk to him that day?
A. It was approximately 10, 15 minutes.
Q. Were you housed with him anytime after that?
A. No, ma'am.
Q. Did you know who Trent Pierce was?
A. No, I didn't, not at that time.
Q. When did you first come forward with this information?
A. I believe it was several weeks afterwards. I wrote to the U.S. Attorney's Office about it, about the conversation.
Q. And did I come see you along with an ATF agent?
A. Yes, ma'am.
Q. About how long ago was that?
A. Oh, it would have been several months later.
Q. Several months ago or several months later?
A. Several months after the incident.
Q. When was the next time that you and I spoke?
A. That would have been with my attorney on the phone yesterday.
Q. Mr. Norwood, you haven't been sentenced yet. Correct?
A. No, ma'am.
Q. You haven't even gone to trial?
A. No.

Q. Are you hoping that in the event that you get convicted and you receive a sentence that any sentence you get might be reduced based on your cooperation?
A. I'm not counting on it, but I wouldn't turn it down, no, ma'am.
Q. Have I made you any promises?
A. No, ma'am.
Q. Do you understand that even if the United States comes forward and asks Judge Wright to reduce your sentence -- she's the judge over your case. Correct?
A. Yes.
Q. You understand that it's up to her whether or not to reduce it?
A. Yes, I do.
Q. Mr. Norwood, why did you come forward with this information to begin with?
A. For several reasons. One, if it could assist me in getting out sooner, I wouldn't complain. That's for sure. Secondly, I was -- in the Marines, I was in the Marine Corps Antiterrorist Unit. And just my current situation, I'm an American, and I love America. I viewed it at the time as a possible like terroristic attack or at least a violent act, and I don't condone any sort of violence.
MS. WHATLEY: May I have a moment?
No further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Hi, Mr. Norwood.

A. Hello.

Q. What is your wife's name?

A. Shelli.

Q. Your wife's name is Shelli?

A. Yes, ma'am.

Q. You just told the jury that you were concerned after having been in the military, right, about terrorist activity?

A. Yes.

Q. You don't condone any kind of violence?

A. No, ma'am, I do not.

Q. But you are, in fact, a member of more than one white supremacist group, are you not?

A. No, I am not.

Q. You are not?

A. No, ma'am.

Q. Are you a jeweler?

A. Yes, ma'am.

Q. Did you not make and sell jewelry on white supremacist websites with insignia, Nazi insignia?

A. I made all sorts of custom-made jewelry, including that, yes.

Q. How many of those did you sell?
A. I would say I probably only sold maybe half a dozen of those.
Q. Who did you sell them to?
A. Any individual that requested them.
Q. Did you post them on white supremacist websites?
A. Yes, I did. And eBay and other sites.
Q. Did you also post comments frequently on those white supremacist websites?
A. Yes, I did.
Q. But you are going to sit here and tell this jury that you don't believe in those things that you posted prior to being incarcerated?
A. I can't remember what I posted. Some things I'm sure I did and some things probably not.
MS. CASSINELLI COUCH: May I approach, Your Honor?
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. Do you recognize this?
A. Yes, ma'am. That is a cut coin.
Q. What does it have in it?
A. That is a Nazi coin.
Q. And what does it say right there?
A. "I have another one available at this time."
Q. Does that have your name?

A. Yes, ma'am.
Q. Did you make this?
A. Yes, I did.
Q. One of many different styles that you've made that have this type of insignia on them?
A. By request.
Q. Did you post this?
A. Yes, I did.
MS. CASSINELLI COUCH: Your Honor, I believe we're on Exhibit 7.
MR. HENDRIX: It is.
MS. CASSINELLI COUCH: I move for introduction of this photograph.
THE COURT: Any response by the government?
MS. WHATLEY: No, Your Honor.
THE COURT: It's received.
(Defendants' Exhibit 7 received in evidence.)
BY MS. CASSINELLI COUCH:
Q. Mr. Norwood, we have just discussed this example of what you've posted on the Internet. Is it pretty fair to say there are dozens and dozens more? Do you agree?
A. I would not say there are dozens more unless they were custom -- unless they were requested.
Q. As a matter of fact, you posted some pictures on the Internet of the various white supremacist items that you had

made. And they were removed from the Internet because they were considered hate speech, were they not?
A. I'm not sure if they were removed or not.
Q. And you reposted them in a different spot. You don't remember that?
A. I don't remember if I did or not.
Q. Let's talk about the charges that you are currently in federal custody on. I think you said that you were a felon in possession of two different firearms and that you also possessed an unregistered firearm. Is that right?
A. I believe the charges were felon in possession of two firearms and an unregistered firearm silencer.
Q. Okay. The two firearms that you were a felon in possession of allegedly were a .45-caliber pistol. Is that right?
A. Yes, ma'am.
Q. And also a rifle?
A. Yes, ma'am.
Q. And the silencer was homemade, was it not?
A. It's a PVC pipe.
Q. Did you buy it at a store like that?
A. I'm not sure what all was supposedly modified on it, but it was a PVC pipe.
Q. It's described as a cylindrical device that measures approximately 24 1/8 inches in length, approximately 1 15/16 inches in diameter. The internal diameter measures

approximately 1 9/16 inches, constructed with PVC pipe and gray tape, with internal components consisting of black foam and a cylindrical piece of Styrofoam. It sounds homemade to me. You are charged with an NFA violation as well for that device, are you not?

A. A what violation?

Q. A National Firearms Act violation for failing to register that silencer in the National Firearms Registry and Transfer Record.

A. I believe so, yes.

Q. You've been detained since what date?

A. I was arrested on a theft charge in December 11th.

Q. Of what year?

A. 2008.

Q. So you've been in custody since December of '08?

A. Yes, ma'am.

Q. And you were indicted on the charges we just discussed in April of '09?

A. Yes.

Q. And were you in state custody since December of '08?

A. Yes, I was.

Q. What state?

A. Arkansas.

Q. Is that arising out of a different event, I assume, since you were arrested prior?

A. That was the theft charge. When they arrested me, they purportedly found the firearms in my car.
Q. What charges do you have pending in Pennsylvania?
A. It is a trespassing charge and I believe a terroristic threatening charge.
Q. Is that based on your conduct related to these firearms? Let me be more specific. Is that related to Mr. and Mrs. Thiel?
A. Yes, it is.
Q. And Mr. and Mrs. Thiel are your victims, are they not?
A. They claim that I took pictures and left them at their residence, yes.
Q. Well, let's go back through that. You --
MS. WHATLEY: Your Honor, he has not been convicted on any of these offenses.
THE COURT: You can clear that up on redirect. This is cross.
BY MS. CASSINELLI COUCH:
Q. You are alleged to have attempted to sell Mr. Thiel some gold bars. Is that right?
A. Yes, I did.
Q. And you received several payments from him over a period of time, did you not?
A. Yes, I did.
Q. Then you sent him some candles?
A. No, I did not.

Q. You allegedly sent him some candles?
A. Yes.
Q. You also allegedly made a threatening phone call. Is that right?
A. He alleges that, yes.
Q. And you also allegedly put a photograph of his home and two .45-caliber bullets engraved with Mr. and Mrs. Thiel's name on it outside of their house behind their electrical box.
A. That is what they are claiming, and I deny that.
Q. You called to alert them of it allegedly, right, so that they would go check their electrical box and see the casings with their names engraved on them?
A. That's what they allege.
Q. You mentioned that in December of '08 you have Arkansas charges you are picked up on. You've currently got the terroristic threatening charges in Pennsylvania. And I believe Ms. Whatley went through a few of your prior theft charges. Those are actually grand larceny convictions, are they not?
A. Yes, they are.
Q. Those go back to Kentucky, Virginia. Does that sound right?
A. Yes, ma'am.
Q. Not petty theft. As a matter of fact, you are a con man. Right?
A. No, I am not.

Q. No. This isn't -- this isn't a history of conning people that goes all the way back into the nineties?
A. No, ma'am. I would not say I conned anybody.
Q. I've noticed you do a lot of business over the Internet. And the charges that are currently pending in federal court have to do with you dealing over the Internet. Right?
A. Yes, ma'am.
Q. You are selling your Nazi insignia over the Internet?
A. Among other jewelry, yes, ma'am.
Q. Any of your other larceny charges come from dealing on the Internet?
A. No, ma'am.
Q. That was just stealing face-to-face?
A. No, ma'am.
Q. In the case that's pending right now, the federal indictment, Ms. Whatley is the prosecutor on that case. Is that right?
A. I believe so, yes.
Q. And that case has been pending since April of '09. Is that right?
A. Yes.
Q. You, through your attorney, moved to suppress evidence that was seized from your car which --
MS. WHATLEY: Your Honor, may we approach?
THE COURT: You may.

(Proceedings at the bench as follows:)

MS. WHATLEY: I'm not the criminal AUSA on that case, Your Honor. I think that needs to be made clear for the record. I'm only on it for forfeiture purposes, and I have no contact with the criminal case whatsoever.

MS. CASSINELLI COUCH: You are attorney of record. You entered an appearance. I don't think that was inaccurate. I can ask if there's another one too.

THE COURT: If she wants the record to reflect --

MS. CASSINELLI COUCH: I'll say you are one of two. You are on record --

THE COURT: What I'll allow you to do, you can clear that up on redirect. The problem is, I don't know if he really understands who the attorney is on the case.

MS. WHATLEY: He knows it's not me because of the conversation.

MS. CASSINELLI COUCH: Here's what I'll do. I'll say, "Your dealings have been primarily with Ms. Lipe with regards to that indictment, and the times you've talked with Ms. Whatley have been about this case." Is that correct?

THE COURT: What I would say is you leave it alone. You already asked the question. I don't think there is any effect for you to go back and ask.

I think, Ms. Whatley, you have to ask him. And I'll let you lead him on it too.

MS. WHATLEY: That's fine.

THE COURT: "I'm not the prosecutor on the case. Ms. Lipe is the prosecutor on the case." Of course, he would say yes.

MS. CASSINELLI COUCH: I'll be happy --

THE COURT: No.

MS. WHATLEY: I'll take care of it.

THE COURT: I'll let you lead him on that issue and clean that up.

MS. WHATLEY: That's fine.

(Proceedings continuing in open court as follows:)

BY MS. CASSINELLI COUCH:

Q. Mr. Norwood, we were talking about the history of your federal case. I think we said that you were indicted in April '09. Correct?

A. Yes, ma'am.

Q. At some point you, through your attorney, filed a motion to suppress evidence that was seized from you. Is that right?

A. Yes, ma'am.

Q. The Court denied that motion. Is that right?

A. Yes.

Q. In April of this year -- and I'm not including all of the things that have been filed in your case. I'm not meaning to mislead you and skip over stuff. But in April of 2010 you, through your attorney, filed a motion to continue your trial

date. Is that right?
A. Yes.
Q. Your trial date at that time was set for April 12th?
A. Yes, ma'am.
Q. Of 2010. Is that right? So on April 6 of 2010 you filed a motion to continue to explore further plea negotiations and/or prepare for trial?
A. Yes, ma'am.
Q. Is that right? And the government agreed through U.S. Attorney Linda Lipe. Is that right?
A. I believe so.
Q. Who is Ms. Whatley's cocounsel?
A. I believe so.
Q. And now you are set for trial in January of 2011?
A. Yes, ma'am.
Q. Okay. Now, during that time, what we've just been through since this indictment was pending and through your motions, you have sent several letters to the U.S. Attorney's Office. Is that right?
A. Yes, ma'am.
Q. When was the first letter that you sent?
A. I believe that would have been maybe a few weeks after April 21st.
Q. A few weeks?
A. I believe so.

Q. So not immediately?
A. No. It would have been at least a week.
Q. At least a week?
A. (Witness nods head.)
Q. The first letter that you sent, do you remember what you said?
A. I can't recall exactly, no, ma'am.
Q. Did you offer your services as a confidential informant?
A. Yes, ma'am, I did.
Q. And you, in fact, said, "I have knowledge of various crimes, and I'm willing to disclose that information as well as work as a confidential informant."
A. Yes, I did.
Q. And then you listed, it looks like, maybe two people that you are ready to talk about?
A. I'm not sure how many.

MS. CASSINELLI COUCH: Your Honor, may I approach?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. Do you recognize this?
A. Yes, I do.
Q. Is that the first letter that you wrote?
A. I can't recall if it's the first letter. It appears to be.
Q. Okay. I'm going to let you look at that. Do you recall the details of this letter? You indicated a moment ago that you

weren't sure. Would this help refresh your recollection?
A. I believe this looks like it was the first letter. It may have been another letter that I wrote after not receiving a response.
Q. Okay. So in this letter, you will notice there's a big blank spot in the middle. Is that right?
A. Yes, ma'am.
Q. And there was writing there, was there not?
A. Yes, ma'am.
Q. You didn't take that out. But that is part of the process that we're in is that I don't have that information. But when you wrote this letter, you filled this page?
A. Yes, ma'am.
Q. And you wanted to discuss with them someone in addition to Dr. Mann. Is that right?
A. Apparently.
Q. Apparently?
A. Yes, ma'am.
Q. When is the next letter that you wrote?
A. I can't recall when I wrote the next one.
Q. Do you remember if it was long or short?
A. No, I don't.
Q. Do you remember if you -- if it was a month later or six months later or eight months later or a year later?
A. I would say within a month or two.

Q. Within a month or two.

MS. CASSINELLI COUCH: May I approach?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. Is this the next letter that you wrote?

A. I'm not sure if that's the next one, or that could have even been the first one.

Q. Do you recognize this?

A. Yes. I wrote it.

Q. This is a letter that you wrote to the U.S. Attorney's Office?

A. Yes, ma'am.

Q. And you may have written one in between the one that we just discussed. Let me ask you this. The one that we discussed prior to this, what's the date on that letter?

A. It is 5/15/09.

Q. So May 15th, 2009. And now you've looked at a second letter, and you say there may be one in between the two. Is that right?

A. I'm not sure.

Q. Do you remember the contents of this letter that you just identified?

A. Not offhand.

Q. Do you remember saying in your letter -- do you remember mentioning the U.S. Attorney's Office has offered to you -- you

say, "I write regarding the case against Randeep Mann. Your office has offered to me in exchange for my testimony against him."

A. I don't recall.

MS. CASSINELLI COUCH: May I approach?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. You've identified this as a copy of that letter?

A. Yes.

Q. Would this help you refresh your recollection?

A. Yes, it should.

Q. Do you say in the first paragraph, "I write regarding the case of Randeep Mann. Your office has offered to me in exchange for my testimony against him."

A. Yes.

Q. "And to provide you with information on several other cases which your office is currently prosecuting."

A. Yes, ma'am.

Q. Then you go on to mention that you've written them two and a half months ago -- no. You say, "Two and a half months ago your office made an offer and a plea deal."

A. Yes.

Q. And this was based on providing testimony against Dr. Mann.

A. Yes, ma'am.

Q. You go on to say you are having problems contacting your

attorney but that you are willing to provide evidence and testimony.
A. Yes, ma'am.
Q. But you don't want to talk to them about it until your attorney has had an opportunity to talk to the Pennsylvania prosecutors and make sure that those will be dismissed as well if you agree to cooperate.
A. I had not heard from my attorney, and I was trying to get in touch with him. And that's one of the things I wanted to ask him, yes.
Q. And you go on to mention several times in here that you want to make sure that the Pennsylvania charges are taken care of too.
A. I was hoping he would take care of them.
Q. You were hoping?
A. Yes, ma'am.
Q. Do you say, "I don't wish to do so," meaning talk to you, "until I have gone over it with my attorney and he has had the opportunity to speak with the prosecutors in an attempt to have the charges there dismissed."
A. Yes. I didn't want to go over anything until I had an opportunity to speak with my attorney.
Q. Then you go on to say, "Dr. Mann connected himself to the grenades and to Dr. Pierce in statements to me before the charges concerning Dr. Pierce. My letter to your office details

this prior to those charges as well." It's at the bottom of page 1.
A. Yes, ma'am.
Q. What letter was that that detailed those statements?
A. I had written to the U.S. Attorney's Office. And I believe it was before this 5/15/09.
Q. And it's not the letter I previously showed you?
A. No, ma'am.
MS. CASSINELLI COUCH: May I approach?
THE COURT: Yes.
BY MS. CASSINELLI COUCH:
Q. Is it this?
A. No. That's not it.
Q. So there's some document out there detailing what you are going to say in court against Dr. Mann, but it's not any of these documents that I'm showing you?
A. The first one you handed me, it's not as detailed as the first one was that I had sent out.
Q. Do you know how many you sent total?
A. No, ma'am. I do not know. If I didn't receive a response, I would likely write another letter.
Q. Okay. Let's go on. You go on to say, "If Dr. Mann is found guilty, he will likely appeal. Quote, if my Pennsylvania charges are not dropped, I will file an interstate agreement on the detainer soon and would likely be there and unable to assist

the U.S. attorney on any of Dr. Mann's appeals."
A. Yes, ma'am. I wanted to make sure.
Q. It's either do this or I'm out of here.
A. I wanted to make sure they knew I wanted to be available for any appeals in the future, any testimony.
Q. They better get this deal done with you, right, or you are going to be out of here.
A. No, ma'am. I didn't mean it that way.
Q. You also go on to mention that the Arkansas charges, federal charges, and the Pennsylvania charges are all related to Mr. Thiel?
A. Yes, ma'am.
Q. And you go on to say, quote, "If he and the Commonwealth of Pennsylvania offer to dismiss their charges, if I plead guilty on the federal charges, I will likely accept your office's offer and would be willing to assist against any of Dr. Mann's appeals."
A. Yes. I would be available in that case, yes.
Q. Sure sounds like that you are -- that you are angling for what you needed out of it, that you said if -- if Pennsylvania dismisses the charges, if I plead guilty, if, if, if. It doesn't say out of the goodness of my heart, because I don't like violence, I'm going to come, and I'm going to tell everybody the truth so that I can go home and sleep at night. That's not what it says.

A. No, it doesn't say that.
Q. You go on to say, "Also, I would be able to provide your office and investigators with assistance and information on current and future cases and investigations. These include." And then you do a list that's about a page and a half long. Is that right?
A. Yes, ma'am.
Q. Now, the copy I gave you, I don't have that list, do I?
A. No, ma'am.
Q. How many people were on that list?
A. Oh, I believe at least six or seven, including a white supremacist.
Q. Really?
A. Yes, ma'am.
Q. So they weren't all people of color?
A. No, ma'am.
Q. You didn't target the people that weren't like you since that was your way of life prior to entering the system?
A. Not at all. No, ma'am. Not at all.
Q. It just so happens that Dr. Mann is?
A. It's just a coincidence, yes. In fact, I would say that over half those people on that list were white.
Q. Of course, I wouldn't know, because I don't have that list. Right?
A. I don't know if you have it or not, ma'am.

Q. Is it on the copy that you are looking at?
A. No. It's been blanked out.
Q. Right. And then to page 4, on page 4 of your letter, again, "I'm willing to turn over all of my notes and provide information, testify and cooperate in any future investigation regarding these matters, especially if I do not have to go to Pennsylvania for a terroristic threatening charge." Is that what you said?
A. Yes, ma'am.
Q. You go on to say that you are a former Marine and had secret security clearance?
A. Yes, ma'am.
Q. And that you were part of the Fleet Antiterroristic Security Team.
A. Yes, ma'am.
Q. That you have no violent charges in your past?
A. Yes, ma'am.
Q. Do you think that Mr. Thiel considers the threat and the casings behind his house a little violent?
A. I still deny his accusations. Those are still pending.
Q. Then you say that you are a jeweler, provide for your wife, that you donate to charity, and that if you get out you will give 50 percent of all of your profits to charity.
A. Yes, ma'am. That's my goal.
Q. Not a white supremacist group?

A. No, ma'am. I would be willing to take their money, though.
Q. That's not the last time that you wrote to the U.S. attorney, is it?
A. I'm not sure if this was the last letter or not.
Q. Do you remember writing the U.S. attorney in January of this year?
A. January would have been before this, this letter right here.
Q. January of 2010?
A. Yes, ma'am. This letter that you just went over was here very recently.
Q. Well --
A. I believe this was the last letter.
Q. Well, this letter that we just discussed, it says, "Two and a half months ago your office made an offer and a plea deal." Right?
A. Yes, ma'am.
Q. Then you wrote another letter in January of 2010.

MS. CASSINELLI COUCH: May I approach, Your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH:
Q. Do you recognize this?
A. Yes, ma'am.
Q. Is this a letter you wrote?
A. I believe so.

Q. In that letter you say five months ago you spoke with one of your prosecutors. Is that right?
A. Yes, ma'am.
Q. And so we're clear, this letter is short. It's shorter than all the other ones. Right?
A. Yes.
Q. Two little paragraphs. And you say, "I am still willing to provide information and testify. Please contact me."
A. Yes, ma'am.
Q. And then, finally -- may I approach?
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. Let me ask you this. Is that all the letters that you've written?
A. I'm not sure.
Q. You don't know?
A. No, ma'am.
Q. You mentioned one that had more detail that we don't have. Is that right?
A. Yes, ma'am.
Q. Do you recognize this?
A. Yes, I do.
Q. Is that your handwriting?
A. Yes, ma'am.
Q. When did you produce this?

A. I turned this over today.
Q. Oh, so these were the notes that you prepared for today that you submitted to the prosecutors prior to testifying?
A. These are the notes that I made, let's see, approximately two weeks after I spoke with Mr. Mann.
Q. And you gave these to the prosecutor today?
A. This one set, yes.
Q. There's another set. Is that what you are saying?
A. No, ma'am, not notes. But I believe this information was in a letter previously.
Q. Okay. That's the one we haven't gone over we don't have.
A. Yes, ma'am.
Q. But in any event, this is what you gave the prosecutor today. Is that right?
A. Yes, ma'am.
Q. I assume this is outlining the testimony that you plan to give?
A. This was just notes that I took of the conversation.
Q. And you held on to these until today to get their approval for your testimony?
A. No, ma'am. Just in case I was called to testify.
Q. I'm not going to go through all this. You didn't testify to all this information, did you? You answered Ms. Whatley's questions.
A. Yes, ma'am.

Q. You didn't read this out loud.
A. No, I did not.
Q. In these notes, does it appear to say that Dr. Mann was making weapons?
A. No. I had mentioned at one point during the conversation that I had always wanted to make weapons.
Q. So you made notes about what you were thinking?
A. That's one thing that I had mentioned with him and mentioned making of weapons in a place called Darra, Pakistan. And I believe his comment was something to the effect that you couldn't go there, but that was referring to me actually producing weapons.
Q. So you took notes about what you were wanting to do.
A. Everything that I could remember of the conversation, yes.
Q. Well, just about everything you've testified to and everything on there was available through the media at the time that you made these statements.
A. I'm not sure if they were or not.
Q. Have you testified before the grand jury in this case or any other case?
A. No, ma'am.
Q. Let's talk about the benefit that you expect to get from this. Do you know what the United States Sentencing Guidelines are?
A. Yes, ma'am.

Q. Your attorney has discussed that with you?
A. Yes.
Q. And you are aware, I assume, from going through your indictment with your attorney that there are statutory minimums and maximums for every offense -- well, each and every offense in the code has a minimum or maximum or both.
A. Yes, ma'am.
Q. And the three counts against you are all ten-year maximums. Is that right?
A. I believe so, yes.
Q. But you've got quite a criminal history?
A. I have several previous, yes.
Q. Have you -- the sentencing guidelines are what judges in federal court use to determine a defendant's sentence, although they are not binding. They are advisory. Is that right?
A. I believe so, yes.
Q. It's kind of a baseline, where they begin. And it gives a range for punishment. Is that your understanding?
A. Yes, ma'am.
Q. And that is based on factors of the offense if you are convicted. Right?
A. Yes, ma'am.
Q. As well as your criminal history?
A. Yes, ma'am.
Q. Is that your understanding?

A. (Witness nods head.)
Q. Is it your understanding that your criminal history is going to give you a much higher sentence than if you didn't have any criminal history?
A. Yes.
Q. Have you gone through your guidelines in this case with your attorney?
A. Yes, I have.
Q. The only way to get a lower sentence in federal court is to cooperate with the government and have the government ask the judge to reduce your sentence based on your cooperation. Is that right?
A. I'm not sure if that's the only way or not.
Q. You are not sure if that's the only way?
A. No, ma'am.
Q. Well, you've not gotten any other -- have you gotten any other offer, any other -- anybody told you that you are eligible for some new parole that doesn't exist or --
A. No, ma'am.
Q. This is it, which I assume is why you spent two pages listing all the people that you wanted to come talk about in court, because that's where you are going to get the benefit.
A. Yeah.
Q. And your guidelines work out to about 15 years, give or take a couple of years on both ends, do they not?

A. I'm not sure.
Q. And the government will ask for a reduction of up to half off of your guideline sentence. Is that your understanding?
A. I believe that they can ask for up to half. It's their discretion.
Q. Fifteen years is a long time, isn't it?
A. Yes, ma'am.
Q. Especially when you have pending charges in two states as well.
A. Fifteen years is a long time anywhere.
Q. And you have three ten years that could be stacked by a judge for 30.
A. I'm not sure if they can be stacked or not.
Q. But you said on direct you wouldn't turn it down, right, if they just gifted it to you.
A. No, ma'am, I wouldn't.
Q. I bet the white supremacists wouldn't turn down your money either. Would you think?
A. I wouldn't offer them my money.
Q. Really?
A. Yes, ma'am.
Q. You wouldn't?
A. No, ma'am. I would take money from them. If anybody wanted custom jewelry, I would make it whether they were -- if they wanted a Nazi pendant or a Star of David.

Q. You actually advertised those. People didn't ask you for them. You sold them. You made them, and you said, hey, everybody on this white -- in this white supremacist group with me, who wants this Nazi pendant? They didn't e-mail you.
A. Initially they did.
Q. Oh, they did?
A. After that, I made several extras and advertised on the site.
Q. Did any of the proceeds of that go to any of these groups?
A. No, ma'am.
Q. I just want to be very clear on this point. You were very active in these groups. You were not a passive bystander who was occasionally selling a piece of jewelry on these websites. You were a frequent poster on more than one. As a matter of fact, when you got arrested, they posted it to the website and all discussed your arrest.
A. I'm not sure if they did or not.
Q. Do you remember -- oh, how about the quote?
May I approach, Your Honor?
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. Do you remember this?
A. No. I do not remember that.
Q. You don't?
A. It looks like a quote from somebody else.

Q. What was the, I guess, screen name that you used in these websites?
A. It was Margo 331.
Q. Does that say "posted by Margo 331"?
A. Yes. Then it says "quote."
Q. Does it say "Cecil" at the bottom?
A. Yes.
Q. Promoter for a whiter future?
A. Yes, ma'am.
Q. You're not a passive bystander.
That's all I have, Your Honor.
THE COURT: Mr. Dudley.

CROSS-EXAMINATION

BY MR. DUDLEY:
Q. Mr. Norwood, I want to make sure I understand where and how and when Dr. Mann made this confession to you.
A. Yes, sir.
Q. Tell me again where you were.
A. I was in the holding cells here in this building.
Q. And Dr. Mann was here too?
A. Yes, sir.
Q. Sharing a cell with you?
A. Yes, sir.
Q. Was he here for arraignment?
A. I'm not sure what he was here for.

Q. So you didn't talk to him about why he was in the holding cell?
A. Several other inmates had asked him about the hand grenades. He said no. Then we discussed the weapons. And he did tell me that he had been turned down for bond, so I don't know if he was here for a detention hearing or not.
Q. And how long were you in the cell with him?
A. Ten or 15 minutes.
Q. Were there other folks in the cell too?
A. Yes, sir.
Q. So other folks heard this conversation?
A. I'm not sure if they were listening or not.
Q. Well, how big was the cell?
A. Maybe 20 by 20, 20 by 15.
Q. Twenty by 20 or 20 by 15. How many folks are in the room?
A. There was probably about ten people in there at that time, and they were all talking.
Q. Okay. And I assume you gave the U.S. attorney or the ATF investigators the names of the other folks in the room?
A. No, sir, I did not. I did not speak with them.
Q. I'm sorry?
A. I didn't speak with them.
Q. Okay. Did you tell the investigators or the U.S. attorney that there were these other eight, ten folks in the room?
A. I'm not sure if they knew that or not. But, no, I didn't

tell them that.
Q. Wait a minute. Don't you think, Mr. Norwood -- you've been a convicted criminal and all, and your credibility might be called into question -- that it would be nice if you told them, hey, there were eight or ten other folks who heard this conversation. Why don't you go talk to them, and they can confirm what I'm telling you?
A. I'm not sure if those individuals overheard or not. They were having their own conversations.
Q. Whether they overheard or not, you are in a small room with eight or ten other folks. They certainly could have overheard. Right?
A. Yes, sir.
Q. And it would certainly have been good to have somebody else come here and corroborate what you say Dr. Mann told you. Right?
A. Yes, sir.
Q. But you didn't bother to tell the U.S. attorney or the investigators that, hey, there are eight or ten other folks who might corroborate what I say?
A. No. I did not say that.
Q. And you were with Dr. Mann for 10 or 15 minutes?
A. Yes, sir.
Q. And you have a lot of folks who immediately trust you. Does that happen to you often?

A. On occasion.
Q. Okay. These seven, six, seven, five, six, seven other folks you listed in the letter that you are willing to testify about, did they all confess to you that they had done what they are charged with doing?
A. Yes, sir. They all told me information about their cases or other charges, yes.
Q. Okay. So you must be a fairly trustworthy guy if you have five, six, seven folks who are all confessing to you that they did what they were charged with. Right? You must have an attitude about you that makes people want to confide in you.
A. I'm willing to listen.
Q. Okay. And you understand Dr. Mann is a medical doctor. Right?
A. Yes, sir.
Q. And you are telling this jury that you saw him one time for 10 to 15 minutes, and he trusted you so much he confessed his crime to you. Is that your testimony?
A. He confessed several things to me, yes, sir.
Q. Okay. Now, have you testified before?
A. No, sir, I have not.
Q. Have you offered to testify before?
A. Yes, sir, I have.
Q. Had you cut a deal with the government before this one?
A. No, sir, I have not.

Q. Have you ever offered to cut a deal with the government before this one?
A. No, sir, I have not.
Q. Have you agreed to testify against the five, six, or seven other folks that were listed in this letter that you said confessed to you?
A. If the U.S. attorney wants me to, I will.
Q. Okay. So you've agreed to testify against them too?
A. If they wish me to, yes.
Q. All right. I understood you to say, when Ms. Couch was questioning you, that there are allegations against you regarding Mr. Thiel, right, about the gold bars and all that?
A. Yes, sir. Yes, sir.
Q. And a terroristic threatening charge?
A. Yes, sir.
Q. But that you deny those allegations?
A. Yes, sir.
Q. You are not guilty of that?
A. No, sir.
Q. You said in your letter -- and you are welcome to read with me if you have it in front of you. I'm on page 2 of your five-page letter. Ms. Couch has already read this part to you. It says, "If my Pennsylvania charges are not dropped, I will file an interstate agreement on the detainer soon and would likely be there and unable to assist the U.S. attorney on any of

Dr. Mann's appeals." Right?
A. Yes, sir. It is my intention to file the interstate agreement on a detainer soon.
Q. And you say, "My Arkansas state charge, which I just finished serving and am on parole for, are" -- the federal charges and the Pennsylvania charges are all related to Martin Thiel in Pennsylvania. Right?
A. Yes, sir.
Q. Then you say, "I have already served time and offered restitution to his charges."
A. Yes, sir.
Q. Why would you offer restitution to somebody if you are not guilty of what you are charged with doing?
A. The Pennsylvania charges are the terroristic threatening. The other charge, the state charge that I had already served time on, was the theft charge.
Q. The gold bar charge?
A. Yes, sir. I pled guilty to that and offered restitution.
Q. Okay. And maybe I misunderstood you. But I thought you told Ms. Couch you weren't guilty of defrauding him on the gold bar thing. Is that right?
A. Actually, I am not guilty. I did plead guilty, though. It was in my best interest at that time.
Q. When you pled guilty, Mr. Norwood, you had to go in front of a judge, didn't you?

A. Yes, sir.
Q. In fact, the judge put you under oath, didn't he?
A. Yes, sir.
Q. And a judge asked you if you were guilty. Right?
A. Yes, sir.
Q. You have to tell a judge you are guilty to plead guilty. Right?
A. Yes, sir.
Q. And you are under oath when you do it. Right?
A. Yes, sir.
Q. So you lied to the judge under oath?
A. No, sir. I pled guilty. I thought that was in my best interest at the time.
Q. I understand. But you just told this jury you weren't guilty, but you did it because you thought you were in your best interest. Right?
A. I should have pled no contest.
Q. Well, if you were not guilty and you went under oath and told the judge you were guilty, you lied under oath to the judge. Right?
A. I believe it could be looked at that way, yes, sir.
Q. I think it could be too.

THE COURT: Redirect?

MS. WHATLEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Let's clear up a couple of things, why don't we.

A. Yes, ma'am.

Q. First and foremost, I'm not the criminal AUSA on your case, am I?

A. No, ma'am, you are not.

Q. Who are you dealing with on that case?

A. On the gun charges?

Q. Yes, sir.

A. I believe that is Ms. Lipe.

Q. So any conversations you are having about pleading guilty, who are you having those conversations with or when your trial is or anything?

A. Oh, I haven't spoken with anybody about that. But it's been through my attorney, Mr. Tarver.

Q. And who would he be communicating with?

A. I believe it would be Ms. Lipe.

Q. How many times have you talked to me or seen me before you walked in this courtroom today?

A. Just once.

Q. So you saw me --

A. I saw you once, and I spoke with you on the phone.

Q. To this day, what have I promised you?

A. Nothing.

Q. These white supremacists Ms. Couch was so happy to show you

about and talk to you about, there's a part of her letter that's missing. Isn't that right?

A. Yes, ma'am.

Q. May 15th, 2009, you wrote a letter to whom it may concern. Right?

A. I believe so, yes.

Q. Do you have that up there in front of you?

A. Yes, ma'am.

MS. CASSINELLI COUCH: Your Honor, may we approach for a minute?

THE COURT: Okay.

(Proceedings at the bench as follows:)

THE COURT: What's the objection?

MS. CASSINELLI COUCH: I don't have any problem with her redirecting on it. But I do have a problem that we didn't get it in the first place, because then I wouldn't have had to do what I had to do to find out about his background. I think that was *Brady*. I think it is *Giglio*. I think we should have had the full letter to begin with. On that basis, I would say maybe she shouldn't be able to redirect with it.

THE COURT: What is the response?

MS. WHATLEY: I don't think it is *Brady* or *Giglio*, Your Honor. She requested -- we turned over the information that he had on Mann. I had no idea that she was going to go where she went. Based on that, I think she has opened the door

wide open to the fact he has agreed to testify against white supremacists and provide information. I think that needs to be cleared up for the jury, especially in light of exactly how far he took it.

THE COURT: I think he said he would testify against white supremacists. If she shows him something that says he agreed to it, what is the objection to that?

MS. CASSINELLI COUCH: My objection is that she's redacted all these letters to take out things that now she wants to bring back.

THE COURT: Here's what I'll do. I'll let you redirect him on it. If you want to do a mini-recross -- I don't know how he will be able to testify as to what you received.

MS. CASSINELLI COUCH: That's the problem. I think it's a violation for her to redact the letter. I assumed that she had redacted other defendants' names so we couldn't go into their cases. But something that broad --

MR. HENDRIX: We're having discovery problems in this case, Judge.

MS. CASSINELLI COUCH: This isn't the first. We're trying to be agreeable since we have so much. I know Ms. Whatley has tried to get us everything.

THE COURT: May I see the part that's redacted?

Now, what part was not in your letter?

MS. CASSINELLI COUCH: All of this and the three, I

think.

THE COURT: So you've just identified paragraphs No. 1 and No. 3.

MS. CASSINELLI COUCH: Also, Your Honor, this letter is also redacted.

THE COURT: I understand the discovery issue. But as far as the redirect on this, I'm going to allow her to redirect on this. You have two paragraphs, one that says, "I am willing to testify against white supremacists. They trust me. I have information about these hate groups." No. 3 is, "I'm willing to testify about a murder for hire, also about a drug trafficker." I think that's fair game. I do understand you have an issue with what has been redacted out of this.

Ms. Whatley, if the government does not produce this or these paragraphs or this document with these paragraphs to the defendants, how would they know not to get into that? I understand you are saying it is not *Giglio*. How do they know not to go down that path if they haven't received the documents? If I'm on the other side of this case, I would only go by what I have on the page. And I would cross them on what I have on the page. And then, until I determine, there's some extra determination that's not on that page, I should be able to use it. That seems unfair.

MS. WHATLEY: At no point in time did they ask for the redacted parts. Part of it is, Your Honor, there are

specific -- he is officially -- especially in this one, 7/7/2010, there are specific defendants' names in there that should not have been brought forth in court.

THE COURT: Here's what I'll allow you to do. I'll allow you to -- because we haven't introduced any of this into evidence. The jury will not see this. "In your letter, didn't you say you would testify against white supremacists? Haven't you identified you would be willing to do that?" Then he will say "yes." Essentially, what you are doing, you are kind of countering the cross with a document without going through all of the details of it. That way we can clean it up without showing it to him and having him read it all and all of that. It clears it up.

MS. CASSINELLI COUCH: Your Honor, I have a couple more issues. One is, on recross I want the jury to know that the government didn't give us that and that that was withheld to this point. Also, there's a page and a half missing out of this one. We, obviously, have worked with Ms. Whatley a lot and believed she had redacted this because there were other defendants' names and sensitive information. Now to find out that's not the case and she wants to use it against us, I would like to know what's on these two pages. I also would like to know what's in the letter he said he wrote that has details we don't have.

MS. WHATLEY: I never received the letter he is saying

he wrote that has details in it. The first letter I have is this letter that's in the judge's hand.

THE COURT: Here's a problem, though. How does he testify about what the government gave or did not give you? You understand what I'm saying? I don't know how on a redirect or a recross you could get that out of him. He will say, "I don't know."

MS. CASSINELLI COUCH: Which is the fundamental unfairness of her withholding the information.

MR. HENDRIX: This is a discovery violation.

(Proceedings continuing in open court as follows:)

THE COURT: Ladies and gentlemen, we're going to give you 15 minutes. You can come back at 4 o'clock.

(Jury excused.)

(Proceedings at the bench as follows:)

THE COURT: Do we want to have this up here?

MS. CASSINELLI COUCH: It doesn't matter to me.

THE COURT: Here's what I'm going to do. I'm going to let you ask him, "Haven't you agreed to testify against white supremacists," and whatever. And he can answer "yes." He said it on his cross-examination.

Now, with regard to the other documents that have been redacted, I would like to do an in camera, just take a look at it. If it's stuff that you have names and stuff and they can't be produced, we won't produce it. Oh, you are going to do it

now. Now, what pages have been redacted?

MS. CASSINELLI COUCH: 2 and 3.

THE COURT: From the bottom of 2 and 3?

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: Just the bottom of 2.

MS. WHATLEY: Also page 5 was redacted, Your Honor. I think you'll understand that when you get there.

THE COURT: Okay. Here's what we'll do.

MS. WHATLEY: That's the first one.

THE COURT: On page 2, we have redacted out those paragraphs.

MS. CASSINELLI COUCH: This is Jack's handwriting. Sorry.

THE COURT: We'll redact out from this one, paragraph 2, it mentions the name of the person. I'll permit you to obtain this document with paragraph 3 because it just mentions the race or nationality of the person. Redact out paragraph 4. We will give you this with paragraph 5 in it, with paragraph 6 in it. Redact out paragraph 7. Leave in paragraph 8. Redact out paragraph 9, paragraph 10, because those are mentioning names, then those pages, 2 and 3. Then paragraph 5 is all about names and about a specific person.

MS. WHATLEY: You are talking about page 5, Your Honor?

THE COURT: Yes. That will remain redacted.

MS. CASSINELLI COUCH: Your Honor, may I have a complete copy of the first document?

THE COURT: Of this one?

MS. CASSINELLI COUCH: That one. Here's what my copy looks like.

THE COURT: Yeah, because paragraphs 1 and 3 don't have names on them. Yeah, I'll permit you to receive that.

MS. CASSINELLI COUCH: I think we would like to make a record on the discovery issues at this point.

THE COURT: Okay.

MS. CASSINELLI COUCH: It appears from this letter that there was no reason to redact that information, specifically if they were waiting for us to ask the questions which were obvious questions. We've had -- I'm going to start most recent. We are getting information every day, which is permissible under the rules. But we're getting a lot of it, and we're getting a lot of what we consider to be *Brady* and some Rule 16 information along with *Giglio* and Jencks. And we can't keep up, getting this much information, and having to be prepared for the next day of court. We've gone a little bit faster than was planned, which is also making us really not being able to keep up with it. We're finding some things we consider our clients' statements, we're getting this week of trial.

Earlier, the Court is aware there was an issue whether or

not we had a substantial amount of exhibits. We sort of passed over that and allowed, in my opinion, allowed the Court to believe we had dropped the ball. I don't believe that's a fair assessment. I want to clear up, early on in this case we had a law clerk copy documents that Mr. Gordon said were really not important. Ms. Whatley, in an abundance of caution, restarted discovery and said, I'm going to restart to make sure I have everything on every case, so we didn't go back to that old stuff. We never got any of the information since then. Mr. Lassiter sent a letter to Ms. Whatley. She didn't receive it. That's fine. It's their obligation under Rule 16 to give us those things. They are not benign.

THE COURT: Let's do this. Okay. I think everybody has had a case or two where you've had stuff coming at you at one time, and it's hard to prepare for the next day. I've found that more in civil cases than in criminal cases. Somebody will dump on you or something. And what we would normally do in civil cases is the day before, we would designate who our witnesses are going to be the next day, essentially what exhibits we were going to use with those witnesses, so the other side could prepare for the next day. Now, would something like that -- are you doing that, or would something like that help you?

MR. HENDRIX: It is hit or miss at best, Judge, if I could make a suggestion on two levels. One is, of course, the

Court has the power to regulate discovery, with one exception I'll talk about in a minute. You can order the government, tell us who your witnesses are going to be the next day so everybody can go home and get ready and be certain about that.

Two is we get into *Brady* and Jencks. And that becomes subjective, because the government has the monopoly on that. What I would ask that the Court do is require that the government from here on out provide to you all witness-related statements so that the Court can make an initial determination, is there *Brady* and *Giglio* in here that needs to be produced to the defense now. You can't -- I understand, you cannot do this, that it's a violation of the separation of powers for you as the judiciary to order the executive to provide Jencks sooner than the statute says. Does that scenario make sense? It's we get into these problems where we have *Brady*, and when does *Brady* become subjective. It is being monopolized by the government.

MS. CASSINELLI COUCH: We need to add to that, the exhibit issue, we've gotten so much information that we didn't know that we didn't have those exhibits because we have so much. So when they say, okay, we have Exhibits 80 to 90, we have a jumbled mix of 12,000 documents on CDs, so we don't know what their exhibits are. We don't have their exhibit list.

MS. WHATLEY: May I respond to a whole lot of things? Number one, I did restart discovery. Number two, I said to them, come to ATF as quickly as possible to look at every piece

of evidence that we have in this case so that if you want anything we can make sure we get it to you. This was the end of January, first of February, when we were still sitting with a March 15th trial date. They came on February 2nd, reviewed the data.

According to a letter I received this morning, Mr. Lassiter said he wrote me a letter on February 5th, which I did not get. Everybody who is standing up here will tell you, I bent over backwards for the defense, because I used to be on their side. I used to work for Mr. Lassiter. And if he had requested something, I would have bent over backwards to get it to him. They never followed up until this morning to say, where are all those items that we asked for in our February 5th letter? So for them to say there's been discovery violations on my part because I didn't respond to a letter I never received infuriates me.

MR. HENDRIX: I can dispel that real quick.

MS. CASSINELLI COUCH: I don't think that's what we're saying.

MS. WHATLEY: For Ms. Couch to say we were going to ask the obvious questions about Mr. Norwood's past and the white supremacy, I didn't know about it, Judge, so how would I know that was an obvious question she was going to ask? He had a 10-to-15 minute conversation with the defendant. I talked to his attorney, made sure I had everything. I came here today.

She is saying they are getting a lot of information each day. They are not. We have provided at least 12,000 pages of discovery during the course of this, in addition to a number of CDs. I have tried to get it all to them as quickly as I could. And I made the vast majority of all of the discovery to them prior to the time I left for vacation in March. That was my goal. I killed myself to do it, and I did it.

Since that time, yes, there's been things that have come in, have always come in when you are prepping witnesses for trial and you find new things. As soon as we've been getting them in, I've been getting them to them.

There's a couple of things that came up as we were getting ready for trial we didn't think were relevant, we had for a while that we didn't know we were going to use. As soon as we realized they were relevant, we got them to them.

What we're doing, we're providing them Jencks. We're trying to do it three days before the witnesses testify. There are times we've been flying through witnesses, so we don't always get it to them three days before the witness testifies. Under the Jencks Act, technically we don't have to give it to them until after the witness testifies. We're trying to do that.

The Jencks that I'm producing in this case, my part of the Jencks is only about that thick, total. I'm giving it to them in manageable bites, so they are not killing themselves. Each

afternoon before we leave, they come to me, and they say, who are we having tomorrow? I say, we're doing state search warrant, or we're doing this kind of expert or that kind of expert. It's not like I'm hiding the ball from them.

In addition to that, I am trying to make sure I meet with defense counsel before we put exhibits on to say, here's the exhibits I'm about to introduce. Do you have any problems with them, so there's no questions whatsoever. So for Ms. Couch and Mr. Hendrix to stand here and say I am not providing them discovery is not right.

MR. HENDRIX: It's not what we're saying.

THE COURT: Let's do this. Okay. This is what I hear. Sometimes what is said is not -- sitting where I sit now, sometimes what is said to me is not what I hear. I hear what I want to hear. Any judge who tells you he doesn't hear what he wants to hear, or she doesn't hear what she wants to hear, is not necessarily coming clean.

Here's what I hear, because this is what I want to hear, okay, so we all know where we are. I'm hearing the defense saying, we've gotten all the documents that you said you were going to give to us. They have gotten them all. They are not even arguing we've not gotten most of the stuff, except some of the stuff that was redacted. We've gotten it. What's happening, we're moving through this trial. And we don't know what you are going to use with what, and we're kind of moving on

the fly, trying to figure it out as we go. Okay. That might be totally wrong.

I get the impression they are not saying, Ms. Whatley, you haven't given it to them. They are saying, when you have a case where the prosecution has the burden of proving it and you know who your witness is going to be, you know every document you are going to use with each witness, every exhibit you are going to use with each witness to a certain degree, they are just trying to keep up. And it's difficult.

Now, your point of view is, you are responding, I've given them everything. I've complied with the rules. I'm not required to give them any more than what I've given, and I've even gone above and beyond what the rules require.

Now, so I hear both sides. I believe both sides. The issue is, how do we, moving forward, just resolve it, because I don't get the impression, from paying attention to how the prosecution has put on the case, that you are trying to hide anything. Here are our witnesses. They are going to come in, say these things. Each one has something to testify about. Here are the exhibits.

You are saying, we're still trying to catch up with what's been going on in all these documents. We don't know what's going on. How do we resolve it where the defense knows, coming in the morning, we have these five witnesses, and these are the documents they are going to use so we can go home at night and

prepare?

Now, I think I've heard from you, Ms. Whatley, that's what we're already doing. Defense is saying, that's not really what we're doing. So what do we need to do? I think everybody has made the record on what the defense says the problem is, and the prosecution has made the record on that's just not really the truth.

So the question is, how do we resolve it and continue doing what we're doing for the most part, because I'll tell you, I was just bragging coming in from lunch about how good the lawyers are in this case. I'll be very honest with you. There's sometimes when I prosecuted cases against people who I felt like they were just abusing their clients because they just weren't doing anything. That's not what I'm getting here. On the other side, I represented -- not cases as big as this -- some of the defendants, never in jury trials, always in bench trials, where I felt like the prosecution wasn't doing anything, but they had the judge in their pocket, so they were going to get the conviction anyway. So everybody has been doing a great job, at least from where I sit. You've made this case extremely easy for me. It's actually kind of an exciting case. The question is, how do we exchange what we need to exchange, designate what we need to designate to make it simpler?

Now, what do you want? Defendants, what is it that you want to get you prepared for the next day?

MR. HENDRIX: Definite witnesses. And then this is the only issue that's come up. Obviously, Karen is right. The Court is right. She can withhold a witness statement until after that witness testifies. That's just what the law says. She can do it if she wants to. She's giving it to us. It doesn't seem quite structured yet, but close. And we appreciate it.

Our problem now is, when they are withholding information they do not think is discoverable, it puts -- obviously, we have example A that puts us in a situation where we're looking at a blank sheet of a document, and let me try to fill in the blanks. In fairness, that should have come in to us a lot earlier than before cross-examination. Then, too, it's again the subject of what is *Brady*. I would just ask that all the witness statements be produced as soon as they can to the Court for the Court to start looking through so you can regulate the discovery and take it off the obligation of both of us.

THE COURT: What's your response to that?

MS. WHATLEY: I don't see any reason for the Court to have to look at it. I apologize for redacting it. At the same time, they never asked what was redacted. It was not something that was brought to the Court beforehand. The other part is, we're giving them the witness statements. We're giving them the Jencks.

THE COURT: Okay. Here. Let's finish.

MS. WHATLEY: Just to put on the record, the document, the handwritten notes, I received those yesterday afternoon. The marshal walked in and handed them to me at 9 o'clock this morning. I immediately had him make a copy, and I immediately gave them to the defense.

THE COURT: Are many of these documents redacted in any way?

MS. WHATLEY: No, Your Honor.

THE COURT: See, I don't want to get involved in discovery, but I will. If you have documents that were redacting anything other than names, submit them to me. I'll take a quick look at them. If there's anything in the document that shouldn't be redacted, we'll deal with it. But otherwise, I don't want to get every statement if there's no redactions to them and read through everybody's statements.

MR. HENDRIX: We just want to make sure, if there are statements out there that contain arguably exculpatory information -- and by that, guilt or punishment -- that that information has to constitutionally be turned over. Again, we just never know. We don't know whether it's out there or not.

MS. CASSINELLI COUCH: Some of the things we've reviewed we believe contain that information. But I want to make one thing clear. None of us think that Ms. Whatley would lie to the Court or lie to us. I don't want you to feel that way at all, because we do not think that. I have no idea what

happened to the letter. But the bottom line is, when we get in this courtroom, we are lawyers. There's Rule 16, and there's a Constitution. And so if we don't have something, we have to bring it to the attention of the Court. It's not anything against Ms. Whatley.

But in this context on this letter, we shouldn't have to ask what's redacted. We trust her. And she does her job, and we do our job. So I would say, I know the Court has ruled. But for the record, I would say I think that material should not be used, because we shouldn't have to go back and say, are you sure it's all the *Giglio*, are you sure this is all we're entitled to, before we do a cross-examination. That's just fundamentally unfair.

THE COURT: I think I've already instructed Ms. Whatley. The redirect dealing with that is going to be limited. I think we can do it that way. I think we can deal with it that way.

MS. CASSINELLI COUCH: Would the Court consider -- Ms. Whatley might agree to do this. She did agree kindly to give me a list of the medical board exhibits, because there's like enough paper to fill up this whole bench area with medical board stuff. Perhaps if we had some idea of what the exhibits were going to be, that would help us take 12,000 documents and organize them in some way.

THE COURT: What exhibits?

MS. CASSINELLI COUCH: I mean, generally the government's exhibits in this case, it's like when they come in and they have a witness and they say, we have 60 exhibits we're going to introduce, I'm like going around to every file trying to figure out which piece of paper it is, because we don't have their exhibit list or copies of it, which they don't have to give us.

MR. HENDRIX: Which raises the question, we don't have the government's exhibit list. Right?

MS. CASSINELLI COUCH: Right. But she did give me the medical board portion of it, because I begged. And she was nice and gave it to me.

THE COURT: What is it that you are wanting?

MS. CASSINELLI COUCH: Perhaps if we had their exhibit list it would make it easier for us to know what exhibits are going to be introduced and to prepare, because we're getting here and, yes, they are saying, we're going to introduce these things. But we don't have them pulled as exhibits. They are scattered among 12 or 14 thousand documents. Does that make sense?

THE COURT: Ms. Whatley, what's your response?

MS. WHATLEY: Can I just put one thing on the record I've been wanting to put on the record for a week and a half now? When I took possession of the discovery issues, because I'm more anal in those issues than Mr. Gordon is, I didn't just

throw 12,000 pieces of paper up in the air and tell my clerk, pick them up and scan them. I put them in files. Then I scanned them so everything is fairly organized as they printed off. That's number one. Number two, if the Court wants us to give them a copy of the exhibit list -- I don't think we're obligated to. May I see where we are?

THE COURT: I asked you what is your position on it. I didn't order you to do it.

MS. CASSINELLI COUCH: I believe that the disks are in the order she got them, but they are not lumped together by subject or anything.

MS. WHATLEY: Mike, do you have any objection to them getting a copy of the exhibit list?

MR. GORDON: The exhibit list?

MS. WHATLEY: Uh-huh.

THE COURT: I have not ordered it, but I asked her what is her position on it.

MS. WHATLEY: I'll let the person who spent hours typing it --

THE COURT: The defense argued it would make following the case and getting prepared for the witness every day easier.

MR. GORDON: It's an interesting question.

THE COURT: Let's do this. Let's take five minutes. I'm going to go back, grab a cup of coffee to make it to five. Just think about it, and we'll come back. We'll put that on the

record.

MS. WHATLEY: Can I give this to your clerks for them to do the redaction?

THE COURT: Yes. I didn't write down.

MS. WHATLEY: On page 2, No. 3 is allowed. Paragraphs 2 and 4 are to be redacted. On page 3, paragraphs 5, 6, and 8 are allowed. The remaining paragraphs are redacted. On page 5, it is all redacted. Then they need a copy of that.

MR. GORDON: Your Honor, just so the Court knows, for scheduling purposes, we have one more witness from out of town we would really like to get on. The direct should not be real long.

THE COURT: Let's take five minutes, come back at 4:15.

(Recess from 4:10 p.m. until 4:15 p.m.; jury present.)

THE COURT: Did we ever get you those documents?

MS. WHATLEY: No, Your Honor.

THE COURT: We're still working on it. Hold on just one second.

Ladies and gentlemen, we're still working on an issue. We are dealing with some documents that we're trying to get taken care of, so just hold on a second.

You know, it's a funny thing. Some of you are looking tired, your eyes are a little bloodshot. Others are laughing like this is fun, I like this. That's kind of how I feel.

MR. DUDLEY: Which one, Judge?

THE COURT: You notice, I didn't say which one. I'm tired and laughing.

We have some exhibits we're working on. We're trying to get them copied. We actually didn't finish up out here with our bench conference until right at 4:15.

Ladies and gentlemen, we have this witness, and we have one more we're going to hear from today before I let you go. We have one who is in from out of town who we have to accommodate before we leave today.

Is that it?

MS. WHATLEY: Yes, Your Honor.

THE COURT: And did you need a copy of that? I was going to give you a copy.

MS. WHATLEY: May I proceed, Your Honor?

THE COURT: You may.

BY MS. WHATLEY:

Q. You've been sitting up there a long time now. Do you have your 5/15/09 letter up there in front of you?

A. Yes, ma'am.

MS. WHATLEY: May I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. In that 5/15/09 letter, did you state that you would be willing to provide information about white supremacists and

their acts?
A. Yes, ma'am.
Q. And I believe there was an issue about that five-page letter you have up there in front of you. Is there a fax line at the top of that?
A. Yes, ma'am, there is.
Q. Can you read the date off of that for us?
A. That is July 7, 2010.
Q. So that five-page letter was actually sent very recently, within the past two weeks?
A. Yes, ma'am. That is the last one.
Q. And I believe you were also shown one that was dated January 7th of 2010. Correct?
A. Yes, ma'am.
Q. And you said that on direct -- I mean on cross -- that that one was before the five page, and the dates match. Is that right?
A. Yes, ma'am.
Q. Are you lying to this jury about what Dr. Mann told you in the lockup?
A. No, ma'am.
Q. And are you willing -- have you told the United States that you are willing to talk to us about people of all races and nationalities?
A. Yes, ma'am.

Q. Including Caucasians?
A. Yes, ma'am.
MS. WHATLEY: No further questions.
RECROSS-EXAMINATION
BY MS. CASSINELLI COUCH:
Q. Just so we're clear, there was a letter in May of '09. Right?
A. Yes, ma'am.
Q. May of '09. Then there was -- we've had three letters. Is that correct?
A. Yes.
Q. Here you've reviewed three letters?
A. Uh-huh.
Q. And one of them references a detailed letter. Is that correct?
A. Yes.
Q. Is that detailed letter here?
A. Not that I see. While thinking about it, I may have sent that to my attorney and asked him to send it to the prosecutors. I can't remember at this time if I sent it to the prosecutor's office or to my attorney about a week after speaking with Mr. Mann.
Q. Okay. Did you tell the U.S. Attorney's Office that you had been a member of white supremacist groups?
A. No, ma'am.

Q. In your letter of May 15th, the one that I showed you, it was blank in the middle, wasn't it?
A. Yes.
Q. That's what I gave you?
A. Yes.
Q. Ms. Whatley, I don't know if she showed it to you or not. But she referenced that you had agreed to cooperate against white supremacists. Right?
A. Yes.
Q. And that was actually what filled in the blank of the letter I showed you. Right?
A. Yes, ma'am.
Q. But you don't know what I have and what I don't have in discovery, do you?
A. No, I don't.
Q. So you didn't tell them about being a white supremacist. But it's right there in your letter, so they probably would have suspected it based on what you said. Right?

MS. WHATLEY: Objection, Your Honor. He can't testify as to what I suspected.

THE COURT: That's sustained.

BY MS. CASSINELLI COUCH:

Q. Do you say in your letter, "White supremacists have discussed and/or planned terroristic acts. I've been made aware of illegal weapons. Many of these supremacists reside in

Arkansas. I have the trust of many individuals and hate groups throughout Arkansas, the U.S.A., and the world"?
A. Yes, ma'am. I have spoken with several online and a few in person, and they disclosed these facts.
Q. And that's based on your prior relationship built through the white supremacist groups?
A. I wouldn't say it's a relationship with them, no, ma'am.
Q. I mean, we've already been through your connection to the white supremacist group. But you reference that in the letter, but not in the letter that I provided you.
A. Correct.
Q. But now that we know what it says, you are willing to sell out just about anybody to get a benefit.
A. Well, anybody that's doing wrong and committed a crime, I'm willing to cooperate with the U.S. Attorney's Office on.
Q. The people that you used to walk side by side with?
A. I didn't walk side by side with them.
Q. While we're on the letters, we also went through a five-page letter that had a page and a half that was blank.
A. Yes, ma'am.
Q. And you said that -- I think you said that maybe there were six other people or so that you were --
A. Approximately.
Q. But really there are 11.
A. Okay.

Q. Now that we know what's in the blank spot, there are 11. Right?
A. I don't have that, but I wouldn't doubt it.
Q. Including a Mexican-American, a Chinese citizen?
A. I don't believe there was a Chinese citizen.
Q. You don't even remember who all you heard confessions from, do you? At this point, it's probably getting a little bit confusing.
A. Ma'am, it wasn't a Chinese citizen, I mean not an American Chinese citizen. It was a gentleman in China, yes.
Q. A Chinese citizen, as I read from your letter.
A. I'm sorry. I misheard you.

THE COURT: Is there anything else for this witness? All right. You may stand down.

Call your next.

MR. GORDON: United States calls Michael Knapp.

MICHAEL KNAPP, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Please state your name for the record.
A. Michael Schwan Knapp, K-n-a-p-p.
Q. And who do you work for?
A. I work for the Bureau of Alcohol, Tobacco and Firearms, firearms technology branch.
Q. And you are not a white supremacist, are you?

A. No, sir, I'm not.
Q. Okay. How long have you worked for ATF?
A. A little over ten years.
Q. And tell us, what do you do for ATF?
A. I'm a firearms enforcement officer.
Q. Explain to us what that is, please.
A. About 60 percent of my duties involve firearms and related items which are seized in criminal cases. The vast majority of these are seized by ATF agents. However, we do also work with other federal law enforcement agencies and local law enforcement agencies as well.

The other 40 percent of my duties are split between answering letters, inquiries submitted by the public, regarding firearms. If you are concerned about whether something might be legal or something you want to do with a firearm is illegal, you would write us a letter or call us, and we would answer your question for you. We also answer similar questions that are posed by the industry. So if the industry wants to manufacture something or wants to import something and are unsure how it is going to fall within the law, they will submit it to my office. And we will advise them in writing about what they need to do or what, you know, they are proposing to do, how it would fall within our laws and regulations. We also get involved quite a bit in training, mostly new law enforcement, federal law enforcement officers. We assist law enforcement agencies with

different search warrants and things of that nature as well.
Q. Do me a favor.
A. Slow down.
Q. Yeah. You are right on the line. A little bit faster and we're both going to get in trouble. Okay?
A. All right. I'm from New Jersey, sir. We do everything fast in New Jersey.
Q. Slowly tell the jury what training and experience you have that qualifies you to be an FEO.
A. I completed a 20-year career in the U.S. military, the first four years of that career as a military policeman. The remaining 16 were in the small arms field as both an armor and a firearms instructor. During the course of those 16 years, I attended more small arms related courses for the U.S. military than I care to think about, basically trained to inspect and repair every small arm that was issued to the United States Air Force from the M15 and M9 pistols up to the M60 and M240 general purpose machine guns.

In the early 1990s, I was afforded the opportunity by the Department of Defense to work with ATF while still serving in the military. I was assigned to a firearms task force in northern New Jersey. And for nine years I examined and traced weapons that were criminally recovered in eight counties in northern New Jersey and two counties of New York.

While I was doing that, I was going to school and getting

my bachelor's degree, which I did obtain my bachelor's degree. I was offered a job with ATF as an inspector in 2001, which I accepted. I was an ATF inspector until 2004. My training with that included going to the Federal Law Enforcement Training Center in Georgia. And I received quite a bit of training on federal firearms laws and regulations, the identification of firearms.

In 2004 I was afforded an opportunity to move to the firearms technology branch, which I accepted. And since I've been employed at the firearms technology branch, I've attended five factory-sponsored armor courses presented by Glock, Fabrique Nationale, Heckler & Koch, Remington, and Smith & Wesson.

I've also participated in ATF nexus training. What nexus training is is we travel up to various firearms manufacturers, such as Colt, Smith & Wesson, Ruger. We visit their factories. We talk to their designers. We talk to their employees and their historians. They basically lay out everything about that particular company, what they make, where they make it, how they make it, how they develop their products, the history of the company, how they serialize weapons, and things of that nature. And I participated in both the basic and advanced nexus courses for ATF.

Q. During your time with ATF and the military, how many firearm examinations would you say you've performed?

A. I couldn't give you a hard number, but it's tens of thousands.
Q. Have you testified as an expert before?
A. Yes, sir, on 22 occasions.
Q. In federal court?
A. Twenty times in federal court, once for the U.S. Army in a court-martial, and once for the State of Virginia.
Q. Were you asked to examine and classify some firearms in this case?
A. Yes, sir, I was.
Q. Did you do so?
A. I did.
Q. How many firearms did you examine?
A. I examined two firearms for this case.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been admitted as Government Exhibit 112. I'm going to hand that to you. Please don't point it at the jury. Is that one of the firearms you examined?
A. Yes, sir, it is.
Q. What type of firearm is that?
A. It's an International Ordnance Model USAS-12, 12-gauge semiautomatic shotgun.
Q. Is there a serial number on there?

A. Yes, sir, there is.
Q. What is the serial number, please?
A. The serial number is A0002089 SA.
Q. Is that firearm also marked with the manufacturer, the model, and the caliber?
A. It is, sir. It's an Interord Corporation of Nashville, Tennessee. On the other side, it says USAS-12, 12-gauge, 2 3/4 inch shell.
Q. Are you familiar with how that firearm operates?
A. Yes, sir, I am.
Q. Would you please explain that to the jury?
A. Yes, sir. The weapon looks out the magazine right here. The magazine holds typically ten or more rounds. Ten or 30 round magazines were most commonly paired with this weapon. In order to chamber the first round out of the magazine, you operate and discharge the handle right here, which will chamber the first round. You place the selector on fire. And each time you pull the trigger, you will fire a single shot out of the weapon.
Q. Did you test fire this firearm?
A. I did, sir.
Q. When, where, and how?
A. On August 6th of 2009 at the ATF test range in Martinsburg, West Virginia. I chambered and fired a total of five rounds out of this weapon.

Q. And what were your findings?
A. The weapon is fully functional.
Q. Is it capable of expelling a projectile by the action of an explosive?
A. It is, sir.
Q. How many times did you test fire it?
A. I shot five rounds out of it, sir.
Q. Did it function properly all five times?
A. It did.
Q. And how is this firearm classified?
A. Under the Gun Control Act, it would be classified as a firearm. Under the National Firearms Act, it would be classified as a destructive device.
Q. Why is it classified as a destructive device?
A. A destructive device under the National Firearms Act is defined as any weapon which will expel a projectile by the action of an explosive, the bore diameter of which is greater than one-half inch. On this particular weapon the bore diameter is greater than one-half inch.
Q. Show us where the bore is, please.
A. The bore is basically the opening where the round comes out of the barrel after you fire the weapon, right here where my finger is.
Q. When was it classified as a destructive device?
A. This particular weapon was classified as a destructive

device on March 1st of 1994.
Q. And as a destructive device, is it required to be registered in the National Firearm Registration and Transfer Record?
A. It is.
Q. What if a person owned this particular shotgun before it was classified as a destructive device?
A. This is -- in this case this weapon was regulated for a while as just a shotgun. It was not regulated as a destructive device, because under the definition of a destructive device, there's an exemption that says if the secretary, which in this case would be the secretary of the treasury, finds that the weapon is a sporting shotgun that it will be exempted from the destructive device definition. Therefore, if you are a hunter and you have a 12-gauge Remington 87 or something similar, you are not in possession of a destructive device.
Q. Tap the brakes a little bit for us. Slow down just a little.
A. For a short while, the weapon was offered for sale as a shotgun, not as a destructive device. At a later date the secretary took another look at it and decided that based on the history of the weapon and its design characteristics that it should, in fact, be regulated as a destructive device. So if you owned this weapon prior to 1994, when it was regulated as a destructive device, you were given seven years in which to

register it as a destructive device in the NFA.
Q. When did that seven-year grace period expire?
A. It was, I believe, May 1st of 2001.
Q. And when during that seven years would a person be required to register this particular --
A. Could be anytime in that time period. It could be the first day of the seven years or the last day. As long as it was registered within that time period, it would have been a lawfully owned weapon.
Q. How are gun owners notified that these types of shotguns had to be registered?
A. There were several different efforts that were made. The records of the people that purchased weapons were obtained from the various manufacturers and various distributors. And those people were sent letters explaining that the classification of them had changed and they had a certain time period to register it. There was also an open letter that was sent to all federal firearms license holders that explained that its classification had changed and it had a time period to register it. There was also advertisements taken out in various gun publications, such as *Guns & Ammo* and *The Shotgun News* and magazines of that nature that were taken out basically by ATF in which an advertisement was posted explaining that the status of the weapon had changed and you had a certain time period to register it.
MR. GORDON: May I approach the witness again, Your

Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to hand you what's been marked as Government Exhibit 111. Again, please don't point it at the jury. Is this the other firearm that you examined in this case?

A. It is, sir.

Q. And what type of firearm is that?

A. It's an RPD-type belt-fed 7.62 by .39-caliber machine gun.

Q. Is it identified by any numbers?

A. Yes, sir. On the bottom of the receiver, you have the number BM-0834.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government Exhibit 111-A.

A. Yes, sir. That's the serial number as it appears on the feed cover of the weapon.

MR. GORDON: Your Honor, I would offer Government Exhibit 111-A.

THE COURT: Any objection to 111-A? It's received.

(Government's Exhibit 111-A received in evidence.)

BY MR. GORDON:

Q. Would you please show us again where -- well, I guess let's

put this up first, please. Will you please show the jury where on the firearm this BM-0834 is stamped?
A. The picture that you are looking at, it's right here on the top on the feed cover, BM-0834. This weapon originally originated in Hungary. Hungarians stamped that number in several different locations. They stamped it on the feed cover here. They stamped it on the bottom of the receiver here, stamped it on the bottom of the charging handle here. And if I were to disassemble the weapon and take out the bolt mechanism, the bolt mechanism more than likely has the serial number on it as well.
Q. Now, you said it was originally manufactured in Hungary. First, give us a history lesson. When were those manufactured? What time period?
A. They were adopted and designed in the 1950s. They were the squad automatic weapon of the various Com Bloc forces and basically fire the same round as the AK-47. The biggest difference is they are heavier, and they are belt fed. And they were used as mainline weapons until the early to mid-1960s, when they were replaced by the RPK.
Q. You said they were used by Com Bloc nations?
A. The old Warsaw Pact: Hungary, Poland, Russia. The Chinese adopted it as the Type 56. It was made by about four or five different countries.
Q. Now, you said it was originally manufactured. What do you

mean by that?
A. There's obvious weld marks on this receiver that indicate at some point it was demilitarized by being cut into pieces.
Q. And then --
A. Somebody welded it back together.
Q. All right. Would you please show the jury where on that firearm there appear to be weld marks.
A. You have weld marks on either side of the locking block back here that secures the top cover. And there's also a big weld mark right through the center of the receiver on both sides where it was welded back together.
Q. Are there any -- other than the BM-0834, is there a manufacturer's stamp on that firearm?
A. No, sir.
Q. Should there be?
A. If it was legally welded back together, then there should be a manufacturer's mark on it, yes.
Q. How does that work if you are remanufacturing a firearm? How does that work?
A. If you are remanufacturing a firearm, you have to apply a serial number to that weapon, the receiver of the weapon. And then you have to put your information either on the receiver, frame, or barrel of the weapon.
So let's say I was Mike Knapp and I was legally making this, welding it back together. I would have put a serial

number on the receiver, and then I would have to put my information somewhere on the weapon. So I would have to say, Mike Knapp, Martinsburg, West Virginia. And if I assigned a model number to it, I have to do a model. I have to put that model number on it, and also I have to designate the caliber of the weapon as well.

Q. Now, on that firearm, are there any other numbers engraved or stenciled on it?

A. Yeah. There's a number that's scratched into the top of the rear receiver block here.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Is that number what's depicted in Government Exhibit 111-B?

A. Yes, it is.

MR. GORDON: Your Honor, I would like to offer Government Exhibit 111-B.

THE COURT: It's received.

(Government's Exhibit 111-B received in evidence.)

BY MR. GORDON:

Q. What's the number that's stenciled on there?

A. It appears to be 1442 or 1492, something like that. It's not very easy to make out.

Q. Does that number meet the requirements for a valid serial number?

A. It does not.
Q. Why not?
A. Because when you close the top cover, it's obscured. And the regulation clearly says that the serial number you apply to a weapon has to be completely visible. It can't be hidden. It can't be obscured.
Q. Anything else about it?
A. It's just not -- it's not applied very deeply. It would be pretty easy to remove. The regulation also requires that the marking be impressed or engraved deep enough so that it can't be easily defaced or removed.
Q. So these two markings on the gun, which one appears to be the valid serial number?
A. The BM marking appears to be the valid number.
Q. If you would, please explain to the jury how this firearm operates.
A. It's actually a very simple weapon. It's belt fed. The belt feeds into here. Once your first round is secured in the feed tray, you close the top feed cover, charge the weapon, first round. This is -- you pull the trigger. It will fire the first round of ammunition that's in the belt. You chamber and fire it. And it will keep firing until either it runs out of ammunition or you let your finger off the trigger. This is only an automatic weapon. It has no capability for firing single rounds.

Q. When you say belt fed, what does that mean?
A. The rounds that are fired through the weapon are contained in a belt, and the belt is fed into the weapon. It's typically what you find on a light or heavy machine gun.
Q. It's a continuous string of bullets?
A. Right, until -- right. Until you run out of bullets, it's continuous.
Q. Did you test fire this gun?
A. I did.
Q. When, where, and how?
A. I test fired it on August 7th of 2009, again at the ATF test range at Martinsburg, West Virginia. I fired a total of three ten-round automatic bursts out of the weapon.
Q. What were your findings?
A. The weapon is fully functional. It does fire more than one round without manual reloading by a single function of a trigger, therefore it does meet the definition of a machine gun under the National Firearms Act.
Q. Is it capable of expelling a projectile by the action of an explosive?
A. It is. Therefore it's also a firearm as defined under the Gun Control Act.
Q. Okay. You talked about some weld marks on that firearm. Is there a crack in one of those welds?
A. One of the rear welds is cracked.

Q. Did that affect or impede the function of the firearm in any way?
A. It did not.
Q. Again, you test fired it three times?
A. I did.
Q. The same results each time?
A. Yes, sir. Ten rounds each time. I fired ten rounds automatically.
Q. Based upon that, this firearm qualifies as a machine gun?
A. It does, sir.
Q. As a machine gun, is it required to be registered in the National Firearm Registration and Transfer Record?
A. It is.

MR. GORDON: Thank you, sir. Pass the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Good afternoon, Mr. Knapp.
A. Good afternoon.
Q. Let's talk about the USAS-12 first. That's the Exhibit 112. Is it up there?
A. No, sir. It's over by the cart.
Q. Exhibit 112. Just so that we are all on the same page, this is a 12-gauge shotgun?
A. It is.

Q. Prior to March 1st of 1994, ATF, to the extent "regulated" is the right word, regulated it just like any other 12-gauge shotgun. Right?
A. That would be correct.
Q. Which means essentially it wasn't regulated. Right?
A. It was regulated as a firearm under the Gun Control Act, but not as a destructive device under the National Firearms Act.
Q. Not as an NFA weapon?
A. Correct.
Q. You could buy it just like you could any other 12-gauge shotgun. Right?
A. That is correct.
Q. Just like I go down -- because I duck hunt -- and get my 12-gauge at Wal-Mart, prior to 1994, that's the way this weapon was regulated. Right?
A. Correct.
Q. So then it was in March 1st of 1994 that ATF changed the rules on this particular weapon. Right?
A. That's correct.
Q. And as you said, the secretary, or it's easiest just to say the ATF, decided we want to classify this weapon as a destructive device. Right?
A. That's correct.
Q. And it didn't change between February 28th, 1994, and March 1st, 1994. It's just that ATF decided, we want to

regulate this. Correct?
A. Correct.
Q. And the reason is is because the ATF determined it didn't have a sporting purpose.
A. That's correct.
Q. You are not going to take that out and shoot ducks with it.
A. Right. It had to do with the history of the weapon itself.
Q. Yeah. You could shoot ducks with it, but generally that doesn't look like something you go out in the woods and shoot ducks with. Right?
A. Correct.
Q. So what ATF did is then it tried to get the word out to everybody. So just to make sure we're clear, if I bought this thing before March 1st, 1994, I legitimately owned it. I didn't have to register it or anything like that. Right?
A. That's correct.
Q. The rule changes March 1st, 1994. And ATF tries to let everybody know the best that they could, hey, now you have to register this weapon. We now consider it a firearm, an NFA weapon.
A. Correct.
Q. Correct? So you send out mass e-mail, or it was probably before the e-mail days, I guess, send out mass letters and that sort of thing to try to get the word out, you need to register this thing.

A. Correct.
Q. Then ATF set a cutoff date of seven years. Right?
A. Yes.
Q. And said, if you don't have it registered in seven years, bad things may happen to you.
A. Right.
Q. Okay. Are you aware, outside of this case, of any other prosecutions nationally for somebody that's lawfully owned the USAS-12 prior to 1994?

MR. GORDON: Your Honor, I object to this, the prosecution of other people.

THE COURT: What is the relevance of that?

MR. HENDRIX: The relevance is to show -- my information is that this is the only prosecution ever under this statute.

THE COURT: I'll overrule it. I'll let you ask the question.

THE WITNESS: I participated in a case in Pittsburgh, Pennsylvania, that involved one of these weapons.

BY MR. HENDRIX:
Q. Is that the only other one?
A. That I'm aware of, yes.
Q. All right. So the RPD, let's move on to that. Do you have that?
A. I do.

Q. You have it up there? Okay. The RPD, it's a Cold War era weapon. Right?
A. Yes.
Q. And a lot of people consider it a collectors' item. Right?
A. I suppose some people do, yes.
Q. Well, some people consider --
A. People collect -- somebody collects everything.
Q. What's a Tommy gun?
A. A Tommy gun, it's a slang term for a Thompson machine gun.
Q. Which is an old World War II machine gun. Right?
A. Actually it predates World War II by almost 30 years.
Q. Right. And people collect them because they have historic significant value. Right?
A. Yes.
Q. And people collect weapons from World War I, from the Civil War. Correct?
A. Yes.
Q. As collectors' items and as historical artifacts. Right?
A. Correct.
Q. And Vietnam era weapons are collected for historical value. Correct? And so this is a Cold War 1950s Hungarian weapon. Right?
A. Originally, yes.
Q. Yeah. That some people would want to collect. Right?
A. (Witness nods head.)

Q. Let's talk about rewelds, make sure we understand what that proposition is. Can you explain to the ladies and gentlemen of the jury what a reweld is?
A. A reweld is basically when you take a machine gun receiver which has been cut into pieces and weld it back together, essentially recreating a machine gun.
Q. And so we understand, can you point out the receiver and the component parts of the weapon?
A. On this particular weapon, the receiver is this main part right here where the top cover attaches to. The top cover attaches to the buttstock, the firing mechanism. The barrel attaches to the receiver. And as far as we're concerned, as ATF, the receiver is the regulated item. That's the actual machine gun. All the other parts are just parts.
Q. Got it. And so what a reweld is -- are you finished with that explanation?
A. Yes, sir.
Q. Is there more to it?
A. No.
Q. Yeah. It's lawful. People -- actually after 1986 it became unlawful to manufacture and therefore possess and transfer machine guns. Right?
A. Only to civilians. You could still manufacture them if you are a licensed manufacturer, and you could still sell them to the military and law enforcement.

Q. Right. Even after 1986, it's still lawful with the proper license to manufacture and transfer machine guns. Right?
A. Correct.
Q. So in a reweld situation, what you might have is an old weapon that's been demilitarized. Right? And that means it has been -- and ATF has regs on this. Right?
A. Right.
Q. You literally saw the weapon in half.
A. Sawing won't work. It has to be torch cut.
Q. It has to be torch cut. I'm sorry.
A. Basically you cut the receiver into pieces. We don't let you use band saws because the cut is too clean. It is too easy to weld it back together. If you are going to cut it, you need to do it with a cutting torch that the blade is one-quarter inch of metal.
Q. So with a proper license, a manufacturer can do the so-called reweld, where they take component parts of various machine guns even, right, and reweld them back together, and that's considered the manufacturing of a weapon?
A. Correct.
Q. Right? So on a reweld, isn't it sort of like if you are building a car and you are taking component parts -- I'm taking a bumper from here, and I'm taking a windshield from here, and I'm going to build this car. Under that scenario you might find several different VIN numbers for that automobile. Right?

A. I suppose.
Q. Does that not happen in rewelds as well?
A. It does. But once you legally remanufacture, you have to apply your own serial number.
Q. Well, we'll get there in just a second. So my question is, is when you have a lawfully rewelded weapon, you are likely to find a couple of different serial numbers on there. Right?
A. It's possible, yes.
Q. Okay. And nothing wrong with that.
A. No.
Q. Okay. I understand that your complaint about this weapon is there appear to be two different serial numbers. There's one that starts with a B. Right? And then there's the etching of the 1442. Correct?
A. Correct.
Q. And you find fault with the serial number 1442. Correct?
A. Yeah. And its placement and then how deeply it's engraved.
Q. So in your opinion what you are telling the jury is it's your opinion that where it says 1442, that's not a lawful serial number.
A. I cannot believe so, no.
Q. That's your opinion. Right?
A. Right.
Q. That's what you are telling the jury. 1442 is on that weapon. Right?

A. Yes.
Q. And will you show us again where it is?
A. Where my finger is pointing, at the top of the block, the back of the receiver.
Q. And one of the faults you find with that -- and in your opinion therefore it's not a serial number -- is because it's obscured. Right?
A. Right. When you lower the top feed cover, it's obscured.
Q. Okay. And the other problem you get with it is it appears to be etched instead of stamped. Is that right?
A. Even etched would be okay if it was deep enough. It does not appear to be etched deep enough. It would be too easy to remove. The marking requirements state that it has to be etched deeply enough so it can't easily be removed.
Q. No. I understand. And just to make it clear, that weapon has 1442 on it. Correct?
A. It does.
Q. It's just your opinion that that is not a lawful serial number. Correct?
A. Correct.
Q. Thank you.

MR. HENDRIX: May I have just a second? Sorry. May I approach, Judge?

THE COURT: Yes.

BY MR. HENDRIX:

Q. Let me show you that and see if you are familiar with this document. And see if you can tell me whether it's Code of Federal Regulations about that USAS-12.
A. Yes. This is the ruling that basically changed the status to a destructive device.
Q. May I? So this is the actual law that came out where the law changed on the USAS-12. Right?
A. That's correct.
Q. May I read a portion of this to you and see if you can tell me what it means?
A. Sure.
Q. It says, "Pursuant to Section 7805(b)" -- that's part of the National Firearms Act -- "this ruling is applied prospectively effective March 1st, 1994, with respect to the making, transfer, and special occupational taxes imposed by the NFA. All other provisions of the NFA apply retroactively effective March 1st, 1994."
A. Again, it's basically that it's a destructive device. I mean, I don't work in the NFA branch, so I don't want to speak for them. But that is the ruling that basically changed the item from a shotgun, merely a shotgun under the Gun Control Act, to a destructive device under the National Firearms Act.
Q. Okay. That's fine. Thank you.
THE COURT: Any redirect?
MR. GORDON: No, Your Honor.

THE COURT: Mr. Knapp, you can stand down.

Ladies and gentlemen, that's going to be our last witness for today. We've been going to 5:30, close to 6 o'clock every day. So we're going to get out a little early, if you call 5:06 early.

Just remember what I've told you so far. Don't start talking about the case with each other. Don't talk to anybody else about the case. Don't watch any media about the case. Don't read about the case. Don't hear any radio about the case. We want you to maintain an open mind until you've heard all of the evidence and until you've gone back to the jury room with the instructions and can hear from your fellow jurors.

Also, keep doing what you've been doing. Don't talk to the lawyers, witnesses or parties. We not only want this process to be fair, but we want it what? To appear to be fair. All right. We'll recess until 9 o'clock in the morning.

(Overnight recess at 5:08 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Elaine Hinson, RMR, CRR, CCR Date: March 9, 2011.
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

July 21, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 9:15 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 8
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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MS. KAREN D. WHATLEY, Assistant U.S. Attorney
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On Behalf of Defendant Randeep Mann (1):

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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
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114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

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THE COURT: Did we have something we need to take up before we bring the jury back in?

MS. WHATLEY: Briefly, Your Honor. We just wanted to put on the record that the United States provided both defendants with a copy of the United States' exhibit list yesterday afternoon, completed up to where it was before I gave it to Mr. Williams to copy, and the other thing we wanted, we were all kind of debating last night as to where we stood, are we taking Monday off or are we not taking Monday off, because we need to let witnesses know.

THE COURT: I don't think we ever decided. I think I was leaving that to the lawyers to decide if you want to. If we need to, of course I would be all for it, I have no problem with it or we can take a half a day or however the lawyers want to do it.

MS. WHATLEY: It was the defense's request so we're just trying to -- we have witnesses scheduled to come in.

THE COURT: We had talked about the juror who might need to have to go to a funeral. She has worked that out and doesn't need to. But I think some of us had started planning in our minds that we would have a day off so I'll leave it to you. Now, understand that we will not be in court next Thursday and so whatever we do, we need to plan around both

days. It's up to the lawyers.

MR. HENDRIX: I can kind of tell you where we are is we've got all that medical board information that we need to review for copying and look at additional discovery, investigative files and so forth that are downstairs. I think that would be --

THE COURT: Can you step closer to the microphone?

MR. HENDRIX: I'm sorry. The low voice is going to be the second part of this. So that's a full working day, it seems to me. I don't think we're yet on the same page on getting witnesses from the government the day before for us to prepare, so we might even have a hold-up today depending on who they call because we just heard about some witnesses this morning. And the third thing is the low voice deal. I'll tell you right now, we're working till 11, 12:00 at night and I'm almost so physically exhausted I can barely stand up right now.

THE COURT: I understand.

MR. HENDRIX: But a little break at some point where we didn't actually have to work, where we --

THE COURT: Let's just do this. Let's plan for Monday, and then we can plan for Thursday, and maybe even on Monday, you catch up on some work and on Thursday you just take the day off or maybe the other way around, that'd give you a three day weekend to do something other than this case. We can do that. So, our schedule is going to be we'll take Monday off

and we'll come back Tuesday. Let's do this. When I come in on Monday mornings, all of you know I don't live in Little Rock so I either will come in every morning or I'll sleep on the couch in the back. And so Monday mornings usually, after having a weekend of running around, I would rather come in on Monday either at 9:30 or 10 instead of 9:00. It makes it a little easier for me to get over here and get acclimated before we get started.

So let's start up on Monday at 9:30 -- Tuesday, 9:30. And we'll take Thursday off and we'll let the jury know that when they come back out. Are we ready to bring the jury back in? For the defense, when you have -- if you have -- let me see if I can say this right. If you have witnesses who you need to take ten minutes or five minutes or something to look at the documents before you do a redirect or cross, not redirect, but cross, and this goes for the prosecution too, if you need to regroup before doing redirect, because I'm just letting you know, I'll give you a few minutes. On one hand, I told you earlier, I want to push this through this case and get it done, but on the other hand, I don't want people who are not totally prepared. So if you need a few seconds, don't hesitate at all to say, hey, look, let's take five and a break or something. Okay?

MS. CASSINELLI COUCH: Your Honor, I just wanted to follow up on what Mr. Hendrix said. What he was trying to say

is there may be a time this week that we ask the Court for more than ten minutes because of notice issues and Jencks issues so I didn't know if that would affect whether or not you told the jury about next week.

THE COURT: No, I will tell the jury about next week now, and if we have a time where you need to take a little time to look at something before cross or something, you just let me know.

MS. CASSINELLI COUCH: I guess I just want to be clear that we might be thinking of two different little amounts of time. That's all. I just don't want to misrepresent that.

THE COURT: You don't want me thinking ten minutes when you're thinking an hour.

MS. CASSINELLI COUCH: Right, or more.

THE COURT: Mr. Gordon, you look like you want to respond.

MR. GORDON: I just feel like something needs to be said because we keep hearing complaints about notice like Karen and I aren't doing something right. We've done much more than is required by the rules and they're getting Jencks three days early. That's their heads up to what's coming. Most of the Jencks they already have. They're somehow passing the buck to Karen and I. They've got seven attorneys; we've got two. I don't understand the problem here, why they keep casting stones at us.

THE COURT: Well, here's a thought here and I don't think you were at the bench yesterday, Mr. Gordon, when I was saying it. The way I read it, and I could be reading it wrong, is that the defense is saying that you've given them everything, but that there's so many documents, so many exhibits and so many witnesses in the case that just trying to stay up and stay ready for each thing that comes their way is difficult. And so they just need time when the witness actually shows up or when the documents are dealt with or when the exhibits are introduced to just take a look at them and make sure that they're ready to deal with them.

MR. GORDON: I think they're going to ask for extended breaks, some large breaks later on, and I guess we can talk about the necessity of those when that request is made.

THE COURT: Okay. Are we talking you're going to need afternoons off to get ready for witnesses?

MS. CASSINELLI COUCH: I don't think we know at this point. And I'm not suggesting that they haven't given us what they are legally required to give us, it's just that we have to have the material in time for effective use at trial and that can be different amounts of time depending on who the witness is and how much material there is, so I think the law requires them to only give us Jencks after the witness testifies, but it also allows us to ask for time to use it. So that's what I'm talking about and I can't say we need four hours because of

this witness, because I don't know who's coming up or what they're going to say.

THE COURT: That's fine. Anything else we need to take up? I just want the record to reflect that what I hear the defense saying is not that the government is not giving them everything. And, in fact, I think the record reflects that you've actually given them some witness statements three days in advance when you're not even required to do that. But it's just the use of those statements and the use of the evidence at trial is difficult because it's so much stuff and so they just want time to make sure they're prepared to use it.

MS. CASSINELLI COUCH: Your Honor, for the record, I think I should tie this back to our motions for bill of particulars and our follow-up that I think the Court's aware from the record that we didn't have a lot of information about the charges, the detailed information that would be presented, so we are learning a whole lot about the allegations as we move along. So just for the record, I would tie that back to those motions.

THE COURT: I'll deny it, but I'll let you make a response if you want to.

MR. GORDON: This is information they've had for quite a while.

THE COURT: Okay.

MS. CASSINELLI COUCH: It's not.

THE COURT: We can bring the jury back in. If you have your witnesses in, we can bring them in and get them sworn in.

MR. GORDON: For the record, we have Gary Schaible, Tim Harrell, and Gerald Riley.

(Gary Schaible, Tim Harrell, and Gerald Riley, Government Witnesses, Duly Sworn)

THE COURT: Good morning. You know, have you ever had one of those mornings where it's just difficult to get started? That's been my morning. The lawyers were out here before nine o'clock, I did not get out here until about 9:15, and when I came out here, I was moving slow. So forgive me for holding you up this morning, I guess I could have just told you to be here at 9:30, but I was expecting to be able to get moving a little faster this morning than what I did, but I was the one holding things up, so I hope you're ready for a full day of testimony and, Mr. Gordon, we can get started.

MR. GORDON: Thank you, Your Honor. United States calls Gary Schaible.

DIRECT EXAMINATION

BY MR. GORDON:

Q Good morning, Mr. Schaible.

A Good morning.

Q If you would, go ahead and state your name for the record.

A My name's Gary Schaible.
Q Spell your last name for us.
A S-c-h-a-i-b-l-e.
Q Who do you work for, Mr. Schaible?
A I'm employed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives in Washington, D.C.
Q How long have you worked there?
A Since 1972.
Q Let's go back in time and start us at the beginning. What duties have you held with ATF since you started working there?
A Okay. In 1972, I started as what was known as a field inspector where you go out to permitees, licensees' premises and conduct inspections. In 1977, I came in to ATF headquarters in D.C. as a specialist in the research and regulations branch where you prepare regulations. In 1978, I moved into the National Firearms Act branch as a supervisor coordinator. In about 1982, I became the branch chief in the National Firearms Act branch. In '86, thereabouts, I was switched over to the chief of the procedures branch, which drew like branch order at the ATF orders on how to do things. In '86, moved to the chief of the distilled spirits and tobacco branch. ATF covered alcohol back then. Then in '88, came back to the NFA branch as a specialist, and later on became like a program manager and now an industry liaison analyst in the

National Firearms Act branch.
Q First of all, tell us what is the NFA branch?
A The National Firearms Act branch is a branch of ATF that is responsible for maintaining the central registry of firearms that are required by federal law to be registered.
Q And about how many years have you spent within the NFA branch?
A Probably about 30.
Q You are currently the industry liaison analyst?
A Yes, I am.
Q Tell us what that means.
A Probably not much. You get to answer a lot of questions, do different projects, set program direction, I guess would be things -- write letters, write regulations, review regulations, give advice to the field, to the industry, maintain a relationship with the industry.
Q Did that position used to be called the program manager?
A Yes.
Q Is that a pretty accurate description?
A Yes.
Q How long have you been the program manager?
A Probably eight, ten years in that position.
Q Have you testified at trial before on NFA matters?
A Yes, I have.
Q About how many times?

A I stopped counting about 30, and that was some years ago.
Q If you would, please tell us what the National Firearm Registration and Transfer Record is.
A The National Firearm Registration Transfer Record is a registration record of firearms that are required by federal law to be registered. There are six types of firearms in the registry which would include machine guns, silencers, short barrel rifles, short barrel shotguns, destructive devices which are two kinds of firearms and explosives type, and other class of firearms called any other weapon, which is not every other weapon, but it's more a firearm that's not a pistol or revolver that's conceivable like a belt buckle gun or cane gun, something like that.
Q When was the NFRTR created?
A In 1934 when the National Firearms Act was passed.
Q And was it something that ATF came up with?
A No, this was created by Congress.
Q And you already talked about the types of firearms that have to be registered. One of the things you mentioned was the destructive device?
A Yes.
Q What is a destructive device?
A A destructive device is a firearm where the bore or the barrel is greater than one half inch. That's the firearms type. The explosive type would be a bomb, mine, grenade,

missile or rocket.
Q If you would, under the NFA, firearm includes all six types of those items that are required to be registered, correct?
A Correct.
Q Even a grenade?
A Yes.
Q So using firearm in that sense, tell the jury how does a firearm get registered with the NFRTR?
A Okay. Currently, there's three ways a firearm can be registered in the NFA. There are people who are qualified to manufacture NFA firearms, and by that I mean you have a federal firearms license as a manufacturer of firearms, and you pay a special occupational tax which is under the NFA part of it which allows you to manufacture, to manufacture firearms. There's taxes on the transfer and making of firearms. Payment of this special tax as a manufacturer exempts you from the making tax. So, as a manufacturer, you can go ahead and manufacture NFA firearms and you have, by the close of the next business day after manufacture, to register the firearms by filing a notice with ATF. You would complete this form, send it in, and based on the information provided to us by the manufacturer, that would be the registration of that firearm into the National Firearms Registration and Transfer Record.
Similarly, for importers, you have to have a federal

firearms license as an importer of firearms and you have to pay this special occupational tax as an importer under the NFA. In this case, the guns are already manufactured elsewhere and they're coming into the country so you need an import permit through ATF that's handled by another area of ATF, but once the firearms are released from customs, the importer has 15 days to file the same form the manufacturer uses with ATF. On that form, it identifies the firearms that are being registered, and, again, it is notice that's filed with ATF and that filing of that notice then is the entree for the registration of the firearm into the NFRTR, the National Firearms Registration Transfer Record.

And, finally, as any individual, any person can apply for permission to make and register an NFA firearm, it doesn't apply to machine guns, but for anything else, you can apply for permission to make, say if you wanted to make your own short barrel rifle, you had a Colt AR-15 20-inch barrel that you wanted to have it in the short barrel configuration, you could apply to ATF for permission to make that short barrel rifle and we would process the application. If it's approved, then you're good to go, we return the application to you and you could go ahead and make that short barrel rifle.

Q What about transfers?

A Once the firearm is registered, the NFA requires that the firearm be registered to the possessor. If there's going to be

a change of possession on the firearm, the registrant who has it has to apply for the transfer to the other party. There are several different forms used for the transfer, but in short, a transfer has to be applied for and approved by ATF before it can take place.

Q All these forms that you're talking about, they are standard ATF forms that people just fill out and mail or fax them in?

A That is correct.

Q When ATF receives the forms, what happens to them?

A The forms come in to ATF, we have data entry people who will take the information provided on the form, enter it into our database or retrieval database. If it's a first time, if it's a manufacturer, an importer or a making, we're not going to have any record on that firearm, so that would be the initial entry on it. But for a transfer, we take the form, take that information and link it to where the person currently has it registered and we'll put the transfer in a pending status. Once all the data entry is done, it moves on to a different position in the NFA branch.

We have what are called legal instruments examiners. These are people whose job it is to process transfer applications and registrations. They would review the application, make sure it was complete, make sure the firearm matched up with the description, make sure that the person who

had the firearm registered is the one applying to transfer it, and ultimately making sure the person who is the transferee, the person receiving it, is qualified to possess it, receive it and possess it. All that being done, they would go ahead and approve the application and note this update into the National Firearms Registration Transfer Record.

Q With destructive devices, sometimes whether or not a firearm has to be registered as a destructive device depends on how it's classified. Like with a shotgun, there's the exception for shotguns with a sporting purpose. If the classification changes and a firearm goes from one that doesn't have to be registered to now it does have to be registered, how would a weapon like that, a firearm like that be registered?

A Whoever would have the firearm at that time would have a form to complete and submit to ATF.

Q Okay. Is it one of the same forms that you talked about earlier?

A The last time we did that, yes, it was one of the forms we already have, a preexisting form.

Q Okay. Can you tell us how many firearms, again using the big definition of firearms, are currently registered with the NFRTR?

A Just over 2.7 million.

Q 2.7 million. What makes up the bulk of that 2.7 million?

A The flash-bang type grenades.

Q Tell us what that is.
A It's also known as a diversionary device. A lot of police departments, law enforcement agencies will use this on serving a warrant for entry. It's a loud bang and a flash will disorient people, and so it has explosives in it.
Q So even stuff like that has to be registered?
A Yes.
Q How many machine guns are currently registered in the NFRTR?
A About 447,000.
Q Is it possible to search the NFRTR to see what firearms are registered to a particular person?
A Yes, it is.
Q Tell us how that is done, please.
A Our field person, the agent or the inspectors, now investigators, would request a record search and they provide us with the name of the person or entity that they wanted searched.
Q So then it's just a computer search of the database?
A Yes, it is.
Q Were you asked to search the NFRTR and identify all firearms registered to Randeep Singh Mann doing business as Exotic Weaponry?
A Yes, I was.
Q Did you do so?

A Yes, I did.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to show you what's been marked as Government Exhibit 127. Do you recognize that?

A Yes, I do.

Q Are those the firearms registered to Randeep Mann?

A Yes.

Q Who conducted that search?

A I did.

Q And does that exhibit contain the results of your -- the entire results of your search?

A Yes, it does.

Q I'm going to retrieve that back from you.

Your Honor, I'd offer Government Exhibit 127.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 127 received in evidence.)

BY MR. GORDON:

Q Mr. Schaible, how many firearms are there in Government Exhibit 127?

A I believe it's 114.

Q So we're clear, does Government Exhibit 127 reflect all of the firearms that Randeep Mann has ever had registered with

the NFRTR?
A No. These are the ones that are currently registered to Mr. Mann.
Q So, for example, if he had one earlier in time and transferred it to someone else, that will not be reflected in these records?
A Correct.
Q Is it also possible to search to see if a particular firearm is registered to a person?
A Yes, it is.
Q Were you asked to search the NFRTR to see if two specific guns were registered to Randeep Mann?
A Yes, I was.
Q Was one of those firearms an Interord Corporation Model USAS-12, 12-gauge shotgun, serial number A0002089 SA?
A Yes, that was one of them.
Q Did you conduct that search?
A Yes, I did.
Q Was that firearm registered to Randeep Mann?
A No, it was not.
Q Was that firearm registered to anyone?
A It was not registered to anyone.
Q Did you also check if a 7.62-caliber machine gun, serial number BM0834, was registered to Randeep Mann?
A Yes, I ran that search also.

Q Was it registered to Randeep Mann?
A No, it was not.
Q Was it registered to anybody?
A No, it was not.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q I'm going to hand you what's been marked as Government Exhibit 128. Is that your certification that the two firearms we just talked about, that those two firearms are not registered to Randeep Mann?
A That is correct. They were not registered to Mr. Mann.
Q Thank you.
Your Honor, I'd offer Government Exhibit 128.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibit 128 received in evidence.)
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q Mr. Schaible, I'm going to show you what's been marked as Government Exhibit 129-A. Is that one of the registration records contained in Government Exhibit 127?
A Yes, it is.
Q Is it a fair and accurate copy?

A Yes.

MR. GORDON: Your Honor, I'd offer Government Exhibit 129-A.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 129-A received in evidence.)

BY MR. GORDON:

Q Mr. Schaible, is this one of those standard ATF forms that people can use to register a firearm?

A Yes. This one is specific to transactions between parties who are both federal firearms licensees and NFA special occupational taxpayers.

Q And who is the person who is going to receive the firearm?

A The person receiving the firearm in this case would be Randeep Mann.

Q That name is reflected in box 1?

A Yes.

Q Who is the person transferring the firearm to Randeep Mann?

A That is Lloyd Hahn.

Q Down in section 3, what is the description of the firearm that's being transferred?

A In 3A, it shows that Hahn Machine as the manufacturer of the firearm, the type of firearm is machine gun, the caliber is

7.62 millimeters. The model is RPD. It shows the barrel length of 24 inches, an overall length of 45 inches, and showing a serial number of 1442.

Q Let's look at the information box, 3A. Hahn Machine, and then it lists his address or the address there. Is that the same address as the transferor listed in 2A?

A Yes, it is.

Q So Lloyd Hahn manufactured or remanufactured this weapon?

A Yes.

Q According to this paperwork?

A Yes.

Q Okay. Then just tell us just so we understand what this form shows. Sections 4 and 5, 6 and 7, what's that information?

A Item 4 is Mr. Mann's federal firearms license number and it shows him -- that second box from the left where it says two digits and it shows 01, that identifies his firearm type which is a dealer in firearms. And then box 5 is evidence of his payment of that special occupational tax that's paid under the employer identification number which is in 5A, and the class there is 62 which is as a manufacturer of firearms. Now, he's licensed as a dealer, but according to the form here, he paid as a manufacturer. It doesn't allow him to manufacture firearms even though he paid the SOT as a manufacturer of firearms, but it doesn't allow him to deal.

Q Okay. Let's look down a little bit further.
A Then box 6, it identifies Mr. Hahn's federal firearms license, and in this case, the firearm license type is an 07, which is a manufacturer of firearms, and then item 7 shows an item in block A, his employer identification number which we tracked the special tax payment by, and also shows his tax class as 72, which is also a manufacturer of firearms, NFA firearms.
Q Then there's a signature in box 8. That should be the person who's transferring the weapon, correct?
A Correct.
Q So that should be Lloyd Hahn's signature. Then the box, the date in box 10, what is that date?
A That's the date he would complete the form.
Q Then down below, there's a second signature. What does that indicate?
A That's where the NFA part comes in for the branch. In this case, the examiner was Tammy Moss, and then Maurice Walker is the supervisor examiner and both stamps are on that form showing the approval.
Q That date stamp to the right of their name, what does that indicate?
A The date of approval of the form.
Q Is that the effective lawful date of the transfer?
A Yes. At that point, the -- we retain a copy of the form.

It comes in duplicate and we'll send a copy back of the approval form to Mr. Hahn, and as of September, that's 19th, 2001 on there, that firearm was registered to Mr. Mann, but the process is the form would have to go back to Mr. Hahn through regular mail and then he would make arrangements to have it for Mr. Mann to pick it up or ship it or whatever the case may be.

Q Now, in the middle of this form, there's some writing that appears to be stamped on it diagonally. What does that indicate?

A In 1986, there was a law change to the Gun Control Act of 1968, which put prohibitions on the possession of machine guns. So after that point, a machine gun could only be possessed basically for government agency use. When ATF wrote up the regs implementing the statutory change, it created, knowing that the government agencies are going to have to get guns from dealers and manufacturers, that would allow a federal firearms licensee who's paid the special tax to obtain a machine gun for sale or demonstration for sale to a government agency. That particular stamp on there indicates that this machine gun was manufactured or imported after the date 1986, and therefore, it was restricted to government agency use basically, that the dealer who has it only got it for that purpose.

Q Okay. Make sure I have that right. After 1986, you could only possess newly manufactured machine guns if you were in law enforcement or some governmental agency or you had the

exemption indicated by this diagonal marking?
A Yeah, the diagonal marking is the restriction identifying what's commonly called in the trade as a post '86 machine gun. But in order for Mr. Mann to get it, we would process the application and he would have to be a federal firearms licensee, he would have to pay this special tax, and he would also have to provide a letter of interest from a law enforcement agency, not an individual officer. You couldn't get it as an individual officer, but for the agency saying they were interested in the purchase or demonstration for possible purchase of this particular model machine gun.
Q Okay. And so in order for this transfer to be approved, letters have to be submitted to show that it's being -- this weapon will be possessed in order to demonstrate it to law enforcement?
A Correct.
Q And did I ask you to pull the law enforcement letters associated with the firearm in Government Exhibit 129-A.
A Yes, you did.
Q Did you do so?
A Yes, I did.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q Are those letters, are these copies of those letters in

Government Exhibit 129-N?
A Yes.
Q Are they fair and accurate copies?
A Yes.
Q Let me retrieve those back from you.
Your Honor, I'd offer Government Exhibit 129-N.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 129-N received in evidence.)
BY MR. GORDON:
Q Let's look at 129-N, please. Mr. Schaible, explain to us how this letter fits into the post '86 dealer sample.
A Well, it's on agency letterhead from, I don't know if that's saying this right, Laclede County Sheriff Department, and it's addressed to Mr. R. Mann and saying that the sheriff's office would be interested in having the following automatic weapons demonstrated. And it shows a Russian RPD as one of the models they'd be interested in seeing a demonstration of.
Q Okay. So, again, the theory is that the weapon is being possessed so we can -- so it can be shown to law enforcement to see if they want to buy it?
A Correct.
Q All right. Are people kind of on the honor system to actually do the demonstration?
A Yes. We don't go out and check. We don't have that type

of resource.
Q Do you think a 1950 Russian machine gun is something that the sheriff's office --
MR. HENDRIX: Your Honor, I object.
Q -- would be interested in --
MR. HENDRIX: I object to Mr. Gordon continuing to speak as I object. I think that's calling for speculation, Your Honor.
THE COURT: What is the question?
MR. GORDON: I guess I need to ask one more question, if he's familiar with the Russian RPD and then is that the type of firearm that a sheriff's office in 2001 would be interested in purchasing.
THE COURT: You're saying that that would be objectionable because it would call for speculation?
MR. HENDRIX: Speculation and a lack of foundation. I understand that the ATF is not affiliated with the Laclede County Sheriff's Office.
THE COURT: I sustain the objection. You can lay a foundation for it.
BY MR. GORDON:
Q If one of these law enforcement letters is submitted to ATF and the transfer is approved based on that, how long does that allow the person to possess the firearm?
A It would allow the person to possess it until that person

terminates the NFA portion of his or her business. By that I mean, if you decided you don't want to do the machine gun or NFA firearms anymore and you drop your special occupational tax status and kept your federal firearms license, you would have to dispose of the machine gun prior to going out of business. If you terminated business entirely, again you would have to dispose of the machine gun prior to doing that.

Q So I could write you a letter like this and then never even do the demonstration and then just have the gun as long as I have my FFL?

A Yes.

Q Is there a lot of abuse of that system?

A I don't know on that. I don't know.

Q Okay. Let's go back and look at 129-A, please. Again, this firearm was transferred to Randeep Mann from Lloyd Hahn. Were there additional firearms that had been transferred from Lloyd Hahn to Randeep Mann?

A Yes.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to hand you what's been marked as Government Exhibits 129-B through 129-M. Are those records on the additional firearms that you found while searching the NFRTR in this case that were transferred from Lloyd Hahn to Randeep

Mann?
A Yes. Let me flip through them all here. Yes, these are all records I found during that search.
Q Are all of those records contained within Government Exhibit 127?
A Yes, they are.
MR. GORDON: Your Honor, I'd offer Government Exhibits 129-B through 129-M.
MR. HENDRIX: Your Honor, I object to their introduction and would like to approach if you don't mind.
THE COURT: You can approach.
(Bench conference reported as follows:)
MR. HENDRIX: Your Honor, I suggest to you that these are irrelevant at this point. There is one count, actually two counts that are involved with this one weapon. These are other transactions that are extrinsic to the indictment and are not relevant to the one count. That document has already been introduced.
MR. GORDON: Your Honor, again, I'd point out I'm trying to establish a relationship between Dr. Mann and Lloyd Hahn. Lloyd Hahn will testify later and their relationship is going to be really important, very relevant.
MR. HENDRIX: So, again, under 103, it is a fact that they're trying to introduce that relevancy is conditioned on some future fact that's not been established yet.

THE COURT: I'll overrule it.

(Proceedings continuing in open court at 9:57 a.m.)

MR. GORDON: Are they received, Your Honor?

THE COURT: It's received.

(Government's Exhibits 129-B through 129-M received in evidence.)

BY MR. GORDON:

Q Mr. Schiable, how many firearms were transferred from Lloyd Hahn to Randeep Mann?

A Was it 13? You want me to count it again?

Q Go ahead and count that for us.

A 13.

Q And how many of those were post 1986 dealer samples?

A Two.

Q Thank you. Before I move on from the post dealer sample, I want to jump back to Government Exhibit 129-N, please. Let's actually go to the third page. Can you tell us what this letter is?

A Yes, it's a letter from Mr. Mann to Mr. Hahn, I guess, basically transmitting his order for post May 1986 dealer sample machine guns, and it says that these firearms will be maintained in our inventory and used as demonstration samples until sold and delivered to law enforcement agencies.

Q Then he talks about, I've included a letter from the Laclede County Sheriff's Department who has requested a

demonstration for possible purchase of these firearms for training and tactical purposes.
A Yes.
Q And the letter that he's referring to from Laclede County is the one we already talked about, correct?
A Correct.
Q And that letter from the sheriff's office and this letter from Mr. Mann were both included as documentation for the firearm that was transferred in 129-A?
A Yes, that is correct.
Q Thank you. If you would, please, tell us what's an FFL. What's a federal firearms license?
A That's a license that is required by the Gun Control Act, which is separate from the National Firearms Act, for anyone who wishes to import, manufacture, or deal in firearms, and it's also a license that is issued to people who collect firearms, which are classified as curios or relics.
Q Now, if you have an FFL, does that mean you do not have to register weapons, firearms, with the NFRTR?
A No, you still have to register them.
Q So what's the benefit of having an FFL?
A Well, it's required to be in business and it allows you to receive firearms interstate would be one of the other benefits. It also allows you to get firearms such as these post '86 machine guns that a regular person could not acquire

and possess.
Q Okay. An FFL is not just for individuals, correct, it's for businesses as well?
A Yes. You mean like corporations and such? Yes. Any legal entity.
Q For example, Wal-Mart, would they be required to have an FFL in order to sell even normal shotguns?
A Yes.
Q Gun shops, pawnshops?
A Yes. There's a separate category of license for a pawnshop.
Q Okay.
May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q I want to show you what's been marked as Government Exhibit 130. Do you recognize what that is?
A Yes, I do.
Q What is it, please?
A This is a certificate from our federal firearms licensing center in Martinsburg, West Virginia attaching a copy of the federal firearms license for Randeep Mann, and lists various locations as a dealer in firearms.
Q Is that a certified copy?
A Yes, it is.

Q Thank you.

Your Honor, I'd offer Government Exhibit 130.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 130 received in evidence.)

BY MR. GORDON:

Q Mr. Schaible, let's look at page 3 of Government Exhibit 130. It should be up on your screen. You see it up there on your screen?

A Yes, I do.

Q This is the federal firearms license for Randeep Mann?

A Yes, it is.

Q Explain to us during a -- how an FFL is used like if you're transferring a firearm or something like that, how is this document used?

A In this case, Mr. Mann, if he was looking to acquire a firearm, not talking NFA firearms here, but just a firearm from another licensee, in order for that licensee to be able to ship to Mr. Mann, he would need a certified copy of Mr. Mann's federal firearms license to show that he is qualified to receive firearms interstate.

Q So Mr. Mann would sign a copy of this and send it to the person?

A Yes.

Q All right. What type of FFL does Randeep Mann have?

A It would be right in the middle there where it has 01, that would be the type as a dealer in firearms.
Q Okay. What's the full name of the title?
A Dealer in firearms other than destructive devices.
Q So that would cover machine guns?
A Yes.
Q But not destructive devices?
A Correct.
Q When does this FFL expire?
A April 1st, 2011.
Q Is there a separate FFL for collectors?
A Yes, there is.
Q Is this an FFL for collectors?
A No.
Q It's for dealers?
A Correct.
Q Is a 40-millimeter high explosive grenade classified as a destructive device?
A Yes.
Q So under this FFL that we're looking at, Mr. Mann was not authorized to deal in 40-millimeter grenades, correct?
A Correct.
Q Is there another type of license that would authorize it?
A Yes, there's another type which allows you to deal in firearms basically including destructive devices.

Q If it's a high explosive destructive device, do you have to have two licenses?
A Yes.
Q What would the second one be?
A There are federal explosive laws also for people dealing in importing, manufacturing, and using explosives. And because a high explosive grenade contains explosives, then they're subject to the explosive laws also and would need a license or a permit.
Q As a destructive device, is a 40-millimeter high explosive grenade required to be registered with the NFRTR?
A Yes.
Q Did you check to see if Randeep Mann had any 40-millimeter high explosive grenades registered to him?
A Yes, I did check.
Q Did he?
A No.
MR. GORDON: May I approach the witness?
THE COURT: Yes.
BY MR. GORDON:
Q I'm going to show you what's been marked as Government Exhibit 131. Do you recognize that?
A Yes, I do.
Q Is that your certification that Randeep Mann does not have any 40-millimeter high explosive grenades registered to

him?
A Yes, it is.
Q Thank you.
I offer Government Exhibit 131, Your Honor.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibit 131 received in evidence.)
BY MR. GORDON:
Q Mr. Schaible, are grenade launchers required to be registered with the NFRTR?
A Yes, if it's a 40-millimeter grenade launcher.
Q How is that classified, the grenade launcher?
A That's a destructive device.
Q Why?
A It's the firearms side of the destructive device definition. This is a firearm where the bore of the barrel is over one half inch.
Q Okay. Now, a grenade launcher essentially has two parts, a receiver and the barrel?
A Yes.
Q If you only possess the receiver, does the receiver have to be registered?
A No.
Q It's just when you have both the receiver and the barrel, then it has to be registered?

A Correct.
Q Did Randeep Mann have any grenade launchers registered to him?
A No, if I recollect.
Q I'm sorry?
A I don't think so on that one.
Q I'm going to show you the third form in Government Exhibit 127. Can you see that form, Mr. Schaible?
A Yes, I can.
Q Okay. From this form, what does it show was registered to Randeep Mann?
A It shows -- I should have looked through the stack again before I answered, but it does show that a grenade launcher, 40-millimeter, is being registered to Mr. Mann.
Q And the serial number?
A 0175521.
Q Who was the manufacturer?
A Colt Industries.
Q What was the date -- well, what was the date that this transfer was applied for?
A November 4th, 1996.
Q When was it approved?
A Looks like February 26, 1997.
Q All right. Then I want to take you to the tenth form in this exhibit, Government Exhibit 127. Let's look at that. Is

that also the registration of a different grenade launcher?
A Yes, it is.
Q Also a Colt Industries?
A Yes.
Q What's the serial number, please?
A 104164.
Q What was the date that the transfer was applied for?
A November 6th, 1996.
Q And when was it approved?
A March 11th, 1997.
MR. GORDON: Thank you, Mr. Schaible. Pass the witness.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:
Q Good morning, Mr. Schaible.
A Good morning.
Q I want to start out, I think it is Government's Exhibit 130, which is the FFL of Dr. Randeep Mann, do you have it in front of you now?
A One of the pages.
Q Were you asked to research the history of Dr. Mann's FFL?
A No, I was not.
Q Are you aware of the history of his FFL?
A Other than what I see in there, no.

Q Say that one more time.
A Other than from what I see in the certificate, no.
Q Are you aware or not aware that his original FFL goes back to, I think, like 1992?
A No.
Q Okay. When one becomes a -- gets an FFL, and in this case, we'll spend a little bit of time trying to make sure the jury understands, because this is a very regulated business, correct?
A In what way do you mean regulated? That you're required to have a license to do business?
Q No, just as a general overview, the NFA and the regulatory requirements to deal in firearms are, or are they, in your opinion, fairly complicated, fairly comprehensive?
A Comprehensive, yes; complicated, I don't think so.
Q Certainly not somebody that's been working with them since 1971, right?
A There's that, yes.
Q There are -- an FFL, there are many different types of FFLs, right?
A About six off the top of my head.
Q Don't they go up to 11?
A Yeah, but some don't exist anymore.
Q Say that again.
A Some don't exist anymore.

Q Right, I think you begin with 1, which is what Dr. Mann is, right, which is a dealer in NFA firearms other than destructive devices?
A Just in firearms.
Q Fair enough. You have type 2 license, right?
A Right.
Q You have type 3 license?
A Right.
Q And I think 4 and 5 are what you're referring to are no longer in existence?
A Right.
Q Then you have type 6, 7, 8, correct?
A I'm not sure on 6.
Q Types 9, 10, and 11 are the ones that deal with destructive devices, correct?
A Correct.
Q So we know that Dr. Mann -- one, we know that there are many different types of licenses, we know that the one that he has properly held for several years is a type 1 FFL, a dealer in firearms. The prosecution asked you about there is a difference between a type 1 FFL dealer in firearms and another type that's for collectors, right?
A Yes.
Q And the type 1 would allow the person to deal, in other words, to buy and sell firearms, right?

A Correct.
Q So one that likes to collect weapons can properly have a type 1 FFL, right?
A If they are in business and it's to be in business as a dealer.
Q Exactly. That allows them to not only collect, to get, but to also sell, right?
A Correct.
Q Okay. And it's not uncommon in a sales transaction for a collector to say, I will trade you this firearm for that firearm, right?
A Are you talking between two dealers?
Q Yeah.
A I'm sure it happens, yes.
Q Okay. When you look at Government's Exhibit 130, by the way, the dealer license is in the name of Randeep S. Mann and Exotic Weaponry, right?
A Yes.
Q And you can easily assume that Exotic Weaponry would be a business, right?
A That would be the trade name or doing business as, whatever you want to call it.
Q Okay. The government asked you about the NFRTR, the National Firearms Registration and Transfer Record, right?
A Yes.

Q And it is a big, centralized database, right?
A Yes.
Q Where is the database contained? Is it in West Virginia?
A That's always a tough computer question to answer because we have servers. If you're referring to servers where information is stored, then yes.
Q Okay. And I asked another witness this, but maybe you can do a little bit better. Just kind of give the jury a breakdown of the organizational structure of ATF. There are many components to it, right?
A Yes. ATF would be you'd have like an administrative side which is the office of management, you have office of chief counsel, you have like a public affairs office, legislative affairs office, and we have an office of field operations which covers all the local offices or 26, 27 field divisional offices throughout the country, and then the sub offices under that, and we have an office of enforcement programs and services located in headquarters, which I'm part of.
Q Where is headquarters now?
A In Washington, D.C.
Q Okay. Actually I meant a little bit more basic than that. ATF has a criminal investigation component to it, right?
A In our office, field operations, we have the law enforcement side and then it's the kind of industry operations compliance side.

Q Right. So the criminal enforcement are sort of the cops, the police, right?
A Yes.
Q And then you've got the regulatory side. Is that right?
A Yes.
Q And did I understand that's where you began in 1971 is in the regulatory inspection side?
A Yes.
Q And so you were one of -- the ATF has many, many inspectors, and you guys will go out and do audits of FFL holders, right?
A Well, that's what the regulatory side does, yes.
Q Yeah. Generally are those audits supposed to be about once a year?
A Oh, no.
Q Is there any process, any protocol on auditing FFL holders or is it just random?
A I'm sure there's a protocol, I don't really know, and that's part of the field operations side I'm not a part of. I don't know what their standards are for how often to conduct an inspection.
Q Okay. Are you aware that all FFL holders are subject to random sort of pop-in audits?
A Well, yes, sir, they are subject to audits. There's 107,000 federal firearms licenses, thereabouts, total, and I

think about 600 investigators, so I guess whatever is protocol or the field operations office sets up is what they're going to go with.

Q But an FFL holder is told you have to, one, keep records because, two, you're subject to having those records audited at any time, right?

A Yes.

Q And an ATF inspector can come to a business or the home of a dealer at any time without notice and demand the documents to make sure that everything's properly registered and all the paperwork's done, right?

A Not quite, no. Because business hours are set up when the FFL applies for the license and the inspection would be conducted during business hours.

Q Sure, sure. I'm not suggesting you're going to get a midnight tap on the door, but yeah, if I owned a business and I'm a dealer in weapons and I'm open from nine to five and my FFL says my business is at such and such address, they'd know that at midnight they're not going to find me there to do an audit, right?

A Right.

Q Okay. You've been with ATF on the inventory side since 1971, right?

A '72.

Q '72, pardon me. During the course of your tenure there,

the accuracy of the database of the NFRTR has been the subject of a lot of debate, has it not?
A Yes, it has.
Q And do you know who Tom Bussey is?
A Yes, I do.
Q Who's Tom Bussey?
A He was branch chief of the National Firearms Act branch at one time.
Q Okay. And do you remember Mr. Bussey saying in 1995 that the error rate for the NFRTR could be as much as 49 to 50 percent?
A I remember and I also am aware of his statement afterwards that he was wrong.
Q Really? Are you aware of a -- what is office of inspector general?
A I don't know what you mean.
Q The office of inspector general, you're aware of that federal agency?
A Yes.
Q It conducts audits of other institutions in the government, right?
A Right.
Q You're aware that OIG, we call it OIG, Office of Inspector General, conducted its own evaluation and audit of the NFRTR in June of 2007?

A Yes.
Q You're aware that the findings were the NFRTR database has technical problems and its software programming is considered by the NFA branch to be flawed; you're aware of that?
A Yes.
Q The lack of consistency in processing procedures combined with database technical issues results in errors in records, reports, and queries produced from the NFRTR that affect its reliability as a regulatory tool and inspection in federal firearms licensees. You familiar with that?
A Yes, I am.
Q Ultimately, I think what OIG says is it can be better, there are problems through this, we're unaware of anybody being maliciously prosecuted for these things, right?
A Yes.
Q If they're just errors, they're errors; is that correct?
A That's what they're saying, yes.
Q Okay. I want to go back and let's look at some of these specific things. One of the items that you were asked to look at was a USAS-12, that 12-gauge shotgun?
A Yes.
Q And you did your research and you went through all these registration records, right, and what the government was showing you -- may I switch to the elmo? I'm just doing this

as a representative sample. Is this -- when we say you need to register a weapon with ATF, it's just a form, right?
A Yes.
Q Is this like -- is this a sample of one?
A This is a transfer form.
Q Okay. That's not a registration record?
A No. I mean, it's a registration record, yes, but it's not one of the forms used to initially get a firearm into the database as being registered.
Q Right. The bottom line is, what I'm trying to get at is if you're in lawful possession of an NFA weapon, it has to be registered, right?
A Right.
Q And the registration is simply filling out a government-looking form, it looks like a fax form, right, it looks like something I'd have to fill out in my taxes; is that fair enough?
A It's a standard form that we use, certainly.
Q It's not a whole lot of sweat to it, you know, it's just filling out another government form. You fill it out, you check the boxes, you sign your name and you send it in, right?
A Right.
Q It doesn't take a whole lot of effort to do it, right?
A No.
Q Let's talk about that USAS-12, and we've talked about it

before with other witnesses, but to make sure that it's clear, that 12-gauge shotgun used to be unregulated, right?
A Correct.
Q Before what year, 2004?
A No. The ruling is in --
Q Pardon me, 1994?
A Yes.
Q Excuse me. Then ATF decided, well, now we want people to register this thing, right?
A Yes.
Q Okay. So --
A Let me rephrase that. It was above ATF, but it's an ATF ruling that was issued.
Q Understood. Was it from United States Congress?
A No, from Treasury.
Q Okay. So it's not a law as in Congress passes laws, it's a regulation like agencies of government like ATF have their own regulations, right?
A Yes.
Q So this became not a law but an ATF regulation, correct?
A Yeah, ruling, yes.
Q Ruling. So ATF tried to send out notice to FFL holders and anybody else that might be interested in this change of policy and said you need to get these things registered and fill out the form and send it in and we're going to give you

seven years to do it. Is that essentially it?
A Well, I don't think it started out at seven years, but in 1994 when the rulings were issued, it was yes, you need to register these and use this form and, you know, get the information out as best you could in 1994 through trade publications and writing the manufacturers and all that, yes.
Q Okay. And so if you lawfully had this, a USAS-12 before 1994, to comply with the new ATF policy, all you had to do was fill out that form, right?
A Right.
Q Okay. Let's talk about the purposes of registering NFA weapons. One is because the government wants to keep track of them, right?
A Yes.
Q Because they're dangerous weapons, right?
A Yes.
Q You don't want these in the hands of bad people, right?
A That's the idea, yes.
Q They can do a lot of damage with it. So what you require is a license, number one, to get them, right?
A Not for those particular ones, no.
Q Say that one more time.
A Not for the USAS-12, you didn't have to have a federal firearms license.
Q Prior to 1994, I'm sorry I've confused you, Mr. Schaible.

I'm sort of moving on to a different topic. Overall NFA stuff, purpose of -- because they are interesting, exotic, and dangerous weapons, ATF has a broad policy, the government has a broad policy of wants a person to have a license to have an NFA weapon, correct?

A Well, again, it's not a license, I guess. Just so I'm clear, we're talking about just NFA firearms now.

Q Yeah.

A Because the license is for the people being in business.

Q Right.

A And NFA, it's basically a registration to the person.

Q Understood completely. Then you have to register an NFA weapon so that the government can keep track of it and make sure it's not going into the wrong person's hands, right?

A Right.

Q That's the regulatory part of the thing. A reason -- the point, I guess, of registration is to make sure that these weapons are sort of exposed to the light, right? Does that make sense? Let me turn that question on its head. If I wanted to hide my unlawful possession of a weapon, I wouldn't register it with the government, right?

A Right.

Q Okay. The other side of the coin is, if I have it, it's a simple process, and I lawfully have it, it's a simple process for me to register it, it's just sign a form and send it in to

ATF, right?
A Again, we're talking about NFA firearms in general there?
Q Correct.
A Yeah, it's the application process and if you're not a prohibited person for some kind of felony conviction or the state or local law permits possession, then it's a process that's going to be basically approved.
Q Now, back specifically to the USAS-12. I have lawfully possessed it and there's going to be a record of me buying this firearm, I lawfully possessed it before 1994. If there is a record of that transaction clearly showing that I'm not trying to hide my ownership of it, is a plausible reason why, after the rule changed, I didn't register it is because I was a busy doctor and forgot or I didn't receive notice?
A I don't know if I can answer that one to tell you the truth, I don't know.
Q Sure. I mean, can you -- if you lawfully owned it and there was paperwork to show it, it means you're not hiding it. One of the parts of the registration process is to make sure things aren't hidden, right? If I want to hide my ownership of a gun, I don't want to register it, right?
A Can I go back a little bit to your previous question?
Q Sure.
A You're saying that some kind of record exists that you would have it and that wouldn't necessarily be the case.

Q Well, assume that it is.
A ATF doesn't have access to those records. Those records are in the licensees' hands. We're not -- we don't get notified of every conventional firearms transaction, so we're not in a position to know where it is at any given time.
Q I'm just trying to work through logical reasons that if I'm in lawful possession of a USAS-12 before 1994, why wouldn't I just fill out the form and send it in when you guys put out the --
MR. GORDON: Your Honor, I guess at this point he's speculating, he's not testifying about facts. He's become argumentative, not factual.
THE COURT: Is that an objection as to --
MR. GORDON: Yes, Your Honor.
THE COURT: It's sustained.
MR. HENDRIX: I'll move on.
BY MR. HENDRIX:
Q What is 129-A? And I'm moving on to the RPD. What do we have here? This is the government exhibit, the 7.62 machine gun, the RPD, correct?
A Yes.
Q And this is the application for tax exempt transfer. This is evidence of the transfer of it, right?
A Yes.
Q And it shows that it was transferred from Lloyd Hahn to

Randeep Mann, Exotic Weaponry, correct?
A Correct.
Q To go down a little bit, make sure, this record is all in proper form, right?
A Yes.
Q And it's evidence of a lawful transfer of this RPD from Lloyd Hahn to Dr. Mann, correct?
A Yes, that is correct.
Q And in box 4 where it says two digits, it shows that's the type 1 license, correct?
A Correct.
Q Now we know from your previous testimony, that accurately says I'm a class 1 FFL holder and that's -- or type 1; is that right?
A Yes.
Q And 07 for Mr. Hahn, what type of license is that?
A That's a manufacturer of firearms.
Q Okay. It's all filled out properly, right? It shows this serial number of 1442, correct?
A Correct.
Q It shows that it was dated July 17th of '01, and that ATF approved this transfer in September of 2001, right?
A Yes.
Q And that all looks like the paperwork is properly done and everything, right?

A Yes.
Q Okay. Can you explain with a little bit more clarity what post dealer samples are?
A It refers just specifically to machine guns with the federal law change in 1986. Prior to 1986, May 19, 1986, machine guns were just routinely transferred as part of NFA, they required the registration and the transfer, but anyone could possess a machine gun. There's a little exception on imported ones that sells samples, but say it was a Thompson manufactured, you know, in the U.S. and everyone in the country, then they're transferable. May 19, 1986, the effective date of the law change restricted the possession of machine guns to government agency use, and after that, the regulatory system that was implemented would allow federal firearms licensees to obtain a machine gun for use either for sale to a government agency or for demonstration for sale to a government agency. And the regulations that went into effect had criteria saying we need a letter from a law enforcement agency evidencing an interest in this particular model machine gun.
Q So it was in 1986, Congress basically said machine guns are outlawed, right?
A Yes.
Q Then through the working process, that turns out not necessarily to be so, right? I'm sorry, go ahead.

A Go ahead.
Q And so what ATF did was in this grand scheme of things said well, okay, Congress said it's illegal to own machine guns except for governmental purposes, right?
A Right.
Q So ATF came up with this regulatory scheme that said, well, if you show us that it is a dealer sample and you're going to go show it to law enforcement, you can lawfully possess the thing, right?
A Right.
Q And that's all it was, it was a simple remedy, I guess, is what it was, right?
A Right.
Q All you had to do is say, and this happens quite a bit, law enforcement agencies want to -- they're part of the gun culture and these are cops and they like guns, right, and they want guns demonstrated for them, right?
A Right.
Q So for this dealer to lawfully possess the machine gun, all they have to do is show that there's some law enforcement agency that says, yeah, I'd like for you to come out and show it to me, right?
A Yeah. Basically, yes.
Q Okay. And so here we have from the Laclede County Sheriff's Department -- and by the way, Laclede County is

around St. Louis where Dr. Mann lived at one time. It's dated August 3rd, 2001, right?
A Yes.
Q This shows -- this is the Laclede County Sheriff going, Dr. Mann wants to come out and shoot this thing for us, and show it; we're fine with that, right?
A That's what they said, they would be interested in having the following automatic weapons demonstrated, yes.
Q And so that got submitted with the transfer record on the 1442, correct?
A Correct.
Q And that's why Moss and Walker approved the transaction, correct?
A That and the other qualifications of them being a federal firearms licensee and all that.
Q Exactly. So this evidences and shows facts of a lawful transfer, correct?
A Correct.
Q Now, I think what the prosecution was trying to do with you is to go, is there some sort of abuse in this process and do you know anything about this, and I objected because I thought it was speculative and you couldn't come up with any reason. That's a lawful transfer, right?
A Yes.
Q Period, right?

A Yes.
Q End of story. Lawful transfer got approved by the ATF?
A Well, implicit in that there was going to be a demonstration, I guess, yes.
Q And you have no facts, what we're here for, to present to this jury that that didn't happen, right?
A That's correct.
Q Let's look at a couple of other ones. I want to make sure we're all clear on the grenade launchers. And you were asked by the prosecution in your review of the ATF registration records were any grenade launchers registered to Dr. Mann. And your answer was no. Correct?
A But corrected, yes.
Q That was a big oops, right?
A Yes.
Q It's very important for us to establish now the accuracy of that because I'm afraid some of the jurors are going to have to start marking through things on their notes. And they're going to rely on those in deliberation. So let's be very, very accurate and very clear. Your records show that there were two transfers, correct, of launchers to Dr. Mann, correct?
A Correct.
Q This is the first one. Correct?
A Yes, that's the first one we saw, yes.
Q It would be from Gregory Watts to Randeep Mann, correct?

A Correct.
Q Grenade launcher, 40-millimeter, correct?
A Correct.
Q Type M203, correct?
A Correct.
Q Approved by ATF, looks like Levine and Conner, on I'm assuming that's February 26, 1997, correct?
A That's what it looks like. It's a little blurry down there.
Q The second page of that is this. And let's just read this top. What it says is, if the transferor of a destructive device, machine gun, short barreled shotgun, or short barreled rifle is a federal firearms licensee and the transferee is anyone other than a licensee qualified to deal in the firearm to be transferred, the transferee must sign the applicant certification, item 2 below, in the presence of a law enforcement officer signing item 3 below. The law enforcement certification, item 3 below, must be completed for the transfer of any registered firearm to an individual other than a licensee qualified to deal in the firearm to be transferred. In addition, the individual transferee must affix a recent photograph taken from the past year in item 1 and submit in duplicate to the transferor two completed copies of FBI form FD258 fingerprint card. See card below.
Let's look at box 3. Law enforcement certification. It

says I certify that I'm the chief law enforcement officer of the organization named below having jurisdiction in the area of the residence of, and mine doesn't have that on there. I have no information indicating that the transferee will use the firearm and device described in the application for other than lawful purposes. I have no information that the receipt and/or possession of the firearm described in item 4 of this form could place the transferee in violation of the law, Shelby County Sheriff's Office, signed by A.C. Gilless, or Gyless, something, a deputy sheriff there. Is that right?

A I'm sorry, who signed it?

Q Have I accurately --

A It looks like a deputy chief signed it.

Q Yeah. And it's from Shelby County Sheriff's Office, Memphis, Tennessee, correct?

A Yes.

Q So is this a lawful transaction?

A Yes.

Q I just wanted to make sure that we're all clear on that because Mr. Gordon was making a point that Dr. Mann's type 1 license is to deal in NFA weapons, but there was a suggestion but not -- but other than destructive devices, right?

A Right.

Q This is a destructive device?

A Yes, it is.

Q But because of the law enforcement certification, it was a proper and lawful transfer, correct?
A Correct.
Q Not one problem with it?
A No.
Q Correct?
A Correct.
Q The second launcher, and I won't be as long-winded on this one, shows transaction from Vickie Lynn McLaughlin to Randeep Mann, correct?
A Yes.
Q Destructive device, grenade launcher 40-millimeter, correct?
A Correct.
Q Approved by, it appears, Franklin and Levine from ATF, March 11, 1997?
A Correct.
Q And, again, the proper law enforcement certification, correct?
A Correct.
Q So both of those launchers were properly transferred, the paperwork's in order, and they were registered with ATF, correct?
A Correct.
MR. HENDRIX: Judge, can I have just a minute?

THE COURT: Yes.

BY MR. HENDRIX:

Q I'm sorry for bogging it down. You're familiar with the Code of Federal Regulations, the regulations themselves that deal with ATF, and I'll just show you the title cover. Title 27 CFR means Code of Federal Regulations, chapter 2. You're familiar with the Code of Federal Regulations?

A Yes, sir, I am.

Q Again, just to make sure. We have laws that are passed by Congress that are contained in the United States Code. Then we have regulations that are adopted by government agencies, right, and they're the regulations that the agency imposes on people as opposed to a law like Congress passes a law that says don't kill somebody, right?

A Right.

Q These are different from laws, these are regulations?

A Right.

Q Just to be sure that we're all on the same page, I'm looking at regulation section 479.105, machine guns, transfer and possession of --

MR. GORDON: Your Honor, he's got notes written on here, I don't know if this is a current version. The law comes from you, not from Mr. Hendrix, and I object to this.

MR. HENDRIX: Your Honor, this is the regulatory scheme from ATF and the government says he's an ATF expert.

THE COURT: What is the objection to him showing him the regulation?

MR. HENDRIX: You probably don't want my note on there.

MR. GORDON: That's part of it.

THE COURT: He can ask him whether he knows what the regulation is and what is the regulation.

BY MR. HENDRIX:

Q Let me just read it to you. Dealer sale samples, we've already talked about that. Subject to compliance with revisions of this part. Applications to transfer and register a machine gun manufactured or imported on or after May 19, 1986, to dealers qualified under this part will be approved if it is established by specific information the expected governmental customers who would require a demonstration of the weapon, information as to the availability of the machine gun to fill such orders, and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. Application to transfer more than one machine gun of a particular model to a dealer must also establish the dealer's need for the quantity of samples sought to be transferred. Does that sound right?

A Yes.

Q Okay. So, again, all it tells you is you need that letter from a governmental agency, right?

A Right.
Q And that was done in this case?
A Yes.
Q I think the insinuation for the prosecution was, well, this is a Cold War Era 1950s Hungarian RPD, why would a cop want to see that, right? Well, all we know is the fact is they said yes, they do. Right?
A That's what it said in the letter, yes.
MR. HENDRIX: I'll pass the witness.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. GORDON:
Q If the letter, the demonstration in that letter was never done, is the whole thing a fraud?
MR. HENDRIX: I object. That assumes a fact that's not in evidence, Judge.
THE COURT: Overruled.
MR. GORDON: It's coming.
THE COURT: I sustained the objection on cross to prevent the prosecution from getting into it, but the defense opened it up on cross. I sustained it on direct, the objection, but the defense opened up the door on cross. It's overruled.
THE WITNESS: We would expect a demonstration be conducted, yes. So if it wasn't, then we would figure, yeah,

it was a fraudulent letter.
BY MR. GORDON:
Q Okay. Thus, a fraudulent transfer?
A Yes.
Q You were asked about the change in the designation of the USAS-12 12-gauge shotgun from being a shotgun to a destructive device back in May of 1994?
A Yes.
Q Okay. When that change in designation was made, what sort of things were done to notify people who had this sort of gun?
A Well, in 1994, the ruling was issued, both rulings were, I think, February 28th, 1994, as I recollect, we put articles in the trade journals. This is before we had a website back in 1994, I believe, so we put articles in trade publications, we contacted the manufacturers we knew of who made these particular firearms, and there's a federal firearms newsletter, federal firearms licensing newsletter that goes out periodically to anyone who has a federal firearms license, and there was an article in there about, well, about the street sweepers, USAS-12s, and the Striker 12. In addition, there's informational articles in the newsletter and that would have been one of them after these rulings were issued.
Q That newsletter went out to all FFLs?
A Yes.

Q Mr. Hendrix asked you questions from the OIG report from June of 2007, correct?
A Yes.
Q Wasn't one of the findings of that inspection also, we did not find evidence that individual weapons' owners or federal firearms licensees had been sanctioned or criminally prosecuted because of errors in the database? Wasn't that one of their findings as well?
A Yes.

MR. GORDON: No further questions.

THE COURT: Anything else?

MR. HENDRIX: Yes, please.

RECROSS-EXAMINATION

BY MR. HENDRIX:
Q Let's go back to the regulation 479.105, the regulation regarding post dealer samples. If you'd like to look at it I'll give it to you. In fact, let me. May I approach?

MR. GORDON: Your Honor, I guess we need to clarify the date of that regulation. They may not have been in effect at the time that these dealer sample transactions occurred. It could be bad law, I don't know.

BY MR. HENDRIX:
Q Let's ask about good and bad law. Does the regulation since it's been in existence only require a letter from a law enforcement agency?

A This regulation you just read, yes.
Q Okay. Great. Two is, and let's look at that. Let's look at that record again. Let me grab my copy. Now, when there's a transfer of a gun like the Hahn one, and let me get my -- I forgot, is it 129?
MR. GORDON: A.
BY MR. HENDRIX:
Q 129, here it is. Who's submitting this form?
A Mr. Hahn.
Q It's the transferor, correct?
A Correct.
Q It's not Dr. Mann's obligation under this, it's Lloyd Hahn, the transferor's obligation, right?
A To submit the application.
Q Right.
A Yes.
Q So the letter from the law enforcement agency comes from the transferor, correct?
A It's submitted with the application, but it has to be evidencing that the transferee who's acquiring it is going to use it for those purposes that are in the regs.
Q Correct. But then this application comes in from the transferor, correct?
A Correct.
Q The transferor, in this case Hahn, is the one that

submits this document and the letter, correct?
A Correct.
MR. HENDRIX: Can I have just one second again?
THE COURT: Yes.
BY MR. HENDRIX:
Q I want to make sure that I understood the redirect about the NFRTR. Was your testimony that there has been no criminal prosecutions?
A It was read out of the report. I don't have it in front of me.
Q I gathered what the prosecution was trying to do is to go, it's accurate enough that we don't charge people for it. Is that the gist of the testimony?
MR. GORDON: Your Honor, I'm going to object. Is that a question? I don't really understand.
BY MR. HENDRIX:
Q Yeah, the question is, was that the gist of your testimony?
THE COURT: Hold on one second.
MR. GORDON: He's not asking the witness questions about fact, everything is intended to lob a grenade at me.
MR. HENDRIX: Judge, I absolutely object to that.
THE COURT: The objection is sustained to the extent that you're asking the witness what the intent of the prosecution was. To the extent that you were asking is the

prosecution trying to do this with this question, that's sustained. He can answer the question as to what his testimony was.

MR. HENDRIX: Okay.

BY MR. HENDRIX:

Q Did I accurately describe your testimony?

A You're going to have to tell me again, I'm sorry.

Q Sure. Did you testify that there had not been any criminal prosecutions because of errors in the NFRTR?

A I testified as to what was in the report there, what the OIG said. I mean, was that in the report, and I said basically yes, that's what they said.

Q You're aware that issues regarding the accuracy of the NFRTR have arisen, in my information, according to the Congressional Research Service, in at least two criminal cases; are you aware of that?

A No.

MR. HENDRIX: I'll pass the witness.

FURTHER REDIRECT EXAMINATION

BY MR. GORDON:

Q All right, Mr. Schaible. In Government Exhibit 129-A, we're dealing with the RPD, serial number 1442, transferred from Lloyd Hahn.

A The way the light's on it, I can't see it. It's kind of reflective there.

Q 129-A is the ATF form showing the transfer of an RPD, serial number 1442, from Lloyd Hahn to Randeep Mann, correct?
A Correct.
Q It is a post dealer sample transfer?
A Correct.
Q Okay. Now, during this transfer, I understand that Lloyd Hahn, since he is submitting the paperwork, he submits this form as well as the law enforcement letter, as well as the letter from Dr. Mann saying that there's a law enforcement need, correct?
A He did in this case. All we really needed was a letter to Mr. Mann from the law enforcement agency.
Q But who's the one vouching for the law enforcement need, is it Lloyd Hahn or Randeep Mann?
A Mr. Mann.

MR. GORDON: Thank you. No further questions.

MR. HENDRIX: One more question just to put this thing to dead bed.

FURTHER RECROSS EXAMINATION

BY MR. HENDRIX:

Q All that's required for the lawful transfer is the letter from the law enforcement agency, right?
A Yes.
Q You don't have to follow it up with another letter from the officer that says he actually came out and did this, right?

A Right.
Q Because it's a certification from the officer, right?
A I'm sorry?
Q It's the officer -- it's the sheriff's department that's writing the letter?
A The initial letter.
Q Right.
A Yes.
Q Okay. Thank you.
THE COURT: Mr. Schaible, you can stand down. Let's take a 15-minute break now and let's come back at 11:10. We'll be in recess until 11:10.
(Recess at 10:57 a.m., until 11:12 a.m., jury not present.)
THE COURT: We have and I told you we have a sentencing set for 12:15, so do you think you can get through this next witness before 12:15?
MR. GORDON: I do, yes, sir.
MS. CASSINELLI COUCH: We have one minor issue. Do you want us to approach?
THE COURT: Either way is fine.
MS. CASSINELLI COUCH: The last witness's testimony indicated that the government is going to assert that there was some fraud because the letter, the demonstration didn't end up being completed possibly. We would object to them going any

further with that. One, we didn't have any notice of that. Two, I think that's improper character evidence at this point, and the allegation was that the gun was unregistered, and it was, in fact, registered. At this point, that's been the testimony.

MR. GORDON: Well, Your Honor, originally I wasn't going to go there in my case in chief, but on cross, the defense tried to make it pretty clear to the jury that this transfer was by the book, and I have that sheriff under subpoena and he will come in here and say that demonstration never occurred, and he'll explain how this whole thing went down, and that it wasn't by the book.

MS. CASSINELLI COUCH: May I respond?

THE COURT: Yes.

MS. CASSINELLI COUCH: The government actually addressed that on direct and Mr. Hendrix then addressed it on cross because the government insinuated on direct by saying, so if this demonstration never happened, then. That's how that started and Mr. Hendrix objected and I believe that Mr. Gordon proceeded a little bit on that point, so Mr. Hendrix was clearing that up. Two, the regulations in the law don't say anything about that situation.

THE COURT: Here's the question I have. I think he testified that the letter came from A.C. Gilless over in Memphis, he was the sheriff, but it was signed by some deputy

for a demonstration in Memphis. I think the way the transaction would have occurred is Dr. Mann would have gotten the letter, would have sent it to Hahn who would have filed it. I think that's the way the testimony came in or the way it's supposed to have happened. At some point, Mr. Gordon, through the witness, seemed to -- Mr. Gordon seemed to indicate that that might not have ever taken place. What relevance does it have whether it actually took place if the sheriff actually signed off on the letter? Because I think the issue is whether the letter, whether the letter itself -- if you tell me that it was a forgery or it was never issued by the sheriff's department, then that might create a different, that might be different, but if you say the sheriff actually wrote the letter and then the demonstration never took place, what relevance does that have?

MR. GORDON: Your Honor, it will show that this whole transfer was a fraud, that there was never an intent to do a demonstration, one was never done, this was just pencil-whipping the process in order to get this transfer through ATF to have them approve it so Dr. Mann could have the gun.

THE COURT: Will you show that the Shelby County Sheriff was in on the fraud or that they were -- that they participated in it?

MR. GORDON: The Shelby County Sheriff dealt with

the grenade launchers and that's not the issue.

THE COURT: That's not the issue.

MR. GORDON: It's the Laclede County Sheriff from Missouri, that's the sheriff involved.

THE COURT: Is the evidence that they signed off on a letter thinking that there would be a demonstration but there never was an intention to have a demonstration or that they were in on the fraud?

MR. GORDON: The best way I can put this is that a favor was called in and there was no intention of a demonstration being done by anyone involved in this transaction.

THE COURT: What's the objection to that? That's part of the whole scheme here.

MS. CASSINELLI COUCH: Well, two. One is the allegation with respect to this gun that's made in the indictment is that the particular weapon that Dr. Mann possessed was not registered, period. That's the allegation, that's been the allegation all along. Now the government's attempting to change the allegation, I don't know, in light of the testimony, I don't know why, to being that there was some kind of fraud perpetrated on, I guess, the NFA. One, that's changing the allegation.

Two, the law doesn't require that the demonstration take place. The law requires that a law enforcement officer write

the letter saying they would be interested in seeing the demonstration. As a matter of fact, the law enforcement letters have multiple weapons on there, some that I assume that people can obtain for demos and some that they can't. I'm sure there are circumstances where the demonstration never takes place. Maybe the sheriff is gone the next month. So for them to insinuate some bad character here at this point is just simply, it's just simply to make Dr. Mann look like he's cheating the system, which is inconsistent with the evidence and what the allegations have been all along.

THE COURT: I disagree with you on that, but that doesn't get me to whether I should allow the evidence. I think Mr. Gordon is saying it's not just to show bad character of Dr. Mann, it goes to show that he was involved with some other people in committing fraud to transfer this weapon, which is a crime. Now, it's not just to show like with some of the other things we dealt with, just to show that there may be some bad character. I don't think that's what Mr. Gordon has just said. The question I have is, if the indictment does not allege it and does not charge him with that, should I allow the evidence into the case?

What relevance does it have to the issues in this case? Because the issue in this case is he didn't file or he didn't register. If there is a registration but the registration itself was fraudulent, should we hear testimony about it? And

that's the issue I have to deal with. When are we going to hear this evidence, because I might need to go look at some law to make sure I'm on firm footing?

MR. GORDON: My intention now, and again, I was not originally going to put this in case in chief, but my intention now is to have the sheriff here on Friday to testify.

THE COURT: Let me do this. And my question is is whether, based on the indictment we have and what the charge has been up to now, whether I should allow that. It's not -- well, for different reasons than Ms. Couch said. It's what is the relevance with the charges that we have now and with the way the indictment reads.

MS. CASSINELLI COUCH: Just to follow up on what you said, I think that we sort of meet in the middle on that. You said, I believe, that the government's presenting this as it could be a crime. That's what the Court said. If it's a crime, it's an uncharged crime which makes it fall under Rule 404, character evidence. So that's our position. Although I don't know that it is a crime, you know, that's the thing. The spin is that it's a crime.

THE COURT: The argument is that it is. And I don't think Mr. Gordon is presenting it to show that it's an independent crime. He's presenting it from what he says is to show that if there is a registration, that the registration is invalid and it's fraudulent. Now, the question is, if it's me

and I'm the one who said that that would be an independent crime, so I need to look at some law and some case law to see if this has ever occurred before, and I'm sure it probably has somewhere.

MR. HENDRIX: May I make a suggestion, Judge?

THE COURT: Yes.

MR. HENDRIX: It seems to me the legal issues on that for research would be, one, constructive amendment of the indictment. That is what the indictment charges is that a weapon was unregistered. If now the government's theory is that it was registered but fraudulently, that constructively amends the indictment. The grand jury never found that and it violates the Fifth Amendment grand jury clause. That would be one issue. The second issue, of course, is 404 character evidence, and the third is simply relevance.

MR. GORDON: Your Honor, I don't know whether to be flattered here or not, but I think y'all are really giving me too much credit. Not that much thought has gone into this thing. The only reason I seek to put it in at this point is essentially as rebuttal evidence for the defense making this, presenting this as some perfectly lawful transaction.

MS. CASSINELLI COUCH: Well, that is our defense is that the gun was registered. Are we not supposed to present that and somehow we open up the door by presenting a defense to the charge in the indictment? That's illogical.

THE COURT: Is there anything else?

MR. GORDON: No, Your Honor.

THE COURT: I'll take a look at the law, take a look at some other cases, see what's been done. I'm almost sure that I'll have discretion whether to allow it in. I mean, I'm given discretion on all of this. The question is how should I exercise that discretion, so I'll look at it.

MS. CASSINELLI COUCH: Thank you.

THE COURT: Bring in the jury.

(Jury enters the courtroom.)

THE COURT: Has the witness been sworn in?

MR. GORDON: He has not, Your Honor.

THE COURT: Come forward, please.

STEVEN SCOTT, GOVERNMENT WITNESS, DULY SWORN

THE COURT: Come and have a seat.

DIRECT EXAMINATION

BY MR. GORDON:

Q Good morning, sir.

A Good morning.

Q Please state your name for the record.

A Steven Scott.

Q Is that with a V or a P-H?

A V.

Q Where do you work, Mr. Scott?

A I work at the Lake City Army Ammunition Plant,

Independence, Missouri.
Q How long have you worked there?
A I have worked there for two and a half years.
Q What is your job there?
A I'm the quality assurance specialist, ammunition surveillance.
Q And in that position, what do you do?
A My primary job is technical adviser to the command staff on matters pertaining to munitions and ammunition, quality assurance, also duties as transportation officer for the installation.
Q Do you sometimes also handle requests for records?
A Yes, I do.
Q Are you part of the mandatory mobility program?
A Yes, I am.
Q Since 1984?
A Yes.
Q Tell us what that means and what you've been doing since that time.
A In our program, we could be moved worldwide mobility on a set of official government orders. So I can be stationed overseas and here in the United States at various ammunition installations, be they ammunition plants, ammunition depos, post camps and stations for the Army, headquarters Army, support for headquarters of Air Force, and defense logistics

agencies.
Q Then in that position, ultimately who do you answer to?
A Right now I answer to the commander of the Lake City Army Ammunition Plant.
Q Go ahead and tell us what is the Lake City Army Ammunition Plant.
A Pardon?
Q What is the Lake City Army Ammunition Plant?
A We are the primary manufacturers of small arms ammunition for the Department of Defense.
Q When you say small arms ammunition, what do you mean?
A Small arms ammunition is 20-millimeter and below, 5.56-millimeter, 7.62-millimeter, and 50 caliber and 20-millimeter.
Q And do you manufacture ammunition only for the United States military?
A Yes.
Q Do you manufacture anything other than ammunition?
A We manufacture the metal links that are used if ammunition is linked together in a belt, we manufacture those links.
Q After ammunition has made it to your plant, is it shipped out in canisters?
A Yes, it's packed in a prescribed ammunition container called a metal can, ammo can.

Q Are those canisters marked in a way that you could look at one and tell that it came from your plant?
A Yes, it will have a Lake City lot number on it.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q I'm going to show you what's been marked as Government Exhibit 99-A. Can you see that all right?
A Yes.
Q Do you recognize the markings on that can?
A Yes, I do.
Q Did that ammunition canister come from Lake City?
A Yes, it did.
Q How do you know?
A The lot number starts with LC, which is the designator for Lake City Army Ammunition Plant.
Q If you would, for the record, read the lot number into the record.
A It's Lake City, or LC-07B, as in Bravo, 606 Lima, or L, 250.
Q You said that LC stands for Lake City?
A Yes, that's the assigned manufacturers symbol for Lake City.
Q What does the rest of that lot number mean?
A The position for the manufacturers symbol is a three

position. Since Lake City was an old depot, it only has two letters. The dash is just the filler. 07 is the year of manufacture. Bravo stands for the second month, which is February. 606 is the sequence number. To some people they know that 606 means that this is the ammunition. Lima, or the L, is for linked ammunition. And the 250 is a series number for the lot.

Q Tell us what a lot number is.

A A lot number is the way you identify a group of ammunition that is linked or assembled with certain components.

Q Using the lot number on that canister, is there a way to determine what was in the canister when it left your plant and the date it left your plant?

A The lot number will lead me to look up in the Army records what's called an ammunition data card, an ADC. And that ADC is a listing of where, when it was manufactured and what the components are.

Q Did I provide you with a subpoena to produce the ammunition data card for that lot number?

A Yes, you did.

Q Did you comply with it?

A Yes, I did.

MR. GORDON: May I approach?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to show you what's been marked as Government Exhibit 132. Is that the ammunition data card that goes with Government Exhibit 99-A?
A Yes.
MR. GORDON: I offer Government Exhibit 132, Your Honor.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 132 received in evidence.)
BY MR. GORDON:
Q Looking at Government Exhibit 132, how do we know that this data card goes to that ammo can?
A Well, in the upper left-hand corner, it has lot number and it spells out that lot number. It also has the NSN, which is in the lower right or left-hand corner, it also has the ammunition DODIC, which is also at the end of the NSN on the can.
Q What's an NSN?
A A NSN is a national stock number. It's a unique stock number for this pack of ammunition.
Q What's a DODIC?
A A DODIC is a Department of Defense Identification Code. It signifies -- it's a quick shorthand for this type of ammunition.
Q Both the NSN and the DODIC from this ammunition data card

are also stenciled on Government Exhibit 99-A?
A Yes, they are, the lower left-hand corner.
Q Looking at the data card, Government Exhibit 132, can you tell us what was originally packed in this ammunition canister?
A Well, there was 1500 rounds of cartridge 762-millimeter linked as a 9-millimeter or 9 ball rounds and one dim tracer round linked with M13 links, metal links.
Q Okay. And just so we can follow you, where is that information on the ammunition data card?
A Nomenclature, right there.
Q It's the information provided next to nomenclature?
A Pardon?
Q It's the information listed after nomenclature?
A Yes.
Q All right. Tell us what that means. What does all that mean?
A Well, cartridge is the official name for one round of ammunition. It's a 762-millimeter, which is the diameter of the bullet; 9 ball rounds M80, which is a model number for the M80 flash suppressant round; and one dim tracer M76, which is a tracer cartridge type; and M13 is the link which links the rounds into a belt, functional belt.
Q All right. Tell us what a dim tracer is.
A A dim tracer is a tracer round that is designed for night vision. And it is if you witness it with your naked eye, you

probably won't see it, but it will not blind you in night vision goggles, night vision devices, it's only to be seen by that.

Q So the soldier can see where the shots are going?

A Where the shot's going. It illuminates the path of the rounds.

Q So a soldier using the ammunition that was in this ammo can would fire 9 M80 bullets, then a dim tracer, and then that pattern would repeat?

A That pattern repeats.

Q From this ammunition data card, can you tell us how many canisters were packed and marked the same way as this ammo can?

A The total lot quantity, net quantity is 7,900 -- no, 792,000 rounds. Now, each can is packed with 1500 rounds. So 1500 divided into 792,000 is 528 cans.

Q 528 ammunition cans marked exactly like that one?

A Yes.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to show you what's been admitted as Government Exhibit 102-A. Is this one of those matching cans?

A Yes. It's the same lot number on it.

Q Does it have the same markings as Government Exhibit 99-A?

A Yes.
Q Does Lake City actually manufacture the ammunition canisters?
A No. We purchase the ammunition cans from a subcontractor.
Q Then Lake City fills them and marks them?
A Yes.
Q How are the cans marked?
A They're marked on a, it's a machine that uses a rubber stencil or rubber pad, ink pad that as it rolls through the line, it's on a semicircle and it just marks on the pad like a rubber stamp.
Q That's how they all get marked the same?
A Yes.
Q Does Lake City maintain any records that would show when and where the ammo cans with this lot number on it were shipped?
A For shipping, we maintain electronic records and paper records for commercial bills of lading that are shipped when the ammunition leaves us.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q Did you provide me the GBLs, the government bills of lading for this lot number?

A Yes, I did.
Q Let me show you Government Exhibit 133-A and 133-B.
A Yes.
Q Are those those GBLs?
A Yes.
MR. GORDON: Your Honor, I'd offer Government Exhibits 133-A and B.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibits 133-A and B received in evidence.)
BY MR. GORDON:
Q Can you tell us from those bills of lading when was this entire lot shipped out of the Lake City Ammunition Plant?
A 9th of March of 2007.
Q That was the entire lot?
A Yes.
Q Can you tell us where the lot was shipped to?
A It was shipped to Bluegrass Army Depot, Richmond, Kentucky.
Q Was that all 528 cans?
A Yes.
Q Do you know from your job what happens to these canisters when the Army is through with them?
A When they're through with them, they are gathered and turned into DRMO, defense reutilization, what some people know

as PDO, property disposal office. They're gathered up into lots of however many cans and then they're put up for auction for a bid. If somebody wants to buy the cans, they can.

Q And at this point, it's opened up to the free market, right?

A Some, depending on the regional DRMO. Some of them have verified bidders or people that are on their bid lists that are able to bid. Some of them are open.

Q But at this point, these canisters could end up outside military supply chains?

A Most assuredly. We do not reutilize cans.

Q Where are some of the places that these canisters frequently end up?

A Army Navy surplus stores, gun shows, probably just about anywhere anybody wants to buy one and sell it.

MR. GORDON: Thank you, Mr. Scott. Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q Good morning, Mr. Scott.

A Morning.

Q Just a few quick easy questions. Do you know the date of manufacture of these canisters?

A Yes, on the ammunition data card, it's stated. Was

started on February 9th of 2007, completed on February 10th of 2007.

Q 2007. When do they go out of service, how long does the Army generally use them?

A Until they're consumed or rendered inoperable for whatever reason.

Q I don't think I know what consumed means.

A Consumed, they're shot up, they're functioned as intended. These are designed to go through a mini gun and they're fired through a mini gun.

Q Gotcha. I don't know guns that well. So you have this, this is filled with rounds of ammunition that would fire a 7.62-millimeter round?

A Right.

Q And I guess it sits then next to the weapon as you're firing it?

A No, it's belt fed. It's a magazine fed weapon system.

Q I understand. And a subcontractor manufactures these, right?

A The cans?

Q Yes, sir.

A Yes.

Q Who is that?

A I am not familiar with who this subcontractor is.

Q Some institution outside of the Department of Defense?

A Yes.
Q I gotcha. So like a civilian company manufactures it, sells it to the Army, it gets to you guys at Lake City, and then you guys put all the markings on there?
A Yes, all the yellow markings belong to Lake City.
Q This was where I was just a little bit confused. The lot number of these, does the original manufacturer affix that to the can or is it affixed to the can when it gets to Lake City?
A It is affixed at Lake City. This is basically a blank green can when we receive it.
Q I understand. And so then for this lot number, you had 528 of them that you put the exact same stamp on?
A Yes.
Q Okay. I understand now. Then we have two of them that are matching from the same lot, right?
A Yes.
Q That means 526 of these are out somewhere else, right?
A Yes.
Q Okay. And then the next step of the process is when they go out of use, when they're consumed, is that right, then they kind of go out to the free market?
A Yes.
Q And so anybody -- there are 526 of these that anybody could have bought anywhere, right?
A Well, 528 originally; two of them here.

Q Yeah, so there are 526 of them out there somewhere?
A Still unaccounted for.
Q Not in Army hands or anything?
A No.
Q Okay.
That's all I've got, Mr. Scott. Thanks.

REDIRECT EXAMINATION

BY MR. GORDON:

Q I guess one quick question. You said that the remaining 526 are not in the Army's hands. Is that a guess?
A As far as I know. I did a unofficial query through my headquarters through my upper command to see if there was any visibility of this lot still within the Army and it came back no, there is not any lot visibility. It doesn't mean that the Air Force or the Navy could have gotten ahold of it, but they were all consumed probably in training.
Q Okay. Thank you.
No further questions.

THE COURT: Anything else?
MR. HENDRIX: No, sir. Thank you.
THE COURT: You can stand down. Call your next.
MR. GORDON: The United States calls Gerald Riley.
MS. CASSINELLI COUCH: Your Honor, may we approach?
THE COURT: Yes.
(Bench conference reported as follows:)

MS. CASSINELLI COUCH: I just want the Court to be aware after our discussion yesterday, we discussed with the U.S. Attorneys who would be called as witnesses today. This witness and the next witness, who are crucial witnesses to the government's case, were not -- we were not notified that they were going to be called today. We were actually told a certain set of witnesses and they were not included. We did receive their Jencks, I believe, two days ago, although I don't know if today's Friday or Saturday or Tuesday, so I just want to give the Court forewarning that we object to them being called right now and we're going to need some time after direct to prepare.

THE COURT: What's your response, Mr. Gordon?

MR. GORDON: Their Jencks statements were turned over Monday. I do recall that. I don't know what list was told yesterday. We were asked at the end of the day. I have no idea because we're adjusting each night. So I don't know what they were told yesterday.

THE COURT: Okay. Here's what we'll do. How long do you believe his testimony will be?

MR. GORDON: 30 minutes.

THE COURT: Let's take that to the lunch break at 12:15. How much time will you need to prepare for your cross?

MS. CASSINELLI COUCH: I would think, especially if they're going to call the witness, another witness after this witness who's also in the same situation, I'd say we need a

couple hours, at least.

THE COURT: Let's do this. I have a sentencing at 12:15.

MR. HENDRIX: With me.

THE COURT: Do you have somebody standing in for you?

MR. HENDRIX: No.

MR. GORDON: Your Honor, could we just break now and start whatever time they need now?

MR. HENDRIX: I could certainly stand meeting with my client on the sentencing since I haven't looked at the file.

MS. CASSINELLI COUCH: Of course, then we can't prepare because he'll be with you.

THE COURT: The thing is, do you need to prepare before the testimony or do you --

MS. CASSINELLI COUCH: I don't think I'm entitled to ask for a break before direct.

THE COURT: I'm asking you, do you think you would rather prepare before the testimony or prepare after, because otherwise we can go to 12:15?

MS. CASSINELLI COUCH: I'd rather prepare after direct. I think that would keep it moving.

THE COURT: Let's do that then. We'll have a natural break for lunch and I'll just give you some extra time to prepare.

MR. GORDON: Your Honor, I can't say for sure that I'll be done by 12:15 and I'd rather not break during his direct.

THE COURT: That's fine. We'll go all the way through direct and we'll take a break at that time.

MR. HENDRIX: Can I just ask the Court to do this, maybe impose a little bit of discipline on the witness list. Could the Court at the end of the day inquire so we can put it on the record so we'll know who to prepare for?

THE COURT: I could tell the parties to tell each side. That's more of a courtesy that I ask the parties to do or the lawyers to give each other. I don't like to tell people who are your witnesses going to be and if they're not in that order, I'm not going to let you put them on. I just don't think that's appropriate for me to do. But at the same time, I would ask the lawyers the best you can, decide who your witnesses are going to be and depending on if the defense puts on a case, I'll say the same thing for you. If you have witnesses who are coming in, let the prosecution know who they are so that they can be prepared for them when they come in.

MR. GORDON: Your Honor, I will state there are certain witnesses that are scared, very scared, and they don't want us to disclose the timing of certain things with them and so that is a factor and we're balancing that with the need for efficiency.

THE COURT: I understand. But if it's the night before.

MS. CASSINELLI COUCH: How about this. Dr. Mann's in custody and we don't intend to get anybody hurt and we need to prepare, so I don't think there's any harm in us knowing so that we can prepare, as the lawyers.

THE COURT: That's not to going to stop an independent witness who all they've been doing is reading the newspaper and watching the news at night. It doesn't matter. If that person's prone to be scared, they're going to be scared.

MS. CASSINELLI COUCH: But my point is, that doesn't have anything to do with when they're going to be called and him telling us that. I'm not going to go spread that around over the one night I have to prepare.

THE COURT: I understand that you wouldn't, but if Mr. Gordon is telling witnesses and if they ask, have you told anybody that I'm coming, he's going to say yes. And so, I mean, this has nothing to do with what you'll do. It has to do with what the perception of the witness is, and whether it's rational or irrational, you know. It is what it is.

MS. CASSINELLI COUCH: Respectfully, why is that relevant to whether or not we get any kind of notice to prepare?

THE COURT: Because the witness doesn't want the

name given up before the witness comes. The witness doesn't have a right to that just as though, like you know --

MS. CASSINELLI COUCH: I guess our due process rights, our constitutional --

THE COURT: I don't think it's constitutional that he tells you who his witnesses are going to be. I don't think that's a constitutional requirement that the government give you its witness list and go down its witness list each day. It's not. This is a courtesy I'm asking the government to give you and I would ask that you do that. Now, I would imagine and I would imagine you would have a duty if you know who the witnesses are going to be to tell your client who the witnesses are going to be to help you prepare for them and that's what the witnesses are scared about. You know?

MS. CASSINELLI COUCH: We really don't, because we can't have contact with him at night.

MR. GORDON: Your Honor, this is a witness whose name was read out three weeks ago. It's a witness they've tried to contact, the defendant's tried to contact over a year ago. I mean, he's not a surprise witness.

THE COURT: But that brings us back to where we've been all along. It's not that the defendants have a right to it, and it's not that they don't have all the information, but it's when you're dealing with a case with a number of witnesses with a lot of documents, it's hard to prepare if you don't know

who's coming up because you're just stabbing looking for something. What are we going to prepare for if we don't know. Now, like I said, I'm not going to require either party to tell the other side who your witnesses are or who -- but I would ask you to do that. I think that would help the process. It would make the case go more smoothly because if they ask me for time after the break so they can go prepare, I'm going to give it to them.

Now, I'm not going to put you in a position where you come in here, you had a thousand documents and something's presented and you just really haven't had a chance to prepare to have to just go on the spot with it. I'll give you time. But I think for us to be more efficient, it would be better if the government will let you know who the witnesses are going to be and what the documents are going to be.

MS. CASSINELLI COUCH: I need to clear up one misconception. These two witnesses, we knew that they would be witnesses but we got no information about them until Jencks on Monday.

THE COURT: Okay. But I mean, I'm going to give you time if you need it, I'm just saying it's going to make the case go longer. And I would give the government time, too, if you had somebody who they pulled out who you didn't have information or if you needed some time to work with it, take some time to get together, regroup, we'll do that.

MR. GORDON: I guess at this point so we don't keep pulling the jury in and out, Gerald Riley is our next witness. The one behind that is Tim Harrell, and the one behind that is David Oliver.

THE COURT: They have been sworn in. Are they the ones who came and were sworn in?

MR. GORDON: Mr. Riley and Mr. Harrell were. I don't think Agent Oliver has yet, but those are the next three. That's where we're going if we get there by the end of the day.

THE COURT: All right. We'll take him, then lunch, and then if you need some time between this one and the next one, we'll take some time.

MS. CASSINELLI COUCH: Thank you.

(Proceedings continuing in open court at 11:53 a.m., jury present.)

THE COURT: Call your next.

MR. GORDON: United States calls Gerald Riley.

GERALD RILEY, GOVERNMENT WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q Morning, sir.

A Morning.

Q Please state your name for the record.

A Gerald Riley.

Q How are you employed?

A I'm a professional trainer.
Q How long have you been a trainer?
A For 30 years.
Q Do you do contract work or what kind of work?
A Yes, sir, contract work and I have a internet program where -- it's called a bilevel training system, where I contract out to other sports physicians in other states.
Q What city do you live in, sir?
A Russellville.
Q Do you know Randeep Mann and Sangeeta or Sue Mann?
A Yes, sir.
Q How would you characterize your relationship with them?
A Doc was my family physician and my friend and Sue was my friend also.
Q When you say Doc --
A Excuse me, Dr. Mann.
Q Okay. Mr. Riley, I'm going to ask you to identify Dr. Mann if you see him in the courtroom.
A Yes, sir.
Q Please point to him and identify some clothing that he's wearing.
A He's standing up with a suit and a tie and white shirt.
MR. GORDON: Your Honor, may the record reflect he has identified the defendant?
THE COURT: It so reflects.

BY MR. GORDON:

Q Do you know Dr. Mann's wife?

A Yes, sir.

Q What name do you know her by?

A I know her as Sue.

Q And is Mrs. Mann present in the courtroom?

A Yes, sir.

Q Would you please point to her and identify some clothing?

A She's wearing the dark jacket with the glasses.

MR. GORDON: May the record reflect the witness has identified the defendant?

THE COURT: Will so reflect.

MR. GORDON: Thank you.

BY MR. GORDON:

Q When did you first meet Dr. Mann?

A Approximately 15 years ago. He helped us take care of my brother, Bruce, who was going through addiction problems at the time.

Q Going through?

A Addiction problems at the time.

Q How did Dr. Mann help out?

A Dr. Mann, when my brother was refused medical treatment at St. Mary's because he was unable to pay, and at that point in time, we were also unable to pay, could not afford it, Dr. Mann took my brother in, admitted him in the hospital at

Dardanelle and took care of him and helped him get back to where he was better and he could function properly again.

Q Mr. Riley, do me a favor and pull that microphone closer to you if you would so we can all hear you.

A Yes.

Q Thank you. And did you also later become a patient of Dr. Mann's?

A Yes, sir, I did.

Q And did your family see him as well?

A Yes, they did.

Q Have you met Dr. Mann's children?

A Yes, I have.

Q How many does he have?

A Three is what I recall, Dan and then two daughters.

Q Does he have an adopted son as well?

A The only other one I can recollect is I think it's his brother's son. I couldn't be specific on his name.

Q All right. Do you know if Dr. and Mrs. Mann have adopted Dr. Mann's brother's son?

A Did I know that? I wasn't sure, so I would say no.

Q Okay. And what is the name of Dr. Mann's oldest son?

A Dan.

Q And over the years that you've known Dr. Mann, is it fair to say that y'all became good friends?

A Yes, sir.

Q Was he one of your better friends?
A Yes, sir.
Q Who is Tim Harrell?
A Tim Harrell is also a good friend of mine.
Q Is he also a friend of Dr. Mann's?
A I believe so.
Q Do you consider yourself a gun enthusiast?
A Yes, sir.
Q Since when?
A Always have been all my life. When my dad raised me, we had guns and he taught us how to shoot, those types of things.
Q All right. How many guns do you have?
A About 25.
Q Any machine guns?
A No, sir.
Q Any that you've had to register?
A Yes, sir.
Q How many of those?
A I have one.
Q What kind is it?
A It is a snubnose shotgun.
Q Do you have a federal firearms license?
A No, I do not.
Q Have you bought any firearms from Dr. Mann?
A Yes, I have.

Q Approximately how many?
A I'd say probably around seven.
Q Ammunition as well?
A Yes, sir.
Q And have you brought other buyers to Dr. Mann?
A Yes, sir.
Q Is that one of the common bonds that you and Dr. Mann shared, firearms?
A Yes, we both enjoyed firearms.
Q There was more to it than that, correct?
A Yes, there was. It's not just that.
Q Right. But that was one of the things?
A Yes.
Q Have you seen Dr. Mann's gun collection?
A Yes, I have.
Q What are your thoughts on it?
A It's impressive.
Q Better than yours?
A Much better than mine.
Q Do you know where Dr. Mann kept or keeps his gun collection?
A Yes, sir.
Q Where is that?
A It's in his house on the, I want to say it would be a second level or a basement area of his home.

Q Is it kept in a series of safes?
A Yes.
Q Does he keep any firearms in his medical clinic that you know of?
A No, sir, not that I know of, but they have been some there because I've had transactions where I have bought my weapon and registered it there.
Q Okay. Have you been in any of the storage rooms in the Manns' house?
A Yes.
Q In the garage?
A Yes.
Q What's in those storage rooms?
A The storage rooms where Dr. Mann kept his ammunition.
Q Were there any firearms in there as well? I don't mean machine guns, but other guns that you know of?
A Yes.
Q Have you shot firearms with Dr. Mann before?
A Yes.
Q How many times?
A On two occasions.
Q Tell us about those two, please.
A Dr. Mann took me out to a place over near Dover where it was legal to shoot it because it had a backdrop, background where we could actually shoot firearms and he let me shoot

several of his machine guns.
Q Was he firing as well?
A Yes.
Q What about what was the second time y'all went shooting?
A The second time was just outside his house at his back door and we were shooting into the lake.
Q What were you shooting?
A A Galil.
Q Is that a machine gun?
A Yes.
Q Have you ever seen a grenade launcher at Dr. Mann's house? Have you seen it?
A Like I had expressed before, Mr. Gordon, if I can't own something, I'm not going to pay attention to it, so I can't tell you if I saw it or I didn't see it because it's not something I could have. I'm the type of person if I can, at one point in time in my life own something, then I'm going to pay attention to it because I can some day maybe have it. If I saw it, I can't remember seeing it, and that's just -- I knew he had them, I knew he had talked about them, but I can't remember, myself, ever seeing it or touching it.
Q Fair enough. Have you ever seen any explosives at Dr. Mann's house?
A No, sir.
Q Have you ever seen anything like Government Exhibit 69?

A No, sir.
Q Have you ever seen anything like Government Exhibit 122?
A No, sir.
Q Looking at Government Exhibit 100-JJ. Have you ever seen anything like that at Dr. Mann's residence?
A Mr. Gordon, I can't be definite, so I'm going to say no.
Q How about -- you're not definite, how about I don't know?
A I don't know.
Q Okay. Let's look at picture 118-A. Anything like that?
A No.
Q You were telling me before you don't know?
A I have never seen that.
Q The item that we looked at in Government Exhibit 100-JJ, do you know what that is?
A At the time -- I know now.
Q Okay.
A But at the time, if there was any, I've never seen this. I had heard about gas grenades. Dr. Mann had mentioned that he had shot some out of his weapon that he had. I had never seen him shoot them, but he had talked about not gas, excuse me, smoke grenades.
Q What did Dr. Mann talk about?
A The color that they were, blue, he would say they were blue coated or silver and that was all that I can remember. Again, I didn't pay much attention to it because that's not

something I was interested in.
Q When Dr. Mann talked about shooting, what did you call them, smoke grenades?
A Smoke grenades, yes.
Q Okay. What was he shooting them with?
A He talked about he had a launcher that he shot them with and shot them into the lake.
Q Have you ever been to a gun show with Dr. Mann?
A Yes, sir.
Q How many times?
A Once.
Q How long ago?
A It was back in 2008, around -- August, September, around in that area.
Q All right. And where was the gun show that y'all went to?
A It was in Little Rock at Barton Coliseum.
Q Who went to the gun show?
A Myself and Dr. Mann and his wife, Sue, and Dan.
Q Did y'all go together?
A No, sir, we drove separate cars.
Q Tell us about that.
A We arrived at the gun show, Dr. Mann had mentioned that he had to -- had some business in Memphis and he was going to continue on to Memphis, and then I was going to come home by

myself in my car.
Q So you drove separately?
A Yes, sir.
Q Who did Dr. Mann drive with?
A He drove with his wife, Sue, and Dan.
Q Do you know did Dan ever live or work in Memphis?
A I knew that Dan had a job in Memphis.
Q Doing what kind of work?
A He worked at a hotel.
Q Tell us what happened when y'all got to the gun show.
A We got to the gun show and we started looking around, and understand that being fascinated with the different types of weaponry and things that they had there, I would always listen to Dr. Mann and he would explain these things to me and I enjoyed that. We got to the place where they had ammo tins, and I'd been wanting some for myself to be able to store ammunition in that I had that was loose ammunition, and Doc expressed the same concern. He would like to get some since we saw them there. So Dr. Mann asked the gentleman how many he had and then he told him, and he said, well, I'll take all the ones that you have left.

And, of course, then I made the comment, well, Doc, I want six of them for myself, just to be able to have them at the house. And at that time, the guy asked for payment and Dr. Mann offered him his credit card but the gentleman was not

equipped to be able to take credit cards. Then he asked if he could write him a check. And, again, he wouldn't accept a check, so I had cash. So I just told Doc, Dr. Mann, I said, Doc, just write me a check for it and you can just reimburse me and I'll just pay cash for the ammo tins. That's what we did.

Q Do you recall -- so you paid for them cash?

A Yes, sir.

Q And Dr. Mann wrote you out a check?

A Yes.

Q To reimburse you?

A Yes.

Q Right there on the spot, he wrote the check?

A Right there on the spot.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to show you what's been marked as Government Exhibit 134. Do you recognize that?

A Yes.

Q Is that the check that --

A That's the check that he had wrote me for the ammo tins, to reimburse me.

MR. GORDON: Your Honor, I'd offer Government Exhibit 134.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 134 received in evidence.)

BY MR. GORDON:

Q So Dr. Mann wrote you the check while you were there at the gun show. Looking at this check, what was the date you were at the gun show?

A I didn't look at the date. Oh.

Q There it is on the screen.

A October. October 2nd, 10/2/08.

Q Tell us about the ammo cans that y'all bought that day, how many, the sizes, all that.

A We bought various sizes. I can't tell you what caliber of ammunition that went in each one, but they were several sizes. There was smaller cans and then there was slightly larger ones and then the large cans, so there was three different sizes.

Q Okay. Do you remember how many y'all got?

A I would estimate there was about 27.

Q 27 cans total?

A Yes.

Q From those 27, can you tell us how many large ammo cans there were?

A Seven.

Q Seven? Mr. Riley, I'm going to show you, hold up here Government Exhibit 99-A. Does that look the size and color of

the ammo cans that you bought?
A Yes.
Q Would this have been one of the large ammo cans?
A Yes. The other cans we purchased would fit inside those.
Q Okay. Did you get to keep any of the large ammo cans?
A No.
Q Who got all the large ones?
A Dr. Mann.
Q So you just got some of the smaller ones?
A Yes.
Q Do you remember how many?
A I took six.
Q Who loaded the ammunition cans into the car?
A I did, with the help of the vendor that we bought them from.
Q Whose car did they get loaded into?
A Into my Yukon.
Q Why yours?
A Because I was coming back to Russellville and Dr. Mann asked me if I would bring them back to Russellville and then he would pick them up at a later date.
Q What did you do with the cans?
A I left them in my car for about a couple days. And then, I got tired of them rattling around in the back of my car so I took them out and put them in my garage.

Q Did you eventually take them to Dr. Mann's house?
A Yes, I did. My wife helped me unload them and then Tim Harrell helped me load them back into the Yukon and I took them to Dr. Mann's and dropped them off.
Q Did Mr. Harrell go with you to deliver them to Dr. Mann?
A No, he just -- I had -- my back was -- I had a bad back so Tim helped me load them into the back of my Yukon just to help me out, then he left.
Q Do you know where those ammo cans went when they got to Dr. Mann's house?
A No. We just dropped them off. They unloaded them for me and I just dropped them off and then I left.
Q And when you dropped them off, was there any ammunition inside?
A No, sir.
Q Was there anything inside them at all?
A I think there was several of the small ammo tins still in there because I only took six of them. I think there might have been one or two of the smaller ones that were in there.
Q So the larger ammo cans had some of the smaller cans in them?
A Yes, sir. The larger ammo can would hold two of the other cans.
Q All right. Are you aware of Dr. Mann's dealings with the Arkansas State Medical Board?

A Yes.
Q How are you aware of them?
A Just from what Dr. Mann had expressed to me.
Q So he's talked to you about the Board?
A Yes.
Q Was he pleased with the Board?
A No.
Q Did Dr. Mann tell you that he thought he was being treated unfairly by the Board?
A Yes.
Q Even singled out?
A Yes.
Q Because of his race and/or religion?
MR. HENDRIX: I'm sorry, Your Honor, I would object to the prosecutor leading the witness.
THE COURT: It's sustained.
BY MR. GORDON:
Q Did Dr. Mann tell you why he thought he was being singled out by the Board, what he thought the reasons were?
A He said it was in terms of he was a minority being singled out only because he was -- I can't say, Mr. Gordon, if it was because of his ethnic background or religion, but he felt it was because he wasn't American.
Q Did he have anything kind to say about the Board?
A No.

Q Can you tell us some of the things that you recall that he has said to you about the medical board?
A When I say this, can I give you my -- how I took this comment?
Q I'm not sure that --
A Dr. Mann said he wished he could kill those motherfuckers. All right? But, as a friend of Dr. Mann's and being somebody that's an emotional person as myself, I have also said something like that at the heat of the moment, and that's how I took it, was at the heat of the moment.
Q Has he said that to you more than once?
A I'd say several times. But the thing was is Dr. Mann never singled anybody out, he just said in general.
Q Did he make any comments about suffering?
A Yes.
Q What did he say?
A He said, Gerald, he said, maybe the incident that happened with the bombing was to do exactly what it did do, and that was to make that individual suffer.
Q Did he ever talk about -- did Dr. Mann ever talk about his suffering?
A Dr. Mann felt he was unjustly treated, yes.
Q Do you recall him saying that it was unfair that they took his license and they need to suffer like I am suffering?
A Yes. Can I -- they should experience suffering like I'm

suffering.
Q These statements about the Board, they were made before the West Memphis bombing; is that correct?
A Yes.
Q They were made before Dr. Mann's arrest; is that correct?
A Yes.
Q And like you said earlier, he did not single out any particular member of the Board?
A No, he did not.
Q But he had nothing kind to say about the Board?
A No.
Q After Dr. Mann's arrest, did you get a call from Mrs. Mann?
A Yes.
Q And did she ask you if she could bring something over for you to keep?
A Yes.
Q Did she say what it was?
A On the phone, no.
Q On the phone, did she say why she wanted you to keep it?
A No.
Q After that phone call, did Mrs. Mann show up at your house?
A Yes.
Q Within what amount of time?

A Within 20 minutes.
Q When she came to your house, did she have something with her?
A Yes.
Q Did she give that something to you?
A Yes.
Q What was it?
A It was a manila envelope with rubber bands wrapped around it.
Q Did she tell you why she was giving you this envelope?
A She didn't say why, but she asked if I would hold it for her, that it was, I want to recall, bank statements and records that she would like for me to hold, and I told her I would.
Q Do you recall her saying that Randy asked her to give it to you to keep?
MR. HENDRIX: Your Honor, again, I apologize, but I think the prosecutor is trying to lead Mr. Riley.
MR. GORDON: It's a yes or no, Your Honor.
THE COURT: I'll sustain the objection to the extent that it's leading. Ask a more open-ended question.
BY MR. GORDON:
Q Did Mrs. Mann indicate who wanted her to give this to you?
A No.
Q What did Mrs. Mann ask you to do with it?

A She asked me if I would hold this for her, and again, I told her I would. There was no problem. At the time -- I'm sorry.
Q How long did she say she wanted you to keep it?
A She did not give me a definite time frame.
Q What did you do with it?
A I took it and put it in my bedroom closet.
Q Did you ever look inside?
A No, sir.
Q Had she ever done anything like that before?
A No.
Q What were you thinking?
A I reacted without thinking because I wanted to help my friend. On my way putting it back, taking it and putting it away, I then thought, well, maybe this is not a good idea. But I didn't see any harm in it at the time, myself, I just didn't see anything wrong with it.
Q How long did you have the envelope?
A About a day.
Q Did Mrs. Mann come back and get it?
A Yes, she did.
Q Did she call before she came over?
A Yes, she did.
Q Do you recall what she said before she came over?
A She just asked me if she could come by and she would like

to pick up the item that she had left.
Q Then did she come by?
A Yes, she did.
Q Did she come by herself or with somebody?
A I only saw her.
Q Tell us what happened when she came by and picked up the envelope.
A She came by and picked it up and at that time she told me that she was sorry that she had brought it to me and that she thought it would be best if she picked it up and took it back, and I said, I understand.
Q Were you interviewed by ATF on April 19th of 2009?
A Yes.
Q Did they ask you about Mrs. Mann bringing you something?
A Yes.
Q And were you honest and did you tell ATF what you had just told this jury?
A Yes.
MS. CASSINELLI COUCH: Your Honor, may I approach?
THE COURT: Let's finish up the direct testimony, we'll discuss whatever you want to discuss.
MS. CASSINELLI COUCH: Well, I object to the prosecutor --
THE COURT: It's overruled.
BY MR. GORDON:

Q After the ATF interview, did you receive a phone call from Mrs. Mann?
A Yes.
Q Tell us about that phone call.
A Sue called and asked if she could come by and I said that was fine.
Q Do you recall why she wanted to come by?
A She didn't say.
Q When she came by your house, was she by herself?
A No, Dan was with her.
Q Her son?
A Yes.
Q Tell us what happened when Mrs. Mann and Dan arrived.
A They came by and Sue and Dan both, at that time, expressed to me how sorry they were that they had gotten me involved with this. And my heart went out to them. It did. I got emotional about it, I guess as I am now. They were my friends and I cared for them deeply. Sue had then told me that they would like to hire an attorney for me and they would pay for it, that I didn't need to tell the prosecutor or ATF anything, that they would hire me an attorney and they'd be willing to pay for it and Dan also expressed the same thing.
Q How did you respond?
A I didn't need an attorney. I told them thank you, but no thank you. I didn't project, at that time, this going this

far. I didn't feel like I needed one.
Q All right. You stated just a few moments ago that one of the things they said to you was you don't have to tell them anything?
A Yes.
Q Meaning ATF or the government?
A Yes.
Q Did you let Mrs. Mann know that ATF already talked to you?
A I told Sue at that time, I said, Sue, I said, the package that you brought me, I said, They knew. They asked me directly if I received that from you. And Sue said to me, There's no way they could have known. I said, They knew, they asked me and I had to tell them.
Q What was her response to that?
A Other than she said there was no way they knew is all that I can remember.
Q Do you recall her saying, well, they don't know everything?
A Yes. That was part of her saying, well, there was no way that they knew. That was, They don't know everything.
Q And was Dan involved in this conversation as well?
A Dan just said, Mr. Riley, he said, you don't have to tell them anything, we can hire you a lawyer and we'll pay for it.
Q And how did this conversation end?

A With me saying I can't talk to you guys anymore. I can't. I just couldn't, emotionally. I couldn't handle it.
Q Why?
A They were my friends and I didn't want to believe this was happening. I just didn't want to believe it. I couldn't believe that I was even involved this far with it. And I just said, I can't talk to you anymore. And I left it at that.
Q Did Mrs. Mann later call you about the ammo cans or about an ammo can?
A Yes.
Q Tell us about that.
A Sue had called me, and I recently had purchased some ammunition from Randeep and he had brought it to me in a cardboard box and Sue asked me if I still had the box that the ammunition came in. I thought that she was referring to the cardboard box that I had picked up from Randeep. And then Sue said, No, you know, the green box.

And I thought and I said, Sue, the green box? I said, It's a cardboard box, it's cardboard. That's what I got my ammunition in. She said, No, the green box from the gun show. And I said, Oh, the ammo tins? And she said, Yes. And she said, Randy wanted me to tell you to give one to Tim.
Q What was your reaction?
A Well, I kept saying -- I said then, I said, Well, Sue, you can have the ammo tin, I'll give you one. And I had gone

and bought some other ones for myself, I had bought one for myself or two of them for myself. I said, Randeep can have them. I said, He doesn't have to have me give it to Tim. I said, I'll bring it over to the house and drop it off for you. And she said, No, you need to give that to Tim. And, actually, I felt hurt inside because I didn't think that they would trust me to give it to Randeep, so I kept thinking why did they want me to give it to Tim. And so I said, Okay, well, I'll call Tim.

Q Did Mrs. Mann ever explain why she wanted you to give it to Tim?

A No.

Q Did you ever give one to Tim?

A No. I called Tim and asked him, told him that Randy wanted me to give him an ammo tin and Tim said he didn't want it.

Q Mr. Riley, before testifying, did I ask you to listen to some recordings on a bunch of DVDs?

A Yes.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to hand you what's been marked as Government Exhibits 142, 142-A.

A Yes.

Q 142 -- I'm sorry, 143-A.
A Yes.
Q 144-A.
A Yes.
Q 145-A.
A Yes.
Q 146-A.
A Yes.
Q 147-A1.
A Yes.
Q 147-A2.
A Yes.
Q 148-A.
A Yes.
Q 149-A.
A Yes.
Q 150-A.
A Yes.
Q 151-A.
A Yes.
Q 167-A1.
A Yes.
Q 167-A2.
A Yes.
Q 168-A.

A Yes.
Q 169-A.
A Yes.
Q 170-A.
A Yes.
Q 171-A.
A Yes.
Q 172-A.
A Yes.
Q 173-A.
A Yes.
Q 174-A.
A Yes.
Q 175-A.
A Yes.
Q 176-A.
A Yes.
Q 177-A.
A Yes.
Q 178-A?
A Yes.
Q Are these the DVDs that I had you listen to?
A Yes, sir.
Q And after you listened to them, did I have you write your initials and your date on here so you would know these are the

ones you listened to?
A Yes.
Q That's how you recognize them?
A Yes.
Q On these recordings, is there a male and a female's voice in each of these recordings?
A Yes.
Q Did you recognize the voices?
A Yes.
Q Whose voice was the male's voice?
A Dr. Mann's.
Q Whose voice was the female's voice?
A Sue Mann's.
Q A few of these recordings, did someone's voice mail pick up?
A Yes.
Q Whose voice mail was it?
A It was mine.
Q And on the DVDs that contain the recordings where your voice mail picked up, did we have you write "my voice mail" on it?
A Yes.
Q For example, let's look at 177-A.
A Yes.
Q Mr. Riley, can you tell us what your phone number was

back then?
A It would be (479)970-0224.
Q When was the last time you heard from Dr. Mann?
A Briefly, I heard his voice on my voice mail. That's the last time I'd heard his voice. The last time I saw Dr. Mann was when I had a office visit with him.
MR. GORDON: Thank you, sir. Pass the witness.
THE COURT: We're going to take our morning break now, and we're going to take an extensive break. I have a hearing I need to take care of during lunch. So we are going to -- it's 12:30, we are going to come back at 2:30. So I'm going to give you two hours for lunch and we'll be in recess until 2:30.
(Jury exits the courtroom.)
THE COURT: Let's take up the motion of defense counsel before we disband. Ms. Couch, you wanted to make a record on something?
MS. CASSINELLI COUCH: My objection?
THE COURT: Yes.
MS. CASSINELLI COUCH: I was just objecting. Mr. Gordon was improperly bolstering the witness's testimony with a prior inconsistent statement which is only permissible after -- I believe you know where I'm going with this -- after it's been challenged.
THE COURT: Been crossed, yes. The question was did

you speak to the ATF agent, did you tell the ATF agent this information. The objection is that that is normally inadmissible, bolstering, because what you're trying to do is make sure the testimony's considered stronger than what it should be. And normally it's not normally allowed until after the defense has cross-examined the witness and said you didn't tell them that information. So I've overruled the objection. So we've got a record on it. Anything else we need to take up now before I have my hearing?

MR. GORDON: No, Your Honor.

THE COURT: Okay. Mr. Hendrix, you need some time with your client before sentencing?

MR. HENDRIX: Yeah.

(Lunch recess at 12:37 p.m.)

C E R T I F I C A T E

I, Karen Baker, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Karen Baker, RMR, CRR, CCR
United States Court Reporter

Date: March 12, 2011

(Continuing at 2:32 p.m., jury not present.)

THE COURT: Can I speak with the lawyers?

(Bench conference reported as follows:)

THE COURT: How many witnesses do we have today who we have to put on?

MR. GORDON: That we have to put on?

THE COURT: That you need to put on today because they've come in and they need to go back out of town.

MR. GORDON: Today, none. But it starts kind of a domino effect with tomorrow's and Friday's witnesses.

THE COURT: Okay.

MR. GORDON: Out-of-town witnesses that I expect will testify Thursday and Friday.

THE COURT: Okay. Here's my thought. And I guess I'm going to have to figure out what the government, what's going on with your witnesses to kind of adjust. What I notice is, when I look at Mr. Hendrix, in his eyes, and I look at Ms. Couch, in her eyes, I see two people who are about to fall off to sleep. I mean, no, seriously. And I can say let's push on, but at some point if I have tired lawyers on my hands, it gets a little testy. And you understand? And we'll end up more time at the bench than what we need. If we could knock off a little early this afternoon -- I wouldn't want to be knocking off so you can work to 11, 12 o'clock at night and we end up back in the same position today. But if we can knock off a little early, I'd

like to, and that would give everyone a chance to go ahead and regroup for tomorrow. Now, but I don't want to put you at a disadvantage where you have people who need to be here at certain times and have to leave and it throws everything off because you have a trial strategy that you have to adhere to. And that's why I ask.

MR. GORDON: Thank you.

THE COURT: What does it look like today? Will it throw you way off? Because if we plan not to come on Monday and you have people who are supposed to be here on Friday and we don't get them on, then that creates a problem, especially if they're from out of town and they have to stay several days.

MR. GORDON: I guess I would be in a better position to answer that once the cross of Mr. Riley is completed.

THE COURT: Okay.

MS. CASSINELLI COUCH: It shouldn't be long, if that helps.

MR. DUDLEY: I won't be long either on cross.

THE COURT: Ms. Couch, you still need a few minutes before we start?

MS. CASSINELLI COUCH: If you don't mind.

THE COURT: Let's get started at 2:45, and then I'd like to try to not go after 4:30 or 5 today, because we've been going to 5:30 and a little later.

MR. GORDON: And, Your Honor, when Mr. Riley's

excused, will you call us to the bench and then I can let you know?

THE COURT: Yes, we can do that.

MR. GORDON: Thank you.

(Recess from 2:37 p.m. until 2:47 p.m.; jury not present.)

THE COURT: All right. Let's bring the jury back in.

COURT SECURITY OFFICER: Yes, sir.

(Whereupon, the jury entered the courtroom and proceedings continued in open court as follows:)

THE COURT: Mr. Hendrix, cross-examination, or Ms. Couch.

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Good afternoon, Mr. Riley.

A. Good afternoon, ma'am.

Q. As I understand your testimony on direct, you've known the Manns for quite a while. Is that right?

A. Yes, ma'am.

Q. Been friends with them?

A. Yes.

Q. And Dr. Mann has been your physician?

A. Yes.

Q. As well as some of your family members, I think?

A. He was our family doctor.

Q. You mentioned a brother who he also helped?

A. Yes.
Q. I think helped you pay for some hospitalization that your brother needed?
A. My younger brother, yes.
Q. And I believe that you said that you are a fitness trainer. Is that right?
A. Yes, ma'am, professional trainer, fitness trainer, yeah.
Q. I guess I don't work out enough to get the terms right.
A. That's okay.
Q. Do you train somewhere in Russellville?
A. I work out of -- here in Russellville, out of St. Mary's, but I do a lot of professional training with pro athletes, college athletes, stuff like that, in other states. I contract with other sports physicians.
Q. Okay. So you mentioned that you and Dr. Mann were both gun enthusiasts and y'all had working out in common too?
A. Yes, ma'am.
Q. He liked to work out a lot, I believe. Is that right?
A. Uh-huh.
Q. Was your wife also friends with the Manns?
A. She wasn't as close with them as I was.
Q. But you were all kind of family friends?
A. Yes.
Q. You being the main tie?
A. Uh-huh. My daughters thought the world of Dr. Mann, and

it's because he took care of them. He was -- sorry. He was a good man to us.

Q. Did you all go to the Manns' house?

A. Yes, we did.

Q. They had some barbecues and things?

A. And he invited us over for dinner. My wife and my daughters had been over there several times.

Q. Did you all go to these barbecues where other people came too, other people from the community?

A. Yes, ma'am. Sorry.

Q. Again, that's okay. Do you know when the last barbecue that you all went to was?

A. I'm sorry?

Q. The last time that you went over to one of the Manns' barbecues, do you have any idea when that would have been?

A. I'm sorry, ma'am, I can't remember. I know we've been there several times. I couldn't tell you the exact day or --

Q. Sure. Have you been maybe in like the six months prior to Dr. Mann being arrested?

A. I would say that would be fair to say that.

Q. And I think you mentioned that you'd been to the house and in the garage and in the storage room, in all those areas. Is that right?

A. Yes, ma'am.

Q. You'd seen the gun room with the safes and all that. And

you mentioned that you are a gun enthusiast. Is your family interested in guns as well?
A. My wife and my oldest daughter. My youngest daughter is -- it just doesn't interest her. But my wife and my oldest daughter enjoy it.
Q. While you've been over -- I assume you and Dr. Mann talked about guns and stuff since you're both kind of into it.
A. Yes, ma'am.
Q. I think you mentioned that when you went to gun shows, he would kind of tell you, teach you about some of the different kinds of things, and you enjoyed that?
A. Uh-huh.
Q. When you were at his house and in the storage room, did you notice like old paperwork, boxes of documents about firearms?
A. Honestly, all I remember is just seeing the ammunition. It was a dream to me. He had old ammunition there, stuff that was dating back to World War II, things that -- I mean, I'm a history -- I like history. And I didn't really pay attention if there were documents there or not. I just know there were pamphlets on ammunition, on guns, things like that.
Q. Right. And that's what I'm talking about.
A. Okay.
Q. You saw -- and I should have been more clear. You saw all the -- well, like you said, pamphlets about ammunition and guns, and that was interesting as well to learn about the history of

all the different types of things that have been made and are made?

A. Yes.

Q. And so the jury's clear, that gun room -- excuse me -- the storage room is a pretty small area, but it's kind of got tall shelves. Right?

A. Yes, ma'am.

Q. And there were different kinds of ammunition and things kind of stacked up in there.

A. That and car parts.

Q. Right. And car parts, because Dr. Mann also liked cars.

A. Yes.

Q. And you also mentioned, I think, that you maybe purchased some guns from Dr. Mann?

A. Yes, I did.

Q. And did you do all the paperwork on those, and Dr. Mann did his paperwork?

A. Yeah. And that's one thing I can say about Doc -- I'm sorry -- Dr. Mann -- forgive me.

Q. No, take a moment, if you need to. It's okay.

A. The one thing I can say about Dr. Mann is he was always, with me, by the book, to the letter. If I bought a weapon from him, the paperwork had to be filled out. It had to be called in before I would receive the weapon. You know, and I had -- my wife and I were taking a concealed weapons class, and I had

purchased some handcuffs from Dr. Mann, and we both had to fill out the paperwork. He was real adamant about that, with me.
Q. I think you also mentioned that you only owned one, what's considered an NFA weapon?
A. Yes, ma'am.
Q. And you do not have an FFL. Is that right?
A. No, I do not have an FFL number.
Q. But you can legally possess an NFA weapon, as an individual, if you do the correct paperwork. Is that correct?
A. Right. And that gun that I purchased, that I have a permit for, I bought from Wilkins Sporting Goods store there in Russellville, and I had to have the sheriff and the paperwork and all that turned in before I received the gun.
Q. I believe Mr. Gordon showed you several photographs of different items. We won't go back through the photographs. But I believe it was your testimony that you've never seen any grenades at Dr. Mann's house?
A. No, I have not.
Q. Whether it was a hand grenade or rocket-propelled grenade?
A. Any of the examples that Mr. Gordon laid up here on the counter I have not seen.
Q. Let's move on to the medical board issues. Mr. Gordon asked you, did he have anything kind to say about the medical board, and you said no. It's fair to say that that wasn't a pleasant thing to talk about, probably, for him?

A. And Dr. Mann, he was frustrated, and I knew he was, and I took it, on my part, I took it as him venting, venting his frustrations. I've done that before, and I've said things that I didn't mean, for me. And this is for me. And so I took it as that, as he was venting his frustrations, just expressing them. That's --

Q. And it's fair to say that the dealings with the medical board were frustrating, but you were aware that he was following through a legal process with regard to the board?

A. Well, I don't know the particulars about the process. I knew that he was in negotiations with the board. He never really mentioned it to me, any of the details that he was going through. He just was -- the frustration part of different things that he was going through, not particular incidences or anything like that, if that's fair to say.

Q. Sure. There was one comment, I believe, that you testified to on direct that was several years prior to the bombing concerning, I think it was something along the lines of, you know, the board has made me suffer, like I wish they could understand my suffering, or something to that effect. I mean, let me rephrase that. I took it as --

MR. GORDON: Your Honor, I'll object to how she took it. Her opinion is not relevant.

THE COURT: That's sustained. You can ask him what he said and how did he take it.

BY MS. CASSINELLI COUCH:
Q. You mentioned something about the board and how they had treated him and his feeling like they had made him suffer.
A. Uh-huh.
Q. Is that accurate?
A. That they had made him suffer, yes.
Q. And was that comment and the suffering related to it related to his losing his medical license or losing his DEA rights?
A. I can't speculate on that. All I know is Dr. Mann said, "They're making me suffer," and that's how I remember it, and I remember my heart going out to him at that time. I felt for him because I know how he was with my family and me, and so for me, I respected the man, and I loved him as a friend.
Q. So this was a conversation between friends, saying, "This is hurting me, this is a hard time for me"?
A. Yes, I can say that.
Q. And this was a few years prior to the bombing. Right?
A. I can't tell you what time frame that is, but I know that we had talked about that, and it could be -- I couldn't say what time frame. I'm sorry.
Q. Do you know whether it was in the time frame --
A. It could be within the last two years.
Q. Like during the time that he was dealing with the board stuff?

A. Yes, ma'am. And I meant this two years, but --
Q. Right. You also mentioned that there was a comment, and I think you've explained this a few times, but that you were talking and he said "I'd like to" -- something about killing the motherfuckers.
A. Yes.
Q. Was that also a comment between guys? Sort of like --
A. Yes. And I tried -- I think I explained this -- well, relating to my own experience with me, my younger brother was beat to death, and 13 years younger than me, and I remember hearing the news. I had just spoken to him two days prior to that, and upon hearing the news, I turned to my wife and I said, "I'm going to kill that asshole." They just beat Bruce to death, I knew who it was. And I've said those things myself, not meaning to do it, but --
Q. Sure.
A. -- but out of frustration with me. And, honestly, when Dr. Mann said that, I took it as frustration, like it was with me when I had said that. I don't know if that makes sense or not, ma'am.
Q. Sure. And there are other situations that aren't even quite as dire as the one that you mentioned where you might just get frustrated where you say, Oh, I want to kill him?
A. Especially when they didn't prosecute him and nothing was done, and I felt --

Q. Sure. What I'm getting at is, when guys -- and I think you said to your wife, when people close to you are around and you're venting, that something a normal person might say is, Oh, I'm so frustrated I want to kill him or her or them.
A. All I know is for myself, I've said that, I've said it also.
Q. Let me just put it this way. When he said that, you didn't take it literally?
A. No, ma'am, I did not.
Q. And he didn't single anybody out?
A. He never mentioned any particular person to me. As a matter of fact, and I'll just go on to tell you, I didn't even know who Dr. Pierce was until it came out in an article.
Q. And you're one of Dr. Mann's close friends?
A. I'd like to think I was.
Q. Moving forward to February 4 of 2009, which was the day that the bombing occurred.
A. Yes, ma'am.
Q. You were at Dr. Mann's office that day for your weekly checkup. Is that right?
A. Yes.
Q. While you were there, someone -- who brought it up? Did Dr. Mann know about it or --
A. No. I received a call from my wife. She knows I'm on my way over for my checkup. I had a blood pressure checkup and

stuff like that all the time. And she told me she had just heard about the bombing, and she asked me if I'd heard about it. And I said, no, this is the first I'd heard. And I was on my way to the office. And when I got there, they took me back to the room to wait for Doc. When he came in, I said, "Doc, did you hear what happened?" I said the medical board, the chairman or the guy, the head of the medical board got bombed, and he, Dr. Mann, acted surprised.

Q. He was surprised?

A. Surprised when I told him. I said, "Have you heard?", and he said "No."

Q. Shocked?

A. He acted shocked and surprised.

Q. And did Sue or Dr. Mann mention that just knowing that, they knew they would probably talk to the authorities again?

A. Well, I'm an exact person when I talk, so I try to tell you exactly what I remember and what I heard. Dr. Mann called Sue in. She came to the office, into the room. He told her. She went to the computer, pulled it off the internet, the printout, and then Dr. Mann read it in front of me. And then at that point, Sue said, "Well, I guess we're going to be -- we will get a visit paid by the authorities."

Q. At that point it just happened, so there was kind of minimal information out there, but everybody kind of knew something big had happened.

A. Just whatever that printout had said.
Q. And you all stayed in there, I assume, kind of chatting about it for a little bit. Is that -- is that accurate? Well, let me --
A. It kind of -- well, we went into my regular visit. It was just kind of put aside because he was -- the thing about Doc, he was a professional person with me. He said, "Well, let's go ahead and take care of what we have to take care of," and did my checkup and everything like he normally does, and then I left.
Q. Did you all have some brief conversation surrounding that article? I believe it was your testimony that he said something to the effect of -- or, no, actually, I take that back. It was a week later you all were talking, maybe it was your next visit?
A. It was my next visit.
Q. And y'all were chatting about it?
A. Well, he had mentioned something about it and brought it up. I pretty much just kind of left it alone.
Q. And there was some comment made about, you know, maybe that's what was supposed to happen, maybe it wasn't supposed to kill him?
A. He said, "Gerald" -- I'm sorry. I used to mimic Dr. Mann, when I was in his office, I would make fun of him because my kids couldn't understand when he would talk. So I would go with them when they went to the doctor, even though they're grown, and I would have to interpret to them what Dr. Mann would say.

That slipped out like that. Doc said, "Gerald," he said, "did you ever think that the explosion, the bombing did exactly what it was supposed to do? It was supposed to make the person suffer." And I -- I felt in my heart, I said, "Doc, nobody needs to suffer like that. Nobody needs to suffer."

Q. And that was your reaction, right, you said nobody would deserve that?

A. Nobody deserves to suffer like that.

Q. And Dr. Mann didn't follow that up with, "Well, he did"? You know, he --

A. At that point, I don't recall anything after -- anything that was said after that. I just thought nobody needs to suffer that way.

Q. And he didn't tell you -- he didn't follow what you said with "Yes, they do," or anything to that effect?

A. No. That was the gist of the conversation right there, and then we went on with --

Q. Well --

A. Gosh.

Q. I know in hindsight that's hard to process. But at the time that that all happened, did it cross your mind that perhaps he was thinking of his history in India and his faith and karma? Have you ever heard of karma?

MR. GORDON: Your Honor, I object to speculation.

THE COURT: That's overruled. She can ask that.

BY MS. CASSINELLI COUCH:
Q. Have you ever heard of the term "karma"?
A. Yes.
Q. Are you familiar at all with the faith that Dr. Mann was raised in?
A. Hindu, or Hindi.
Q. Did that ever come into your mind, maybe that's what he was saying, that things happen for a reason? I think that's sort of the karma thing and the basis for that.
A. I don't -- I don't -- I could honestly say I don't know. I never thought of it in that respect.
Q. But it would be consistent with that to an extent, not that anybody would ever deserve to be injured that way?
A. I know as far as my belief, no one deserves that, to me.
Q. Dr. Mann's always -- well, let me ask you this. You mentioned that you were at the clinic every week, right --
A. Yes.
Q. -- for your weekly checkup? Were you there any other time? Did you swing by ever, anything like that?
A. I'd come by to talk. And you have to understand the relationship that I have with Dr. Mann. To the jury, this is hard for me. Dr. Mann saved my life.
Q. Well, and what I was going to ask you --
A. Anyway -- I'm sorry, ma'am. It just -- for me, I don't separate the doctor from the man. To me, he's one person. We

didn't have separate visits or separate this or separate that. It was just Doc was my friend, and that's what he was.
Q. And as your friend and your doctor, you would go by and see him?
A. Yes, I would.
Q. You wouldn't have to call ahead and make an appointment?
A. A lot of times I did do that, though, out of respect that he's a busy man and he's a doctor and he has patients, and I didn't want to come at a time when he had other things that he was doing.
Q. Right. And I didn't mean to imply that you would never make an appointment. But I take it that you're friends and you could drop by, if you wanted to, maybe --
A. If I ever had a problem or anything like that, I could call Doc.
Q. Did you ever see anybody at the clinic that you believed to be living there, somebody that you didn't know?
A. No, ma'am.
Q. And you were there at least once a week, if not more?
A. Yes, I was. I had to have a weekly checkup for blood pressure and heart rate and those types of things, and that was my weekly ritual that I had.
Q. I believe at some point Sue and/or Dan indicated to you that they were very sorry that you had been drug into this.
A. Yes, they did.

Q. And based on the emotion that you've displayed and what you've had to go through, would you agree that it's reasonable for someone -- it would be reasonable for them to expect you to be upset that you'd been drug into this?
A. Can you rephrase that one more time? I'm sorry. I'm kind of --
Q. Well, anybody who feels responsible for having brought their friend into a courtroom to testify like this --
A. Uh-huh.
Q. -- wouldn't it be reasonable for them to expect you to be upset about it?
A. For me to be upset that they involved me?
Q. Right. Or anyone in your position.
A. I don't know if I took it in that respect. I felt -- is it okay to tell how I felt, Your Honor?
THE COURT: Sure.
A. I felt betrayed. But I'm not a vindictive person, or a vengeful person in that respect. My grandmother always said, "Good things come to people who do good things," and I honestly didn't want to come to testify, period.
Q. Sure.
A. Didn't want to cooperate with the prosecution, didn't even want to talk to the defense. I wanted it to go away. I just wanted it to go away. But being compelled to come and tell what I know and try to be as honest as I can without being emotional,

for me, is a little difficult.
Q. And you said you felt betrayed, and Sue and Dan, they were trying to communicate with you that they were sorry --
A. And I understand that.
Q. Is that the way you took it? I'll withdraw that question. I think that you said you felt betrayed and they came and told you they were sorry and they didn't want you to be drug into this and they're sorry that it happened.
A. Can I explain myself a little bit?
Q. Sure.
A. I don't know if this is right or not, but, for me, I wouldn't drag my friends into this. For me, I wouldn't drag my wife into this, or my kids. For me, if I -- if I did something, I take the blame for it, for me. And I know this trial is not about me. But if you can understand that, then you can understand how I felt when they came to me. I just felt like why, why am I being dragged into this when I didn't do anything, when I believed in you?
Q. Sure. I'm not saying that your feelings were wrong at all. I just wanted to understand.
A. I understand. I'm just trying to be --
Q. Sure.
A. -- as honest with you as I can.
Q. And when you say that, you would take responsibility for what you did, but you would also say "I'm innocent" if you

didn't do it, wouldn't you?
A. I -- my dad had a phrase that I always respected when we were growing up. And he couldn't read past third grade, but he was a pretty good guy, as far as education, street smarts. And he would say, "Son, your word is your bond." He said, "If your word's no good, then you're no good." And I try to -- try. I pretty much live my life by that. If I give somebody my word, I try to do what I say I'm going to do, whether I like it or not, in respect to life, things that you go through. I try to teach the same thing to my kids.
Q. You mentioned that there was some discussion about an attorney, but that you didn't have an attorney because you never imagined that you would be here. Is that your statement?
A. I didn't -- I guess the way I interpret things is if you have to get a lawyer, then you've done something wrong. I think that's just me. At the time when they said that, I didn't feel like I had done anything wrong, so I didn't feel like I needed an attorney. I didn't think I needed a lawyer. I mean, I felt that my word would speak for itself. I didn't feel like I had to hide anything. And that's, again, for me. And so I just said, "No, I can't."
Q. But you understand that everybody has a right to an attorney --
A. Oh, I understand that.
Q. And an attorney can be beneficial -- let me go back. How

many times have you been interviewed by ATF or any law enforcement officers or prosecutors? Do you know?
A. Oh, gosh, you're asking me to give you a number, and I couldn't tell you exactly. But it's been more than two. Two or three times, yes.
Q. And you've testified before the grand jury?
A. Yes, ma'am.
Q. And an attorney could be helpful in guiding you through that process? You've made it.
A. I've made it on my own. And forgive me, I'm not downplaying the role and importance of attorneys in our --
Q. No.
A. -- in our society, because I think that everybody -- it's like the ecosystem, everybody has a purpose. But some of them are lawyers that I work with, that I train. I've trained many lawyers. So, please, I didn't mean to be disrespectful in that sense. But I understand that they can help. I just -- I just didn't feel like I needed one.
Q. Luckily, this trial isn't about me either, so don't worry about hurting my feelings. All I'm saying is that you may have that personal feeling, but surely you can step back and recognize that having a lawyer doesn't mean that you're guilty, it means that you might be prudent?
A. It's like -- yes.
Q. That's okay. Were you aware of the history that Dr. Mann

had with the local law enforcement in the Russellville area?
A. I'm going to say no.
Q. Okay.
MS. CASSINELLI COUCH: May I have just a moment, Your Honor?
THE COURT: Yes.
BY MS. CASSINELLI COUCH:
Q. Mr. Riley, you talked to ATF agents, I think you said, at least twice. Is that right?
A. Yeah. I've talked to ATF. They came to my home and spoke to me there, and that was basically the most in-depth conversation we had was that one time. And then there's been, I think, two times after that.
Q. Did you have phone calls with them as well?
A. I have spoke to them on the phone, but mainly it was for when I had to appear in court when the grand jury was, when the trial was postponed, those things.
Q. If you previously mentioned in testimony that you had contacted them with information here and there, back and forth, would that be accurate?
A. They asked me -- this was after the first interview that we had -- if I recalled things as I came through, to please contact them and let them know if I had recalled some of the things of direct questions they had asked me. And I had told them, I said, again, I didn't want to say anything that I wasn't

sure that I heard or that I knew was true, for me. And I didn't want to tell them just anything. So I told them, I said, "I will call you if I can think of" -- if I can think of how I said this or what was said. Because when they came to the home, it was -- and I'll be honest, I wasn't expecting it. It was surprising. It was overwhelming for me at first. I don't know if anybody would naturally feel that way. Never really having done anything wrong in your life, not being a bad thing, but law enforcement comes in, they were very nice, but it was the fact that they were just there and I wasn't expecting it.

Q. And you came down here -- and have you reread your grand jury testimony before you testified?

A. I -- have I sat down and read it? No.

Q. No? Okay. You've been here -- you've been here today. Is that right?

A. Yes.

Q. In the room with the witnesses, right outside the door?

A. Uh-huh.

Q. And over, I guess, gosh, a year and a half now. I know that you said earlier you just didn't want to be involved in this. But our investigators did contact you, did they not, and you declined to talk to them?

A. Yes, they did. And the reason, and to give you the reason, I didn't want to talk to anybody.

Q. Understood.

A. It wasn't personal for Dr. Mann or -- I didn't even want to talk to the agents. I just wanted -- honestly wanted it to go away, and I thought maybe it will never come to this.

Q. Thank you, Mr. Riley.

THE COURT: Mr. Dudley?

MR. DUDLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. DUDLEY:

Q. Mr. Riley, I want to get a few more details from you and see if I can get a sequence of events down. Let me talk first about the envelope that Sue brought to you.

A. Yes, sir.

Q. How long after Dr. Mann was arrested did that occur?

A. The next day.

Q. The next day?

A. (Witness nods head.)

Q. You're sure about that?

A. All right. Sir, the only thing that I can say that I'm absolutely sure about is she brought it to me.

Q. Okay.

A. I couldn't tell you what day. I know it was at night. And she brought it to me --

Q. That's all I asked you. Mr. Riley, I'll tell you what. You're getting comfortable on the stand and you're talking a lot, which is fine, if you want to do it. But I'll tell you,

I'll get through with you a lot quicker if you just answer my questions. Is that fair enough?
A. Yes, sir. Forgive me. I have a tendency of wanting to explain why.
Q. So you don't know when she brought it to you?
A. It was recent -- after that.
Q. Sometime shortly after -- after the arrest?
A. Shortly after.
Q. You said it was a manila envelope?
A. It was an envelope with rubber bands around it.
Q. It wasn't manila?
A. Yeah -- yes.
Q. I don't mean to interrupt you. How big was it? Let me just ask you --
A. The only way I could show you, it was probably about (indicating) that long and about that wide (indicating), and had rubber bands all over it.
Q. Kind of a standard size, was it this big, as big as my legal pad (indicating)?
A. I wouldn't say it was that big. Now you're asking me to remember something. It was a manila envelope with rubber bands around it. I could hold it in one hand.
Q. Smaller than my legal pad (indicating)?
A. I want to say it was a little smaller.
Q. Okay. How thick was it?

A. Do you want me to show you what I think how thick it was or tell you exact inches?
Q. You can show me and then --
A. I'd say probably about that thick (indicating).
Q. I'm saying three quarters of an inch, an inch, something like that?
A. (Witness nods head.)
Q. I mean, I'm looking at what you're doing. You don't need to look at what I'm doing. But from what you were holding up, I would say three quarters of an inch to an inch. Is that about right?
A. I would say an inch may be too big.
Q. Something smaller than an inch?
A. It was not something that was real bulky, no.
Q. Was the envelope sealed?
A. Yes.
Q. And was it sealed when you gave it back to her?
A. Yes. I never looked in it.
Q. You never looked in it and your wife never looked in it, nobody ever opened that envelope while you had it?
A. No, sir.
Q. Okay. So the only information you have about what was in the envelope was what Sue told you?
A. Yes.
Q. And Sue told you it was a bank statement and records?

A. That's what I remember that she said, bank statements and records. And checks.
Q. Now, she comes back after the weekend sometime and retrieves the envelope?
A. A day later.
Q. A day later, okay. She comes back a day later and retrieves the envelope. Now, is this when the conversation about hiring a lawyer occurred?
A. No, sir.
Q. That occurred later?
A. Yes, sir.
Q. All right. I may be wrong on my date, but do you remember when Dr. Mann was arrested?
A. No, I can't tell you.
Q. All right. When Sue came back and y'all had the conversation about hiring a lawyer, do you remember when that was?
A. It was on a Sunday, but I can't tell you the date.
Q. Can you tell me the month?
A. Oh, God.
Q. If you can't, that's fine. "I don't know" is a perfectly acceptable answer.
A. I can't tell you.
Q. Can you tell me whether it was after you were interviewed by the ATF?

A. Yes.
Q. And who from the ATF had interviewed you before this conversation?
A. Agent David Oliver.
Q. And was anybody else with him when he interviewed you?
A. Agent Warren.
Q. Okay. And the interview by the ATF, was it shortly before you had this conversation with Sue? When I say "shortly before," a day, two, three days before?
A. Okay. This is -- mister defense attorney, when -- Easter Sunday was when Sue and Dan came by. And my mind is still back on that.
Q. That's fine. Easter Sunday of 2009. Right? That's last year?
A. Yeah.
Q. Okay. So that's when you had this conversation with Sue. Now, can you date, can you place that in relation to when --
A. I want to say Thursday, that was about -- oh.
Q. I'm not trying to trick you. I just want your best estimate. Was it three, four days before this conversation?
A. The sequence of events is what happened. Sue brought me the envelope, dropped it off. She came back the next day and she picked it up. ATF interviewed me shortly after that time. They had asked me about the envelope. I told them yes, that I received an envelope from Sue Mann. Sue had already picked the

envelope up. After ATF interviewed me, Sue came to the house with her and Dan and then told me about they would actually -- they would hire me an attorney if I wanted one to represent me. That's the sequence. I wish I could tell you the dates, but all I know is they came on Easter Sunday because I remember we had had -- my wife and I had had some things to do, and I recall that was before we went out that -- that morning.

Q. This conversation about hiring an attorney occurred at your house?

A. Yes, sir, it did, in my driveway.

Q. In your driveway?

A. In my driveway at my house.

Q. Now, you told the jury, and I think you've shown the jury that you're a fairly emotional fellow?

A. I try not to be.

Q. You testified that when you had this conversation with Sue and Dan, that you got emotional. Correct?

A. Yes.

Q. Were you crying?

A. Yes.

Q. All right. You were upset. Correct?

A. Yes.

Q. Were you scared?

A. No.

Q. Let me ask you this. Had Agent Oliver told you that you

could go to jail for aiding and abetting Sue and Dr. Mann?
A. No. Agent Oliver, when he interviewed me, said, "Gerald, I'm going to ask you some questions. I know the answers to some of these questions and I'm not going to know the answer to some of these questions, but you're not going to know which ones they are." He said, "All I want you to do is tell me the truth and be honest with me, and don't speculate. Just tell me what you know and we'll be fine."
Q. All right.
A. At that point in time -- go ahead.
Q. I didn't mean to interrupt you.
A. No.
Q. Did you tell Sue and Dan in this conversation we're talking about that you were scared because Agent Oliver had told you you could go to jail for aiding and abetting?
A. No, I -- what I recall that I told Sue was, is that I was afraid that I would go to jail if I lied to them. And I didn't want to lie to them. I didn't want to lie to anybody. I didn't want to be involved. I just wanted it to go away. At that time, that's how I felt.
Q. Okay. Now, I want to make sure I got an answer to my question.
A. Yes, sir.
Q. You are saying you did not tell Sue and Dan in that conversation that you were scared because Agent Oliver had told

you you could go to prison as an aider and abettor?
A. They said if I lied to them, I could go to jail. That's what I told them. That if I lied to ATF, I could go to jail.
Q. Did Agent Oliver tell you that?
A. He said if I lied to them --
Q. You could go to jail?
A. -- I could go to jail.
Q. But he didn't say anything to you about being an aider and abettor?
A. No, sir.
Q. Did Agent Oliver scare you?
A. I'm going to be perfectly honest with you, mister defense attorney. David Oliver was, out of the two -- and I know Mr. Warren is here, and I hate to say this. David Oliver, out of the two, was very fair with me. He never treated me as a criminal. He asked me questions, he treated me fairly. Agent Warren was -- did not treat me well.
Q. Okay.
A. I did not like the man. And that's my perception at that time. That's how I felt at that time. David Oliver treated me fairly when he talked to me.
Q. Maybe I've been asking about the wrong agent. Did Agent Warren tell you you could go to prison as an aider and abettor?
A. Agent Warren, to tell you the truth, was an asshole, and he pissed me off.

Q. Did he scare you?
A. No, he didn't scare me. As a matter of fact, I kept thinking in my mind, Agent Warren, I may be old now and would only be able to last five minutes, but you're a three-minute job. I'm sorry, but that's how I felt. I know I'm being candid, but that's how I felt at the time, that athlete in me. Excuse me, Your Honor. I'm sorry.
Q. That's all right. Now, I asked you this question -- and one of the things I try to teach younger lawyers like Mr. Crabtree over there is listen to what the witness says, and I'm embarrassing myself because I forgot what you said. But I asked you if you cried while you were talking --
A. Yes, sir, I did. Sue and Dan --
Q. That's all right.
A. I loved Sue and Dan as much as I did, Doc. They were good to me. I had trained Dan at the gym, helped him. Dan was a good, respectful kid. He grew up with my nephews. I knew Dan well.
Q. Okay. So you were crying. You were emotional, you were crying during this conversation?
A. That's part of me.
Q. Now, when Sue was talking to you, was Sue expressing some concern for you?
A. Sue was very remorseful and sorry. Dan was also, when she talked to me. And I could see they were.

Q. Let me ask you something about what you said about getting dragged into this. You said, "I would never drag my wife or kids into this, or my friends into this." Do you remember saying that?
A. I wouldn't bring myself -- yes, I recall what I said.
Q. What was it that you got dragged into?
A. Honestly, what I think -- I think back, and as a gun enthusiast with Doc, I respected him as a person and his knowledge. His family was my friends -- they were my friends. I bought guns and talked guns with him because he was so knowledgeable about everything, and Sue was always so kind, their family was always kind to me. And when I thought back on having to give Mr. Harrell the can, why would they want me to give him something? Why was I even involved in this? I didn't understand. My mind doesn't go there on that.
Q. I'll tell you where I'm going.
A. Okay.
Q. Your question implied that you got dragged into this because either Dr. Mann or Sue Mann did something wrong. Right?
A. At the point in time, sir, I didn't think they did anything wrong.
Q. You didn't?
A. At that point in time.
Q. Okay. So when you had this conversation with Sue about hiring you an attorney, you didn't think Sue had done anything

wrong?
A. No. I didn't think I did anything wrong.
Q. Okay. Had the agents, Warren or Oliver, made you believe that Sue giving you an envelope to keep, there was something wrong with that?
A. They didn't make me feel that way. And when Sue gave me the envelope that night and I got up and I took it to my bedroom and put it in my closet, the thought at that point in time crossed my mind, should I be doing this? But then my heart overruled my brain, as far as friendship goes. I didn't think anything was wrong with it at the time. I didn't think anybody was doing anything wrong at the time, so that's why I held it for them.
Q. Now, back to my question. Did the agents make you believe that Sue had done something wrong by bringing you an envelope to keep?
A. No.
Q. They didn't imply that to you in any way?
A. No. They let me answer the way I felt I should answer, the way I wanted to answer.
Q. One of the things Sue told you, "We'd like to get you an attorney, and we'll pay for it, and you don't have to talk to the ATF." Is that basically what she said?
A. Yes.
Q. Okay. Had Agent Oliver told you that you had to talk to

the ATF?
A. No.
Q. Had Agent Warren told you that?
A. No.
Q. Okay. Do you know whether you had to talk to the ATF or not?
A. Do I know if I had to?
Q. Yeah.
A. Law enforcement came to my house, said they wanted to ask me a series of questions, may they ask me questions at this time, and "Would you, please, be honest with us and tell me what you know."
Q. That didn't answer my question.
A. I thought that would answer your question.
Q. Do you know, or do you know today whether a citizen has any legal obligation to talk to the ATF?
A. Sir, I don't know.
Q. Okay. Thank you.
A. Sorry.

THE COURT: Redirect?

MR. GORDON: No, Your Honor.

THE COURT: Okay. You can stand down.

Call your next. Or do we need to -- do you want to determine when we're going to break or stop this afternoon or can we just push on? Let's just push on. Call your next.

MR. GORDON: United States calls David Oliver.

THE COURT: He hasn't been sworn in, has he?

MR. GORDON: No, Your Honor.

DAVID OLIVER, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Please state your name for the record.

A. David Oliver.

Q. Who do you work for, Agent Oliver?

A. I'm a special agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives.

Q. How long have you worked there?

A. Approximately, I guess, 11 years now.

Q. How long -- or where are you currently assigned?

A. To the Little Rock field office.

Q. How long have you been here in Little Rock?

A. Since 2004.

Q. And where were you before Little Rock?

A. I was assigned to the Boston field office.

Q. How long were you in Boston?

A. About five years.

Q. Do you have any prior law enforcement experience?

A. Yes, sir, I do.

Q. Where did you work?
A. Prior to working for ATF, I started my law enforcement career at a state prison in Rhode Island. I worked there for about a year and a half. After that, I went to a police department in Middletown, Rhode Island, police department. I was there for about nine years. I left there as a detective. And I worked for NCIS for a short time prior to coming to ATF.
Q. I want to go all the way back to the beginning of this case. Did you respond to a bombing in West Memphis on February 4 of 2009?
A. Yes, sir, I did.
Q. Did just about the entire Little Rock field office respond?
A. Just about everyone, yes, sir.
Q. And what was your job in West Memphis?
A. Excuse me. I was assigned to the command post, so we went and established the command post, actually, and I was assigned to coordinate the witness interviews and to assist in whatever duties needed to take place in the command post.
Q. In that role, did you have any contact with the Arkansas State Medical Board?
A. Yes, sir, I did.
Q. Tell the jury about that.
A. I contacted the medical board and I asked them for a list of five doctors that had been recently disciplined by the board.
Q. Did the medical board respond?

A. Yes, sir, they did.
Q. Is that in an e-mail?
A. Yes, sir, it was.
Q. And did they provide you with five names?
A. Yes, sir, they did.
Q. What were the five names?
A. It was a Dr. James Dilday, Dr. Lonnie Harrison, a Dr. Robert Kale, a Dr. Randeep Mann, and a Dr. James Miller.
Q. Now, was that in any particular order or is that just alphabetical or what?
A. There was no order that I was aware of. That was -- I just asked for five names and they gave me five names.
Q. And when you received those five names, what did you all do with them?
A. We assigned an agent to interview the ones that hadn't been interviewed. I believe Dr. James Miller was already in the process of being interviewed, or had been interviewed prior to establishing the command post, and we assigned agents to go find and interview the other doctors.
Q. And they were to do that that day?
A. As soon as possible, yes, sir.
Q. And was an agent assigned to go interview Dr. Randeep Mann?
A. Yes, sir.
Q. Who is that ATF agent?
A. It was Special Agent Tony McCutcheon.

Q. About how long were you in West Memphis working on the case?
A. I think for the first two or three days that I would go in to the command post.
Q. And who was the lead ATF agent on the case?
A. Special Agent Glen Cook.
Q. Is he also from Little Rock?
A. Yes, sir.
Q. Is he assigned here anymore?
A. No. He's now a supervisor in El Paso, Texas.
Q. When you were in West Memphis, did you process the bomb scene or collect any evidence?
A. No, sir.
Q. About two weeks after the bombing, were agents assigned to investigate each of the five doctors that had been named by the medical board?
A. Yes, sir.
Q. Tell us how that happened.
A. We had a meeting at the office about a week or two afterwards with the supervisor, and the list of the five doctors came up, and the supervisor assigned each one of the doctors to a different agent to investigate.
Q. Whose idea was that?
A. That was mine.
Q. Where did you come up with that idea?

A. From a previous investigation.
Q. And so those five doctors were all assigned an agent to start looking at each of those doctors?
A. That's correct.
Q. And were all the agents in your office?
A. Was everyone there that day?
Q. No. I mean, the agents that were assigned to look at the doctors, the five doctors that were named, were all the agents assigned from your office?
A. Yes. Well, we have a Fort Smith satellite office that comes under us. But they're all Little Rock agents, that's correct.
Q. Were you assigned one of the doctors?
A. Yes, sir, I was.
Q. Who were you assigned?
A. I was assigned Dr. Mann.
Q. Was there any rhyme or reason to that?
A. No. The boss made the assignments, and I did what I was told.
Q. Okay. Let's jump ahead a couple of more weeks to March 4 of 2009. Did you receive a call about some grenades that were located in Pope County?
A. Yes, sir, I did.
Q. Who did you get the call from?
A. Special Agent Cook.

Q. Why did he call you?
A. Because he was aware that I had been assigned to Dr. Mann, and because the grenades were located in close proximity to Dr. Mann's house.
Q. And did you respond to the Pope County Sheriff's Office?
A. Yes, sir, I did.
Q. By yourself or with someone?
A. Initially by myself.
Q. Tell us what happened when you got to the sheriff's office.
A. When I got to the sheriff's office, they had the grenades at the office. They were in a green metal can. I looked at the grenades, saw that the markings on the grenades and recognized them as 40-millimeter high-explosive grenades. I think I first took the lot numbers down and queried those through our bomb data center, and then I also queried the NFA branch of the National Firearms Registration and Transfer Record to see if Dr. Mann had any grenades registered to him, if he had any 40-millimeter grenade launchers -- actually, I queried to see what he had registered to him is what I did.
Q. You mentioned querying the bomb data center. What's that?
A. It's a branch in ATF, at headquarters, that keeps track of explosive incidents in the United States. It's where if there was some munitions that were stolen, that they would have information on that. They also, you know, keep track of bombings and those types of things that occur in the United

States.
Q. And then you also queried the NFRTR?
A. That's correct.
Q. What was the purpose of doing that?
A. To see what Dr. Mann had registered to him.
Q. Okay. Is there anything that piqued your interest?
A. Yes.
Q. What was that?
A. I saw that he had two 40-millimeter grenade launchers registered to him that I knew were capable of firing that type of grenade.
Q. Was a search warrant drawn up?
A. Yes, sir.
Q. And who handled that?
A. Special Agent Stacie Rhoads from the Arkansas State Police.
Q. Did you participate in the execution of that state search warrant?
A. Yes, sir, I did.
Q. Tell us what you did when you got to Dr. Mann's residence?
A. I went in the house with Special Agent Rhoads and one of the other investigators. And Dr. Mann had driven to the residence. I think they met him at his office and asked him to come to his house, so he arrived at the residence as I was arriving. And I went in the house with Stacie Rhoads and I think it was Rowdy Sweet, Lieutenant Rowdy Sweet.

Q. What did you all do inside the house?
A. I was there when Stacie -- I heard Stacie Rhoads explaining to Dr. Mann that we had a search warrant for his house. And we initially talked to him, and I asked him if he had anything that was in the house that was like booby traps or anything that would hurt the agents.
Q. Why did you ask that?
A. For officer safety reasons. I mean, don't want to pick something up and get blown up. So he indicated he did not have any booby traps, but he had told people in the past that he had booby traps, and the reason he did that was to keep people from breaking in his house. I then asked him if he had any valuables or cash in the house. And I do that so it's harder for someone later on to say that we stole the money. So when I asked him that, he indicated that he had $50,000 in cash in the house.
Q. Did you ask him to show you where it was?
A. Yes, I later on asked him to show me where it was. We brought him down into the basement and asked him to open the gun safes, and he opened, used a combination, perhaps a key to open the four gun safes. And that's when I asked him, I said, "Okay. Now, where is the money?" He brought us into a bedroom on the lower level of the house, and he pointed out an area under the tub where there was a yellow bag of currency, and also some money that was in the nightstand.
Q. Okay. Let's take a look at Government's Exhibit 100-I. Is

that one of the locations Dr. Mann took you to?
A. Yes, sir. That's the bathroom area and the pipe trap, for lack of a better word, where you access your pipes underneath the bathtub.
Q. Let's look at 100-J, please.
A. Again, that's looking into the pipe trap, you can see the pipes and the apparatus that run the tub, and the yellow bag is what contained the currency.
Q. 100-K, please.
A. That's the currency on the floor, after it was taken out of the bag.
Q. Did Dr. Mann point out currency being located anywhere else in the house?
A. Yeah, he pointed out some currency that was in the nightstand in that same bedroom.
Q. Okay. And what was the total of the currency that he pointed out to you?
A. He told us it was $14,000.
Q. When he told you 14,000, did you ask anything of him?
A. I said -- yeah. I asked him, I said, "You told me there was 50,000. Where's the other 36,000?" And he told me that there wasn't any more currency or any money in the house.
Q. What did you do after that?
A. After that, I went out into the -- well, we asked him if he wanted to leave or if he wanted to stay. We gave him the option

of leaving or staying. He indicated that he wanted to leave, that he needed to get to the airport. And we asked him what car he was going to drive to go to the airport, and he pointed out, I think it was a gray Lexus. So before he left with that car, I searched that car.

Q. Why?

A. Well, because if he left with the car and there was evidence in it, he would have a chance to destroy it before we get to search the car.

Q. What did you find when you searched the car?

A. When we searched the car, I found in the front seat area, there was a map book open, and it was open to a Memphis map. So I photographed that. And I think there was an insurance policy or a disability policy and paperwork.

Q. And did you then allow Dr. Mann to leave?

A. Yes, sir, I did.

Q. Was Mrs. Mann there during this search warrant?

A. Excuse me? She was not there when we started the search warrant.

Q. Did she arrive at some time?

A. She arrived later on in the evening, yes, sir.

Q. Okay. While the search warrant was still being executed?

A. Yes, sir.

Q. When she arrived, was she by herself?

A. No, sir, she was not.

Q. Do you know who was with her?
A. She was with a man, I believe in his thirties, he was short, had dark hair. I believe he was probably Indian like the Manns were.
Q. And do you know where that man came from?
A. I assumed that he had come from the airport, and I kind of figured that out -- I believe I saw him again at a later date, and he had presents. So it appeared to me like he had traveled here and brought presents for someone, like, you know, as, you know, different customs have.
Q. During the execution of the search warrant, did you help search one of the storage rooms in the garage?
A. Yes, sir, I did.
Q. And while you searched that room, did you find anything?
A. Yes, sir, I did.
Q. What did you find?
A. I found a box that contained 45, the practice grenades, the same type of practice grenades that were found in the canister located down the street.
Q. Let's look at 100-GG, please. Does this picture show the area where the practice grenades were found?
A. Yes, sir. They were on the shelf on the wall that you're looking at, in one of the boxes on the bottom shelf.
Q. Let's look at 100-HH, please, and 100-II.
A. I'm sorry. Those two pictures are the box that I had

pulled out of the shelf, and inside it you can see the 45 practice 40-millimeter grenades.

Q. What did you do when you found those practice grenades?

A. At that point, I instructed one of the, or asked one of the deputies to go back to the sheriff's office and compare the lot numbers that were on those practice grenades with the lot number that was on the practice grenade that was recovered down the street.

Q. Did they match?

A. No, sir, they did not.

Q. Did you ask the deputy to check on something else while he was at the sheriff's office?

A. Yes, sir. I asked him for the lot number on the canister that was at the sheriff's office, and we compared it to the lot numbers of the canisters in the garage, and we found one of the canisters in the garage had the exact same lot number.

Q. Did you notice anything else about the lot numbers on the other ammo cans?

A. Yes, sir. There were -- counting the canister that was located down the street, there were six canisters total, and I saw that there were three sets of lot numbers. So two of the cans had one lot number, two more cans had another lot number, and the third set of cans had a third lot number.

Q. Did you also coordinate activities that were going on in the gun room in the basement?

A. Yes, sir, I did.
Q. Tell us about that.
A. I had printed -- I had a list of weapons that Dr. Mann had registered to him, I had that faxed to me at the sheriff's department, and I brought that with me to the house. So the agents and the officers that were in the basement, in the gun room, I provided them with the list, I told them to go through the guns to determine which ones were firearms that needed to be registered, and then to compare those guns that needed to be registered to the list of firearms that I had provided them.
Q. And how were they to determine whether or not the firearm needed to be registered?
A. You know, the firearms that need to be registered are silencers, short-barrel rifles, and machine guns, right off the bat, are the three obvious ones. There are other categories, but those are the three we're looking at there. So, obviously, the short-barrel rifles, you measure either the overall length of the weapon or the length of the barrel, and if it's too short, it needs to be registered. If -- you know, the other way, the other thing we do on machine guns, you field test them to see if they fire fully automatic.
Q. Tell the jury how you do that.
A. What you do is, you function the bolt with the -- first you make sure there's no bullets in it, because that's a bad thing, to play with a gun with bullets in it. You function the bolt

and you hold the trigger as pulling the bolt back and you can hear the firing pin clicking back and forth. And if you hear the firing pin -- you can hear that it's clicking -- it's hard to explain. It's easier to do. You pull the trigger, and when you function it, you pull the slide back, you'll hear the firing pin, and if it continues to click, you know that it's fully automatic, if that makes sense.

Q. Okay. And so the agents and the deputies were asked to do that.

A. That's correct.

Q. And based upon field testing and the length of the barrel, you try to figure out if it should be registered or not?

A. That's right.

Q. Did you then start making piles?

A. Yes.

Q. All right. What went in what pile?

A. The guns that were -- the guns that needed to be registered that were not on the list went into a pile.

Q. Okay. And what happened to those guns?

A. I went through and we made sure they weren't on the list and we -- those are the guns that I told them to seize.

Q. Those were the guns based upon -- those were the guns that were not shown to be registered to Dr. Mann?

A. That's correct.

Q. Based on the list you had at the house?

A. Yes, sir.
Q. And those guns were seized as contraband?
A. Yes, sir.
Q. Did you seize anything else out of the gun safes?
A. There were two 40-millimeter grenade launchers that were seized out of the gun safe.
Q. Those were actually named in the search warrant?
A. Yes, sir, they were.
Q. Of the guns that were seized out of the house, do you remember how many there were?
A. There were 17 or 18.
Q. Did you continue to look at those guns to see if they needed to be registered?
A. At a later date, yes, sir.
Q. All right. Tell us about that.
A. Back at the office, we then took the guns and ran the serial numbers in NFA, and I also examined the guns more closely there and got some more advice on some of the weapons. And I determined that two of them that we thought were in fact had -- we took because they were too short, those guns were manufactured as pistols, so, therefore, they were not considered a short-barrel rifle. There was one shotgun, it was a SPAS-12, we took that because we thought it had been classified as a destructive device in the same classification as the Interord USAS-12, and we learned that that was not a destructive device.

Q. Let's clarify that. Which one of those two firearms was not a destructive device?
A. The SPAS-12.
Q. What's one of the identifying features of the SPAS-12?
A. It's kind of a big, menacing-looking shotgun that has a curve on the back of the stock, as I remember.
Q. Okay. So that was not a destructive device?
A. No, sir.
Q. But you all didn't know that until after you had seized the weapon?
A. Right, because the markings on the weapon were similar, like the Interord USAS and the SPAS-12 I think were kind of -- we got those two markings mixed up, so we took them both, to be safe.
Q. So the SPAS-12 was not a destructive device, but the USAS-12 was a destructive device?
A. That's correct.
Q. What else did you find out about the guns that you seized?
A. I remember one of the guns that I seized was -- it came back registered to someone in Connecticut. And then there were other guns that we seized that the gun itself was not registered, but the trigger group was registered.
Q. Explain that to us.
A. Machine guns have to be registered if they're designed as a machine gun, but there are certain parts that you can use to

make a semiautomatic gun into a machine gun, and in those cases, the parts that are used to convert the gun into a machine gun have to be registered.

Q. So in examining those firearms, you found that the part was registered?

A. That's correct.

Q. Okay. And then same thing with Auto Sears?

A. I consider an Auto Sear a part that makes a gun fully automatic.

Q. Tell us with an Auto Sear is.

A. It's a part that makes a machine gun fully automatic, that makes it function from being a semiautomatic gun, that is, you have to pull the trigger every time, to a gun where, when you pull the trigger once, it will shoot all the ammunition that's in the gun.

Q. Okay. So some of the guns that were not on the list from NFA had an Auto Sear inside them that was registered?

A. An Auto Sear or trigger group, that's correct.

Q. But that wasn't something you could determine there at Dr. Mann's house?

A. That's correct.

Q. All right. So through the process of all that, how many of the guns were determined to not be registered to Dr. Mann?

A. Three.

Q. How many of those were indicted?

A. We indicted two.
Q. Which was not indicted?
A. It was an AK-74. It was a 223-caliber machine gun, and that was registered to someone in Connecticut.
Q. During the execution of the search warrant, did you see a tire in the shower?
A. Yes, sir, I did.
Q. Was that tire seized?
A. At a later date it was, yes, sir.
Q. Why wasn't it seized there during the state search warrant?
A. Because it wasn't in the scope of the search warrant.
Q. Did Dr. Mann return during the execution of the search warrant?
A. Yes, sir, he did.
Q. What happened at that time?
A. I took one of the uniform deputies with me and I went down and I informed him that I had a problem and cause to believe he was in possession of some unregistered grenades, and I told him he was under arrest.
Q. Which unregistered grenades were you talking about?
A. The unregistered grenades in the field.
Q. Found buried off Galaxy Lane?
A. That's correct, the 98 unregistered grenades that were found in the ammo can on Galaxy Lane.
Q. And did Dr. Mann respond to that?

A. Yes, sir, he did.
Q. What did he say?
A. He asked me if I found any grenades at his house.
Q. And had you?
A. No, sir, I hadn't.
Q. What did you tell him?
A. I told him that I hadn't found any grenades at his house.
Q. What was his response to that?
A. He got very agitated and he accused me of planting the grenades at his house.
Q. And I just want to make sure we're -- you're not misspeaking. He asked if there were grenades in the house, you told him no, and then he accused you of planting grenades in the house?
A. That's correct.
Q. Did the Pope County Sheriff's Office collect evidence from the search warrant?
A. Yes, sir, they did.
Q. Did they transport it to ATF here in Little Rock the following day?
A. Yes, sir, they did.
Q. Did that evidence include the grenades and the ammo can found on Galaxy Lane?
A. Yes, sir.
Q. Were the grenades processed for fingerprints and DNA?

A. Yes, sir, they were.
Q. Who did that?
A. Mickey Holloway from the Little Rock Police Department Crime Scene Unit.
Q. Who from ATF assisted?
A. Warren Newman.
Q. Did anybody else help out?
A. I believe Bill Buford from the State Police was there as well.
Q. Where were the grenades stored after they had been processed?
A. At the ATF explosives bunker on Camp Robinson.
Q. Was there any black plastic found during the search warrant on Dr. Mann's house?
A. Yes, sir.
Q. Was it seized?
A. Yes, sir, it was.
Q. Was that black plastic and the black plastic found around the buried canister submitted to the ATF lab?
A. Yes, sir, it was.
Q. For what purpose?
A. To test -- it was tested to see if it had similar characteristics, if one -- one group of plastic had similar characteristics to the other.
Q. Did any of it match?

A. From that search warrant, no, sir.
Q. Okay. Was there duct tape found outside the home of Dr. Mann?
A. Yes, sir, there was.
Q. Was that collected and also submitted to the lab?
A. Yes, sir.
Q. For what purpose?
A. It was compared to the duct tape that was located on Galaxy Lane around the ammo can where the grenades were, and I believe it was also compared to the duct tape that was used in the bombing of Dr. Pierce.
Q. Did any of that match?
A. No, sir, it didn't match.
Q. All right. When I asked you about the plastic that was found during the state search warrant being compared to the black plastic around the canister that was buried and the comparison results, you said nothing matched from that search warrant.
A. That's correct.
Q. All right. Let's go ahead and let's not leave that hanging, let's jump ahead. Was there black plastic seized from Dr. Mann's house later on down the road?
A. Yes.
Q. Was that in August of 2009?
A. Yes, sir.

Q. And that black plastic, where did it come from?
A. It came from underneath the flower beds, or, I'm sorry, in the flower beds underneath the rocks in front of the residence.
Q. And was that black plastic also submitted for comparison?
A. Yes, sir, it was.
Q. And let's break this down. Did the black plastic from the rock beds match any of the black plastic around the ammo can that was buried?
A. No, sir.
Q. Did it match any of the black plastic that was found in Dr. Mann's house?
A. In the garage, yes, sir.
Q. Okay. Do you remember which black plastic it matched?
A. It was one of the rolls that was in the garage.
Q. Was it a roll that was contained in a bag that had red and white and black lettering on it?
A. Yes, sir, that's correct.
Q. All right. You testified that Dr. Mann was arrested after the state search warrant on March 4 of 2009?
A. Yes, sir.
Q. Was that at nighttime?
A. Yes, sir, it was.
Q. What day of the week was it?
A. I believe that was a Wednesday.
Q. And was any paperwork filed against Dr. Mann in federal

court the next day?
A. Yes, sir.
Q. What kind of paperwork?
A. A criminal complaint.
Q. Tell the jury what a criminal complaint is, please.
A. A criminal complaint is a legal process by which you charge someone. There are three ways in which you charge someone in federal court: You can do a criminal complaint, you can do an information, or you can do an indictment. And a criminal complaint is one of those processes.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government's Exhibit 135-A. Do you recognize that?
A. Yes, sir, I do.
Q. Is that a certified copy of the criminal complaint you were just talking about?
A. Yes, sir, it is.
Q. Thank you.
MR. GORDON: Your Honor, at this time I offer Government's Exhibit 135-A.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government Exhibit 135-A received in evidence.)

MR. GORDON: Just so the record is clear and there's no confusion, this exhibit, it's a single sheet, it does mention an attached affidavit that has not been put into evidence.

THE COURT: Okay.

BY MR. GORDON:

Q. Agent Oliver, in this criminal complaint, what was -- who is the defendant?

A. Randeep Mann.

Q. And what was he charged with?

A. He was charged with violation of Title 26, United States Code, Section 5861(d), which is he did possess one or more firearms, as defined in Title 26, United States Code, Section 5845, which were not registered to him in the National Firearms Registration and Transfer Record.

Q. The definition of firearms would include grenades?

A. Yes, sir.

Q. Dr. Mann was not charged with the West Memphis bombing in this, was he?

A. With this complaint?

Q. Correct.

A. That's correct.

Q. Was that still under investigation?

A. Yes, sir, it was.

Q. Did Dr. Mann appear in federal court on this criminal complaint?

A. Yes, sir, he did.
Q. And on what date?
A. On the same day the complaint was signed, March 5, he had his initial appearance.
Q. What's an initial appearance?
A. That's where the defendant appears before the magistrate judge and the charges are read against him and the magistrate judge takes up the issue of bond.
Q. And who is the judge in that proceeding?
A. The Honorable Judge H. David Young.
Q. You said that was March 5 of 2009?
A. Yes, sir.
Q. Would that have been a Thursday?
A. That's correct.
Q. And was Mrs. Mann present at that hearing?
A. Yes, sir, she was.
Q. At the end of the hearing -- at the end of that hearing, the initial appearance, was a detention hearing scheduled for Dr. Mann?
A. Yes, sir.
Q. Please tell the jury what a detention hearing is.
A. A detention hearing is when the magistrate judge decides detention, that is, the magistrate judge decides if someone is going to stay in jail while they await trial or if they're going to be released on bond or some other types of conditions.

Q. In state court it would be called a bond hearing?
A. Yes, sir.
Q. But in federal court we call it a detention hearing?
A. That's correct.
Q. When was the detention hearing scheduled for?
A. For the following Monday.
Q. Would that have been March 9 of 2009?
A. That's correct.
Q. And who was the hearing to be held in front of?
A. The same Judge Young.
Q. And was Mrs. Mann present when the detention hearing was scheduled and announced?
A. Yes, sir, she was.
Q. After the state search warrant, did you return to the Mann residence later with another search warrant?
A. Yes, sir, I did.
Q. We're not talking about the August 1. Was there one before that?
A. Yes, sir. We executed a federal search warrant at the house on March 5, the same day that Dr. Mann had his initial appearance in federal court. It was later in the evening.
Q. That's the day after the state search warrant?
A. That's correct.
Q. So March 5 was a busy day?
A. Very.

Q. And that was a federal search warrant?
A. Yes, sir.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. I'm going to show you what has been marked as Government's Exhibit 135-B. Do you recognize that?
A. Yes, sir, I do.
Q. Is that a copy of the federal search warrant executed on Dr. Mann's residence on March 5 of 2009?
A. Yes, sir, it is.
MR. GORDON: Your Honor, I offer Government's Exhibit 135-B.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government Exhibit 135-B received in evidence.)
MR. GORDON: Thank you.
BY MR. GORDON:
Q. Was that federal search warrant authorized by a United States magistrate judge?
A. Yes, sir.
Q. Do you recall who the judge was?
A. It was also Judge Young.
Q. What was the purpose of coming back that day to the Mann residence?

A. We were searching for evidence of the West Memphis bombing.
Q. How did agents get into the house?
A. We -- I believe Special Agent Rhoads from the State Police contacted Mrs. Mann and asked her to come back to the house. She met us at the house sometime around 8:30 or 8:40 in the evening, and she let us in the house.
Q. Okay. And when you say "she," who is she?
A. Sue Mann.
Q. And did you talk to Mrs. Mann and explain why you were coming back to the house?
A. Yes, sir, I did.
Q. What did you tell her?
A. I told her that I had obtained a federal search warrant, that it was a different warrant than we had executed the night before, and that we were coming back to get the tire out of the shower.
Q. Did Mrs. Mann have a response when you told her that?
A. Yes, sir, she did.
Q. What was her response?
A. She said that the tire was in the shower because her husband was cleaning rust off of it.
Q. During the execution of the search warrant, did you go and get the tire?
A. Yes, sir, I did.
Q. Was it still in the same shower?

A. Yes, sir, it was.
Q. Did you observe any rust on it?
A. I did not.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q. Let me show you what's been marked as Government's Exhibit 136. Do you recognize that?
A. Yes, sir, I do.
Q. Is that the tire that was seized from the shower?
A. Can you hold it up a little higher? Yes, sir, it is.
MR. GORDON: Your Honor, I'd offer Government's Exhibit 136.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government Exhibit 136 received in evidence.)
BY MR. GORDON:
Q. Agent Oliver, why did you want to go back and get this tire?
A. Well, it was very suspicious to me that there was a tire in the shower, and also during the conversations that we had about when we were theorizing how the bomber placed the bomb in West Memphis, we all came to the conclusion that this person just didn't put it there without practicing because he might have blown himself up.

MS. CASSINELLI COUCH: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: I'm just going to object. I think we're getting into speculation. I haven't heard any evidence other than Mr. Oliver's remarks, that are also contained in some statement that we have somewhere, that that was his speculation. But there's no other evidence that indicates that. So I would say that that's way too speculative for him to be able to state, particularly since the tire's not the same and there's no other things that tie to it.

MR. GORDON: I think he's allowed to offer his opinion about why law enforcement thought the tire was relevant and why they seized it.

MR. DUDLEY: Judge, then he could just say, "I think he's guilty, so I can go get the tire." That's not the law.

MR. GORDON: I think there's kind of a difference.

THE COURT: I think that's essentially what he said. Okay. The testimony that why did you get the tire, he has to be allowed to explain that there was a tire used, a doughnut used in West Memphis, there's a doughnut in the shower, it's being washed. Then he goes the next step and says, "During the conversation that we had about when we were theorizing how the bomber placed the bomb in West Memphis, we all came to the conclusion that the person just didn't put it there without

practicing because he might have blown himself up." What he's saying is that apparently this tire was part of the practicing before the West Memphis bombing, and I don't think he can get there. I agree with the defense. Saying they were practicing the explosions or planting the bomb because if you didn't practice you would blow yourself up, so this tire was part of the practice, I don't think -- I think that's objectionable. I think -- that might have been what they were talking about, but I don't know that that's evidence in the case. I mean, there's been no evidence of anybody practicing. So, therefore, this was a tire that could have been used for practice, that was just their theory of you couldn't have just set off that bomb. You understand what I'm saying? I'm not going to strike it from the record, but I'm going to sustain the objection. He can tell whether there was a tire used in West Memphis, there's a tire in the shower, whether it would be relevant to the case, we thought it was odd. But to go the next step of saying that we were thinking they were probably practicing and, therefore, this tire proves that they were practicing, I don't think there's any evidence of that. That's just what they thought.

MR. GORDON: Okay. I'm afraid if I go back to it, this hole may just get deeper, so my intent would be just to move on.

MS. CASSINELLI COUCH: We would really like for you to instruct the jury to disregard the last statement, particularly

because he kept speaking after I objected and got it out.

THE COURT: What would I ask them to disregard?

MS. CASSINELLI COUCH: To disregard the last statement of the agent.

THE COURT: Then they're going to start thinking about what was his last statement. And if I tell them to disregard the statement that they thought they were practicing, then that's just going to remind them of the statement too.

MR. DUDLEY: You don't want that. You're just drawing attention to it.

THE COURT: You might draw attention to it.

MR. GORDON: If they're asking for it to be struck, I'll join them in that. I don't want this to linger and be an appellate issue.

MR. HENDRIX: I think you should move on.

THE COURT: You may want to confer to discuss whether you want to strike it. I think striking it would draw attention to the fact that that's what he said. I'll announce the objection is sustained and we'll move on.

(Whereupon, proceedings continued in open court as follows:)

THE COURT: All right. Mr. Gordon, I think we have some jurors who asked for a restroom break. Ladies and gentlemen of the jury, I came back before we got started today because I thought we would end a little early today. As you can

tell, I was inaccurate again. By the time this case is over, you're going to say, "That judge didn't know anything. He's always wrong. We're going to start at this time and we don't, we're going to end at this time and we don't." I still ask that you listen to me even if you have doubts about what I say.

Let's take about ten minutes and give you a chance to go back and freshen up a little bit. We'll come back here at 4:40. We'll be in recess until 4:40.

(Recess from 4:27 p.m. until 4:44 p.m.; jury not present.)

THE COURT: What's the objection?

MS. CASSINELLI COUCH: I think Mr. Gordon's going to go back into some of the money that was found, and we already addressed that, but we renew our objection to the relevance of the cash.

THE COURT: Okay. It's overruled. Now, how much more time are we going to spend on the money? As much as you need?

MR. GORDON: A little more.

THE WITNESS: I'll talk fast.

MS. CASSINELLI COUCH: I think he should limit it to five questions.

THE COURT: No. As I understand it, you're going to ask a few questions, we're not going to have cross today, and he's going to be recalled on another day, the witness?

MR. GORDON: Are you all reserving your cross?

MS. CASSINELLI COUCH: I think we're thinking about

it.

THE COURT: Until you call him, and that can be a strategic decision not to bring him back and then you miss the chance to cross him.

MR. DUDLEY: We'd like to ask that he be subject to recall and not be released.

THE COURT: Okay. Are we ready to bring the jury back in? Let's bring the jury back in.

(Whereupon, the jury entered the courtroom and proceedings continued in open court as follows:)

THE COURT: Mr. Gordon, you can continue.

MR. GORDON: Thank you, Your Honor.

BY MR. GORDON:

Q. Agent Oliver, during the federal search warrant on March 5, what was your role?

A. I coordinated the collection of evidence.

Q. What does that mean?

A. People would find some of the items that we were searching for, they'd call me over and I'd collect it.

Q. Was any white string or cord found and seized?

A. Yes, sir.

Q. Why did you all take the white string or cord?

A. We were told by the laboratory that there was white string that was recovered at the scene of the bombing.

Q. Okay. And did you know what kind of white string?

A. No, sir.
Q. Did they send you any pictures?
A. Nothing.
Q. So you just took whatever might qualify?
A. That's correct.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes, you may.
BY MR. GORDON:
Q. I'll show you what's been marked as Government's Exhibit 137. Do you recognize that?
A. Yes, sir, I do.
Q. Is that some of the white string or cord that you seized that evening?
A. Yes, sir.
MR. GORDON: Your Honor, offer Government's Exhibit 137.
MR. HENDRIX: No objection, Judge.
THE COURT: It's received.
(Government Exhibit 137 received in evidence.)
BY MR. GORDON:
Q. Agent Oliver, tell us what Government's Exhibit 137 is.
A. It's two rolls of white string that's marked with -- I think it has U-Haul markings on it.
Q. Is that string or rope?
A. It's kind of a judgment call. I mean, it's -- it could be

some thick string or some thin rope. It does say "rope" on the label, though. But, I mean, I've seen -- I'd call that string.

Q. And you all didn't know what you were looking for?

A. No, sir.

Q. And tell us where that string or rope in 137 was found, please.

A. It was found in one of the storage garages. I'm sorry. The storage rooms off the garage.

MR. GORDON: May I approach again, Your Honor?

THE COURT: Yes, you may.

BY MR. GORDON:

Q. I'll show you what's been marked as Government's Exhibit 138. Do you recognize that?

A. Yes, sir, I do.

Q. Is that also some white string or cord that was seized that evening?

A. Yes, sir, it is.

MR. GORDON: Your Honor, I'd offer Government's Exhibit 138.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government Exhibit 138 received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, looking at Government's Exhibit 138, can you tell us where that was found?

A. Yes, sir. It was taken off a jet ski that was in the vicinity of the garage.

MR. GORDON: May I approach, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. I'll show you what's been marked as Government's Exhibit 139. Do you recognize that?

A. Yes, sir, I do.

Q. Is that also some white string or cord that was seized from the house?

A. Yes, sir.

MR. GORDON: Offer 139, Your Honor.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government Exhibit 139 received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, will you, please, tell us where that was found.

A. It was located in one of the dressers, clothes dressers in the north bedroom of the house.

Q. By Agent Littleton?

A. That's correct.

Q. Did you send these three string, cord, or rope samples to the lab for testing?

A. It was sent to the laboratory.

Q. For comparison to what was found at the West Memphis bombing?
A. That's correct.
Q. Did any of it match?
A. None of it matched.
Q. During the federal search warrant, did you come across any money?
A. Yes, sir.
Q. Where was it found?
A. It was found in the trunk of one of the Shelby Cobras in the garage.
Q. Let's look at Government's Exhibit 100-O, please. One of those cars?
A. Yes, sir.
Q. I think we all have it. One of those cars?
A. Yes, sir.
Q. Which one?
A. The blue one on the left.
Q. Let's look at 100-P, please. That little blue one?
A. Yes, sir.
Q. And where was the money found?
A. In the trunk of the car.
Q. How much money was there?
A. $48,000.
Q. Was it photographed?

A. Yes, sir, it was.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. I'll show you what's been marked as Government Exhibits 135-C, -D, and -E.

A. I recognize them.

Q. Are those the photographs of the money that you just testified about?

A. Yes, sir.

MR. GORDON: Your Honor, I'd offer Government Exhibits 135-C, -D, and -E.

THE COURT: 135-C, -D, and -E?

MR. GORDON: Yes, Your Honor.

MS. CASSINELLI COUCH: Subject to our prior objection.

THE COURT: Okay. It's received over the objection of the defendant.

(Government Exhibits 135-C, 135-D, and 135-E received in evidence.)

BY MR. GORDON:

Q. Let's look at 135-C. What are we looking at here, Agent Oliver?

A. That's the trunk of the Shelby Cobra, and the black bag inside the trunk, located inside that bag is where we found the money.

Q. And then can you see the paint of the blue car, in the right corner there?
A. Yes, I can.
Q. 135-D, what is that, please?
A. That's the bag, the black bag opened up and the money inside the bag.
Q. 135-E.
A. That's the money, the $48,000 that was taken out of the bag and photographed.
Q. Was that money seized?
A. No, sir, it wasn't.
Q. Why not?
A. Because you wouldn't let me.
Q. Who found the money?
A. I believe it was Special Agent Ryan McCormick.
Q. Is he with ATF?
A. Yes, he is.
Q. In the Fort Smith field office?
A. That's correct.
Q. What time did the execution of the federal search warrant begin?
A. I believe it was about 8:40 p.m.
Q. What time did it end?
A. Somewhere around 11:30 p.m.
Q. Was a detention hearing held in Dr. Mann's case on Monday

and Tuesday, March 9th and 10th of 2009?

A. Yes, sir.

Q. Was Mrs. Mann present?

A. Yes, sir, she was.

Q. Did she testify during that detention hearing?

A. Yes, sir, she did.

Q. Thank you.

MR. GORDON: Pass the witness.

THE COURT: Okay. Ladies and gentlemen, we're going to end now. I believe this witness is going to be recalled and it will be at that time we will have cross-examination, if the defendants choose to. I didn't get you out of here 4 or 4:30, but I'm getting you out of here at 4:55. Remember the admonitions I've given you all along, continue doing what you're doing, and we'll see you back tomorrow at 9:30. We'll be in recess until 9:30 tomorrow. Did we have anything to bring up? Okay.

(Whereupon, the hearing concluded at 4:55 p.m.)

C E R T I F I C A T E

I, Eugenie M. Power, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Eugenie M. Power, RMR, CRR, CCR Date: March 11, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and
SANGEETA MANN, a/k/a SUE MANN (2),

July 22, 2010
Little Rock, Arkansas
9:32 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 9
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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MS. KAREN D. WHATLEY, Assistant U. S. Attorney
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On Behalf of Defendant Randeep Mann (1):

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[Continued]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

Elaine Hinson, RMR, CRR, CCR
United States Court Reporter

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(Proceedings continuing at 9:32 a.m.; jury not present.)

THE COURT: I understand we have a couple of things we need to take up before we bring the jury in.

MS. WHATLEY: Your Honor, I was actually just meeting with defense counsel, maybe trying to work through some of those. I think I misspoke this morning when I told Mr. Williams we have nine witnesses we plan to put on today, and we have ten. Nine of them are mine. And we think we can work through the day fairly quickly, especially if we get some evidentiary things worked out early on.

The first evidentiary issue that I think we have deals with telephone calls. The first calls that would come in this morning are phone calls between the defendants that were made while Defendant Randeep Mann was housed at the Pulaski County Detention Facility. We are only wanting to put in portions, relevant portions of those telephone calls. And the defense had notified me earlier this week that they anticipated objecting to that. So if we just want to kind of work through the issues one at a time, I think that's the first issue.

THE COURT: What's the position of the defense?

MR. HENDRIX: Judge, they are taking snippets from phone conversations. I think at maximum an entire call from the jail is about 15 minutes. We would argue that the entire statement should come in so it's put in context. I think that the rule would be Rule 106, the remainder of or related writings

or recorded statements. It's the rule of completeness is what it is.

THE COURT: You know, normally, if we were in a civil case, we would have both parties designate portions of a transcript or of a tape because everybody would have sat down and listened to it. We would have this all together and just put in the relevant parts. What I would not want to do is if we have a 15-minute phone call and ten minutes of it is about, you know, I have white socks, you know, and the private school costs $2,000 and, you know, whatever that has absolutely nothing at all to do with the case. I wouldn't want to sit through ten minutes of that.

Now, the question is, has the defense had a chance to listen to the tapes and make a determination as to whether there are some relevant portions that put the conversations in context? What I also wouldn't want to do is, if there's a conversation where Dr. Mann or Ms. Mann say something that might seem very incriminating, but if you listen to three extra seconds or one extra minute it's put in context and shows they were just talking about what they read in the news or something like that. So I would rather -- and I guess you haven't had a chance to sit down together and designate portions of it that we would use. But that's what I would rather have happen.

MS. WHATLEY: Your Honor, what we did two or three weeks ago, I think before the start of trial -- Mr. Dudley can

help correct that. All this has run together to me at this point, so I'm not real sure -- was we sent them the portions of the telephone calls that we intended to use as well as something that would link them to what call it came from.

The United States' response to the defendants' objection is that under the rule of completeness, it is true that the defendant has the right to request introduction of all. But at the same time, the defendant has the burden of showing that the other portions are relevant to the issue at trial and either qualifies or explains the portion that we're trying to admit. I think that perhaps if there are additional relevant portions that the defense believes should be introduced that that could be done in their case-in-chief if it got to that point.

THE COURT: That raises two issues. One, I think weren't those DVDs or CDs that we received into evidence, the conversations?

MS. WHATLEY: No, Your Honor.

THE COURT: Or the relevant portions?

MS. WHATLEY: They were just identified yesterday. We have not introduced them yet. And we only intend to introduce the portions. We do not intend to introduce the entire tape and the entire phone call, because a lot of those telephone calls, Your Honor, are 12 to 15 minutes long. And they are not talking about anything other than selling property and getting some things together and trying to get letters together for the

detention hearing. So we would be here a long time if we listened to all the tape.

MR. HENDRIX: Exactly. I mean, there are probably hundreds of phone calls, wouldn't you think?

MS. WHATLEY: Probably.

MR. HENDRIX: Yeah. Obviously, we don't want to play 100 15-minute calls. But I do think -- we'll probably be able to work this out somehow. But I think my greatest concern is is if the jury just hears snippets and is left with the impression these are all the phone calls and this is the only stuff they talked about.

So to put it in a broader context, I think it is important for the jury to know there are hundreds of calls. If you want to listen to them, you guys go back there and listen to them in jury deliberations, but to put it in the greater context of this is not just what they talked about. They do talk about the insignificant stuff of life too about what color socks you are wearing, just so that jury is not left with the impression that these were all the phone calls that were made, these were all --

THE COURT: Who is the witness that these phone calls are coming in through?

MS. WHATLEY: Mr. Norris. And we do anticipate to say that these are not all the phone calls that were ever made, you know, some of these phone calls are portions of calls.

THE COURT: I'll overrule the objection and allow the

government to put in the portions that they believe are relevant. I will allow the questions about -- of course I'll allow it. I mean, that's part of cross -- about how many minutes, hours, or whatever of phone calls, and this is comprising what percentage of all of that. And then, in the defense's case-in-chief, if you want to play them all and put them in context, you can choose to do that.

MR. HENDRIX: We wouldn't, again, want to bog the process down. But I'm thinking in the next week or four weeks we'll be able to work something out on that.

THE COURT: Okay.

MS. WHATLEY: So that will go for the morning phone calls with Pulaski County, then the afternoon phone calls with Dallas County. And I think that most of the Dallas County calls we intend to put in this afternoon are the full calls, but they are relatively short. I know that Mr. Hendrix said they're going to object to the introduction of the transcript. We do not intend to introduce the transcript for it to go back to the jury. We'll have -- Agent Norris has reviewed the transcripts in conjunction with the tapes, and we will -- we had them synced on the computer so that when the tape is playing the transcript goes along with it. But we do not -- and we understand that we can't send the transcript back to the jury during deliberations.

I believe Mr. Dudley had an issue with one of the transcripts possibly. And I fully understand he can

cross-examine Mr. Norris, that it could have said something different than what appeared on the transcript.

THE COURT: Okay. Now, I thought there was another issue with regard to a bag and stuff found in a bag. Are we still arguing about that?

MR. HENDRIX: Oh, I think we've worked that out. Isn't that right, Karen?

MS. WHATLEY: I think so. I think we've worked that out. And then the only other issue is the documents that were seized from the clinic.

MR. HENDRIX: Right. Part of the government's exhibit list today, they are going to go through the search of the medical clinic. And part of the things that were found were medical board related stuff. For instance, I think they found the transcripts that Dr. Mann had of the 2003 and 2006 hearings. Is that right?

MS. WHATLEY: 2006 hearing.

MR. HENDRIX: Just the 2006. Well, we can describe them here. There are apparently newspaper clippings related to the medical board case.

MS. WHATLEY: Letters which I think have already been introduced, some newsletters, and then a newspaper article -- actually an Internet article regarding the bombing of Dr. Pierce. Our intention is to introduce these just to show that he was collecting things regarding the medical board and his

appearances before the medical board. And it goes toward motive, Your Honor.

MR. HENDRIX: The other stuff, the concern, Judge, is when you get into the newspaper articles -- the newspaper article, again, our concern obviously always about that is it contains assertions from a newspaper reporter's perspective. If you are getting that in front of the jury, there's the risk they are going to believe whatever this may say, which may be contrary to the facts that are introduced in the case.

The rest of this stuff, this part looks like stuff that's already come in. These are letters that would have been in the state medical board file, so it would be cumulative. And the newsletters, I'm not sure what the purpose is.

MS. WHATLEY: Just to show that he is keeping things related to the medical board in his office. And it was actually up in the reception area as opposed to in his office. We believe that they are relevant to show that he is maintaining these items and he's kept these items, some of which for a number of years. We're not offering the newspaper articles for the truth of the matter asserted.

MR. HENDRIX: I mean, my first reaction, it's sort of unremarkable that the guy is going to keep stuff about himself.

THE COURT: Here's the thing. A lot of people keep articles with their names in it. I would say the ones that were written before the bombing in West Memphis could go towards

motive. Anything written after the bombing would not go towards motive. If there are articles or something about the bombing itself, the event has already taken place, so it can't go towards motive. If it's about his interaction with the medical board and thus showing that he's -- I guess in some way you could try to show he is seething and looking at this and getting angry about it and whatever, then that would be admissible.

MR. HENDRIX: The newsletters, do they have information about Dr. Mann?

MS. WHATLEY: These are just newsletters from 2007. And I'm just showing all three newsletters that were from 2007 in the order that they are received, because 155-H becomes extremely relevant later.

MR. HENDRIX: I mean, I have to say, I don't see that I've got any large heartburn about that.

MS. WHATLEY: So what about 155-J?

MR. HENDRIX: I don't want to bog the process down. I can do this very quickly. Do you mind if I just look through them?

THE COURT: That's fine.

MS. WHATLEY: While he's doing that, I need to ask Mr. Dudley about one issue that he may have, and I think we're done.

Okay, Your Honor. I've met with Mr. Dudley. The only other issue we had is that this afternoon the transcript from Mrs. Mann's appearances or appearance -- two transcripts from

her appearance before the grand jury. There are times in there that she takes the Fifth Amendment and takes the marital privilege. And I'm going to redact that out at lunch and make sure Mr. Dudley agrees that I've redacted the proper portions. And those are the only things I thought of at 11 o'clock last night that would possibly be --

THE COURT: That's fine.

MR. HENDRIX: My most specific objection would be to the newspaper article, Judge.

THE COURT: What date is that? Is that before or after?

MR. HENDRIX: This is 8/18/07.

MS. WHATLEY: This is '07. All of these are before the bombing, Your Honor.

THE COURT: I note your objection, and I'll overrule it.

MS. WHATLEY: Your Honor --

THE COURT: I thought there was one that occurred after that was of the bombing itself.

MS. WHATLEY: It's 155-J, which is what Mr. Hendrix is looking at.

MR. HENDRIX: May I have just a second?

THE COURT: Yes.

MS. WHATLEY: Your Honor, I'll go check and see how many witnesses we have available for swearing.

THE COURT: That's fine.

MS. WHATLEY: Your Honor, we have five witnesses in the witness room.

THE COURT: You can bring them in.

MS. WHATLEY: Your Honor, Mr. Norris is also going to testify today, but he's previously been sworn.

(Witnesses sworn.)

MS. WHATLEY: Your Honor, for purposes of the record, we have Stacie Rhoads, Shannon McKittrick-Cruse, Amber Waldron, Cary Dunn, and Greg Evans.

THE COURT: Good. And I think Mr. Hendrix had one other issue. Did you have an objection to the -- I think it was 55.

MR. HENDRIX: Oh, no, sir. I just needed a copy of it.

THE COURT: And I guess we can bring the jury on in.

(Jury present.)

THE COURT: Ms. Whatley, call your first witness for the day.

MR. ROBLES: United States calls Sergeant Greg Evans.

THE COURT: Mr. Robles.

GREG EVANS, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. ROBLES:

Q. Hello, sir.

A. Good morning.
Q. Will you please state and spell your name for the record.
A. Greg Evans, G-r-e-g E-v-a-n-s.
Q. Where are you currently employed?
A. The Pulaski County Sheriff's Office.
Q. What is your current position there?
A. I'm a sergeant in the professional standards unit, where we handle internal investigations.
Q. And how long have you held that position?
A. A little over a year.
Q. Could you describe to us your work responsibilities?
A. My primary responsibility is to conduct internal investigations on the county employees. I also am required to, when requested, to, you know, handle the phone calls coming out of the Pulaski County Regional Detention Facility.
Q. How does an inmate go about making a telephone call at the Pulaski County Detention Center?
A. It's my understanding, there's two ways. Number one, obviously, an inmate can make a collect call, where the party being called has to accept the call, or the inmate can purchase a calling card from the commissary.
Q. Before an inmate makes a telephone call, is he or she aware that the call is subject to recording and monitoring?
A. Yes. Upon placing a call, every call, there's an automated voice that advises both parties on both ends that the call is

subject to being monitored and recorded.
Q. In the course of performing your inmate telephone call responsibilities, have you become familiar with the recording system at Pulaski County?
A. Somewhat, yes.
Q. What recording service do you use?
A. The name of the company is called Securus.
Q. Is that company affiliated in any way with a company called Evercom?
A. Yes.
Q. Could you tell us, Sergeant Evans, how the process for a request of jail recordings, jail call recordings, occurs?
A. Typically I get some type of request in writing requesting for me to search certain telephone numbers with a time frame. And then I just, you know, go through the process of entering the information into the system. And it will give -- you know, it will search the numbers.
Q. In mid-March of 2009, did you receive a request from the United States Attorney's Office here in Little Rock?
A. Yes, I did.
Q. Did that request provide a date range?
A. Yes.
Q. Did that request also provide several phone numbers?
A. There were several, yes.
Q. Did you use this information to conduct a search of your

recording system?
A. I did.
Q. And did your search hit any recordings for those specific parameters?
A. I believe there were two numbers, yes.
Q. Ultimately did you provide those recordings to the United States Attorney's Office?
A. I did.
MR. ROBLES: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. ROBLES:
Q. Sergeant Evans, I have handed you what's been marked for identification as Government's Exhibit 141-A. Can you tell us what this exhibit is?
A. This would be the CD that I provided the government in reference to those recordings.
Q. Is your signature on the front of this CD?
A. Yes, it is.
Q. What date is on that CD?
A. March 13th of 2009.
MR. ROBLES: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. ROBLES:
Q. Sergeant Evans, could you tell us what first appears on a computer screen when you place a CD of your jail recordings in

the CD drive?
A. It's normally a blue screen with a series of dates and the telephone number and the duration of the telephone call made.
MR. ROBLES: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. ROBLES:
Q. Sergeant Evans, I've handed you what's been marked for identification as Government's Exhibit 141-B. Without going into too much detail, could you tell us what this exhibit is?
A. This is what you will normally see when the CD is placed inside the computer and it comes up.
Q. Does this picture or screen shot fairly and accurately depict the software that was on the CD that you provided to the United States Attorney's Office?
A. Yes, it does.
MR. ROBLES: Your Honor, at this time I would like to move Government's Exhibit 141-B into evidence.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 141-B received in evidence.)
BY MR. ROBLES:
Q. Sergeant Evans, let's take a look at Government Exhibit 141-B. And it should pull up on the screen there in front of you. Do you have it there in front of you?
A. Yes, sir.

Q. Could you walk us through the information that is contained on the first line?
A. Okay. It says, "site ID." I'm not familiar with that, other than I'm going to assume it's at our jail, obviously. It has the call time. It date stamps the time the call was made. It also gives the telephone number called from within the Pulaski County Regional Detention Facility and the duration of the call.
Q. There appears to be -- you said there's phone numbers on there.
A. Yes.
Q. There are several calls listed here on the software. How many phone numbers total are there?
A. There are two numbers.
Q. Could you read those numbers for us?
A. One is 479 -- (479) 293-3030. The second number is (479) 264-3116.
Q. Thank you. Now, Sergeant Evans, is this always what appears on the computer screen when you plug a CD of telephone recordings into a computer?
A. Normally, yes. Every once in a while, for whatever reason, when you put the CD in, it will come up where it's asking you to open up another file.
Q. Okay. And when you open up that other file, what files are contained within that window?

A. If I recollect, there is -- if it doesn't open up like this, it will -- on the left-hand side, every telephone call is labeled a certain series of numbers and letters which correlates with the telephone call. If you open that up, it will come up with a call.

Q. Great. Okay. Now, here, if you do eventually find the software on the CD, this WAV file, or this WAV indication here on the left-hand side of the exhibit, could you explain what that is?

A. If I was to -- where you've marked that, if I were to go up and click on the speaker, the recording would start. And also it would give that series of numbers and letters that goes with that call.

Q. Thank you. Sergeant Evans, to your knowledge, or actually in your working at Pulaski County Detention Facility, are you able to determine what inmates are housed there?

A. I have the capability of doing that research, yes.

Q. To your knowledge, has the defendant ever been housed at Pulaski County?

A. Yes.

MR. ROBLES: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. ROBLES:

Q. Sergeant Evans, I've handed you what's been marked for identification as Government's Exhibit 141-C. Without going

into too much detail, could you tell us what this is?
A. This is a print screen of a booking sheet from within the jail.
Q. Were you responsible for preparing this document?
A. Yes. I prepared this document.
Q. Does this sheet fairly and accurately represent the defendant's booking information?
A. Yes, it does.
MR. ROBLES: Your Honor, at this time I would move Government's Exhibit 141-C into evidence.
MR. HENDRIX: May I look at it?
No objection, Your Honor.
THE COURT: It's received.
(Government's Exhibit 141-C received in evidence.)
MR. ROBLES: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. ROBLES:
Q. Let's take a look at 141-C. Now, according to this sheet, when was the defendant initially booked in to Pulaski County?
A. March the 5th of 2009.
Q. And according to this sheet, when was the defendant transferred out?
A. The release date was March the 13th of 2009.
MR. ROBLES: May I approach the witness, Your Honor?
THE COURT: You may.

MR. ROBLES: Pass the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Officer Evans, did you have the records for where he was placed after being booked in to the Pulaski County jail?

A. Once he left our facility? No, sir.

Q. I'm so sorry. At Pulaski County. The Pulaski County jail has various pods. Is that right?

A. Yes, sir.

Q. And a pod is -- y'all have alphabetized. There's like pod A, pod B, up through --

A. U.

Q. Through U. And each pod then has an open area and then separate cells. Is that right?

A. There is several activity areas, yes.

Q. Okay. How many inmates would be housed in a pod?

A. Sir, I wouldn't have any idea on that.

Q. That's not what you do?

A. No, sir. I do not work in the detention facility.

Q. Understood. On the phone calls, do you have a sense -- you said he was there from March 5th to March 13th of '09. Correct?

A. I believe so.

Q. Do you have a sense of how many phone calls he made?

A. No.

Q. Okay. Thank you.

THE COURT: Any redirect?

MR. ROBLES: No further questions.

THE COURT: You can stand down.

Call your next witness.

MS. WHATLEY: United States calls John Norris.

JOHN NORRIS, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good morning, Mr. Norris.

A. Good morning.

Q. Will you please state your name.

A. John Norris.

Q. Sit closer to that microphone. For purposes of the record, are you the same John Norris that previously testified?

A. I am.

Q. You understand that you are still under oath?

A. Yes.

Q. Remind us again what you do for a living.

A. I am a special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Q. During the course of the investigation, do you recall requests being made to the Pulaski County Detention Facility for telephone calls made to certain numbers?

A. Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I just handed you what's been marked for identification purposes and what has been previously identified as Government Exhibit 141-A. Have you seen this?

A. I have.

Q. And what is this?

A. This is the CD of the phone calls from Pulaski County.

Q. Do you know what date range these were from?

A. March 5th through I believe the 13th.

Q. And how many telephone calls are on this CD if you recall?

A. Twenty-one.

Q. And you were just present when Sergeant Evans was testifying. Correct?

A. Correct.

Q. And he stated that there were two telephone numbers that were called through these calls.

A. That's correct.

Q. Do you know whose numbers those are?

A. Yes.

Q. And can you please tell the jury who they belong to?

A. The first phone number, the (479) 293-3030, is going to be the Manns' residence phone number.

Q. And the other phone number?

A. The (479) 264-3116 is going to be Sue Mann's cell phone number.
Q. In preparation for trial, did we go through this CD and break out certain phone calls for purposes of using at trial?
A. Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I'm showing you what's been marked for identification as Government Exhibit 142, 143, 223, 144, 145, 146, 147, 148, 149, 150 and 151. Have you seen those before?
A. I have.
Q. And what are they?
A. They are going to be the phone calls off of this CD, off of 141-A, not all of them but --
Q. Eleven of the phone calls?
A. Correct.
Q. And have you reviewed them?
A. I have.
Q. And how do you know?
A. Because my initials are on each CD with the date that I listened to that call.
Q. And did you compare these phone calls to what's marked as Government Exhibit 141-A?
A. I did.

Q. And are all these phone calls from that CD?
A. They are.
Q. Just for purposes of not confusing everybody, there's one that's kind of a different number. Correct?
A. Correct.
Q. And that's Government Exhibit 223?
A. Correct.
Q. Is this one that we recently added?
A. Yes.
Q. But this came from Government Exhibit 141?
A. This came from this CD.
Q. A?
A. Correct.
Q. The government exhibits that I just had you identify, 142 through 151 and 223, how long are those calls?
A. Anywhere between eight to 15 minutes approximately, I mean --
Q. And have we gone through and taken various portions out of some of those telephone calls?
A. Yes.
Q. And what reasoning was used in order to make -- let me back up. Sorry.

Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I'm showing you what's been marked for identification as Government Exhibit 142-A, 143-A, 223-A, 144-A, 145-A, 146-A, 147-A1, 147-A2, 148-A, 149-A, 150-A and 151-A.
A. Yes.
Q. Have you seen those before?
A. I have.
Q. And what are they?
A. They are the portions of those before-mentioned phone calls.
Q. Portions of the phone calls from 142 to 151 and 223?
A. Correct.
Q. Which for the record are from 141-A?
A. Correct.
Q. Were there -- why were these portions chosen?
A. These portions were chosen from the total phone calls because they are portions where the defendants are talking about upcoming search warrants, evidence, and things of that nature.
Q. Now, the total phone calls, are portions of those calls just where they are talking about day-to-day activities?
A. Oh, yes.
Q. Talking about things that they have to do that have nothing to do with necessarily the case?
A. Yes.
Q. And do the government exhibits I just handed you fairly and accurately depict the calls or the portions of the calls that

were recorded at the Pulaski County Regional Detention Facility?
A. Yes.
Q. And were each one of these phone calls recorded with full knowledge of the persons on the call?
A. Yes.
Q. And how do you know that?
A. On the total phone call, you can hear the advisement that this call is going to be recorded, is subject to recording.
Q. And have you marked on the CDs, which you are holding in your hand, the dates and times that the calls were made?
A. Yes.
Q. And how were you able to do that?
A. Off of the index that Sergeant Evans showed earlier.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I just handed you what's been introduced as Government Exhibit 141-B.
A. Yes.
Q. Is that the log you are talking about?
A. It is.
Q. How were you able to determine the time and the date of the calls on CDs 142-A through 151-A and 223-A based on 141-B?
A. When you pull this up on the computer on your screen, you can see the time and the date and the phone number. Once you

open that call up, it gives you the, I guess, the file name. It's a very large number. For example, on 142-A, we used just the last portion. It's 2D261. That's what I identified as the file name of that phone call. Then I went back to this front page and looked at what date and time it was that that phone call was made and what phone number.

Q. And are the dates and times accurate to the best of your knowledge and ability that you have written down on Government Exhibits 142-A through 151-A and 223-A?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 142-A through 151-A and 223-A.

MR. HENDRIX: No objection.

THE COURT: They are received. They are received subject to the discussions and objections we had earlier.

(Government's Exhibits 142-A through 151-A and 223-A received in evidence.)

BY MS. WHATLEY:

Q. Special Agent Norris, have transcripts been made of the conversations on those CDs?

A. They have.

Q. And have you reviewed them?

A. I have.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:

Q. I'm showing you what's been marked for identification purposes as Government Exhibit 142-B, 143-B, 223-B. And let me ask this. Is 223-B in between 143-B and 144-B because that's where it came chronologically?

A. That's correct.

Q. I'm also showing you 144-B, 145-B, 146-B, 147-B1, 147-B2, 148-B, 149-B, 150-B and 151-B.

A. Yes.

Q. And have you reviewed those transcripts in conjunction with Government Exhibits 142-A through 151-A and 223-A?

A. Yes.

Q. And do they fairly and accurately depict the conversation on the CDs?

A. They do.

Q. And do you feel that the transcript would aid the jury while listening to the CDs?

A. Yes.

MS. WHATLEY: Your Honor, at this time we would request playing each one of the Government Exhibits 142-A through 151-A and 223-A in chronological order.

THE COURT: Okay. I will permit it subject to the objections that have previously been lodged.

BY MS. WHATLEY:

Q. If we could begin with 142-A, can you please tell us the

time and date of this telephone call and to which number this call was made?
A. The date is going to be 3/6/09 at 6:10 p.m.
Q. Do you know which phone call it was made to?
A. I would need to see the main phone call that this came from.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
THE WITNESS: The 142 I believe it is.
BY MS. WHATLEY:
Q. Was it made to one of the two numbers you have previously testified about?
A. Yes, it was.
MS. WHATLEY: Your Honor, if we can play 142-A.
MR. HENDRIX: Your Honor, before we do that, can I ask Ms. Whatley --
(Mr. Hendrix and Ms. Whatley confer.)
BY MS. WHATLEY:
Q. Can you please give us the last five digits of the file name?
A. Yes. It's 2D261.
MS. WHATLEY: Your Honor, if we can play Government Exhibit 142-A.
THE COURT: You may.
MS. WHATLEY: Your Honor, it's not coming out of the

speakers. I'm sorry, Your Honor.

THE COURT: That's fine. We are going to get Ms. Tyree.

MS. WHATLEY: I would tap-dance, Your Honor, but I'm really not very good.

THE COURT: That's okay. This is my fault. I knew we had this audio coming in, and we should have checked this system this morning before we started up. This is not the first time we've had problems. I should have known to check it. Let's do this. So that we can get this system in place, let's take ten minutes.

Ms. Whatley, I'm sorry. I hate for you to build it up and then there's nothing there. But we'll be in recess for ten minutes. And what we'll do is we'll just let you stay back there, and we'll call you back in once we get it fixed.

(Recess from 10:18 a.m. until 10:24 a.m.; jury present.)

THE COURT: We have it fixed now.

MS. WHATLEY: Let's try this again, 142-A.

(Government's Exhibit 142-A played for the jury.)

BY MS. WHATLEY:

Q. Agent Norris, is that the admonition that is contained on each and every one of the full calls that we've talked about today?

A. Yes.

Q. If we can now play Government Exhibit 143-A. And on 143-A,

can you please give us the date of this call?
A. The date of the call is 3/6 of '09.
Q. And what time?
A. 8:49 p.m.
Q. And what are the last five digits of the file name?
A. The file name is 3411E.
Q. If we can play Government Exhibit 143-A.
(Government's Exhibit 143-A played for the jury.)
BY MS. WHATLEY:
Q. Can you please remind us again what the date of this telephone call was, 143-A?
A. 3/6 of '09.
Q. At this point in time, had any search warrants been executed on any property belonging to the Manns?
A. No -- yes. At the house.
Q. And do you know who Drake is?
A. I believe he was Dr. Mann's attorney when he was going through the board, problems with the board, and then early on in this.
Q. Let's go to Government Exhibit 223-A.
MR. HENDRIX: Your Honor, before we go to the next one, I apologize. I should have done this before. There is an Eighth Circuit Instruction 2.06A to instruct the jury on how to use transcripts and their limited value. I forgot to ask the Court to read it to the jury before the first one was played.

Could I ask the Court to read it now?

THE COURT: Yeah. This is the Eighth Circuit's Instruction 2.06. And it reads as follows.

As you have also heard, there are typewritten transcripts of the tape recordings I just mentioned -- although I didn't just mention it -- the tape recordings you just heard. Those transcripts are also undertaken to identify the speakers engaged in the conversation.

You are permitted to have the transcripts for the limited purpose of helping you follow the conversations as you listen to the tape recordings and also to help you keep track of the speakers. The transcripts, however, are not evidence. The tape recordings themselves are the primary evidence of their own contents.

You are specifically instructed that whether the transcripts correctly or incorrectly reflect the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcripts and upon your own examination of the transcripts in relation to what you hear on the tape recordings. If you decide that any of the transcripts are in any respect incorrect or unreliable, you should disregard the transcript to that extent.

Differences in meaning between what you hear in the recordings and read in the transcripts may be caused by such things as the inflection in a speaker's voice. You should,

therefore, rely on what you hear rather than what you read when there's a difference.

You may continue.

MS. WHATLEY: Thank you.

BY MS. WHATLEY:

Q. If we can look at Government Exhibit 223-A.

A. Yes.

Q. Will you please give us the date and time of this telephone call.

A. 3/7 of '09, 11:55 a.m.

Q. What are the last five digits of this file name?

A. 3D5F7.

Q. If we can please play Government Exhibit 223-A.

(Government's Exhibit 223-A played for the jury.)

BY MS. WHATLEY:

Q. Special Agent Norris, to your knowledge, was a search warrant of the medical clinic executed after -- sometime after this phone call was made?

A. Yes.

Q. If we can go to Government Exhibit 144-A. Can you please give us the date and the time of this telephone call?

MS. CASSINELLI COUCH: Your Honor, may we approach for just a minute?

THE COURT: Yes.

(Proceedings at the bench as follows:)

MS. CASSINELLI COUCH: We need a few seconds when you say it, because we're having trouble finding it. We haven't been able to match it up with each call. When you announce, I guess, the number or whatever, if we could just have like a minute.

MS. WHATLEY: How about if we announce the number first and then go to the time and date? Would that help?

MS. CASSINELLI COUCH: Yeah. Just any pause, if you could give it a second.

MS. WHATLEY: That's fine.

(Proceedings continuing in open court as follows:)

BY MS. WHATLEY:

Q. Government Exhibit 144-A, can you please give me the last five digits of the file name?

A. A5876.

Q. And can you give us the date and time of the call?

A. 3/7/09 at 5:44 p.m.

MS. WHATLEY: Your Honor, may I approach and retrieve the transcripts?

THE COURT: Yes.

BY MS. WHATLEY:

Q. I'm sorry. What was the date and time of this call?

A. 3/7/09 at 5:44 p.m.

Q. If we can please play Government Exhibit 144-A.

(Government's Exhibit 144-A played for the jury.)

BY MS. WHATLEY:

Q. Special Agent Norris, was the Defendant Randeep Mann charged with being in possession of the gun that belonged to someone else?

A. No.

Q. If we can go to Government Exhibit 145-A, if you can give us the last five digits of this file name.

A. 5A4ED.

Q. And what is the date of this phone call?

A. 3/7/09, 7:41 p.m.

Q. If we can please play Government Exhibit 145-A.

(Government's Exhibit 145-A played for the jury.)

BY MS. WHATLEY:

Q. If we can go to Government Exhibit 146-A, if you can give us the last five digits of that file name for us, please.

A. FEFBE.

Q. And what is the date and time of this call?

A. 3/9/09, 9:29 a.m.

Q. If we can play 146-A, please.

(Government's Exhibit 146-A played for the jury.)

BY MS. WHATLEY:

Q. I'm sorry. Can you give us the date on that one again?

A. 3/9 of '09 at 9:29 a.m.

Q. This is after the search warrants have been run at the Manns' residence. Correct?

A. Correct.
Q. But before they have been run at the clinic?
A. Correct.
Q. If we can go to Government Exhibit 147-A1. Can you give us the last five digits of this file name.
A. 7BFFE.
Q. And what is the date and time of this call?
A. 3/10/09, 4:02 p.m.
Q. If we can please play Government Exhibit 147-A1.
(Government's Exhibit 147-A1 played for the jury.)
BY MS. WHATLEY:
Q. In the call of 147-A1, what location are they talking about?
A. The medical clinic.
Q. If we can go to 147-A2, is this from the same telephone call?
A. It is.
Q. And give us the last five digits of that file name again.
A. 7BFFE.
Q. And give us the date and time of this call.
A. 3/10 of '09 at 4:02 p.m.
Q. If we can please play Government Exhibit 147-A2.
(Government's Exhibit 147-A2 played for the jury.)
BY MS. WHATLEY:
Q. Special Agent Norris, at the time of this telephone call,

had the Defendant Randeep Mann been charged with the West Memphis bombing?

A. No.

Q. If we can go to Government Exhibit 148-A, if you can give us the last five digits of that file name.

A. 38136.

Q. And the date and time of this telephone call?

A. 3/11/09, 7:12 a.m.

Q. If we can please play Government Exhibit 148-A.

(Government's Exhibit 148-A played for the jury.)

BY MS. WHATLEY:

Q. Special Agent Norris, had the search warrant at the clinic been executed the night before this telephone call?

A. Yes.

Q. Do you know who Tim is?

A. Tim, I believe, is Tim Harrell, one of the friends of the Manns.

Q. If we can go to Government Exhibit 149-A, can you give us the last five digits of this file?

A. ED4FE.

Q. And the date and time of this call?

A. 3/11/09, 5:49 p.m.

Q. If we can please play Government Exhibit 149-A.

(Government's Exhibit 149-A played for the jury.)

BY MS. WHATLEY:

Q. Special Agent Norris, are one of the guns the defendant is charged with possessing the USAS-12?
A. Yes.
Q. If we can go to Government Exhibit 150-A, if you can give us the last five of this file name.
A. 1EC3A.
Q. And what is the date and time of this call?
A. 3/11/09, 6:33 p.m.
Q. If we can please play Government Exhibit 150-A.
(Government's Exhibit 150-A played for the jury.)
BY MS. WHATLEY:
Q. Do you know which -- in the beginning of this call, Mrs. Mann is saying when she was on the witness stand. Do you know when she had testified prior to March 11th of 2009?
A. When she had testified? At the detention hearing?
Q. Had there been a detention hearing for Dr. Mann prior to this date?
A. Yes, yes.
Q. And if we can go to Government Exhibit 151-A, can you give us the last five digits of this?
A. 8973C.
Q. And what is the date and time of this call?
A. 3/12/09, 8:23 a.m.
Q. If we can please play Government Exhibit 151 -A.
(Government's Exhibit 151-A played for the jury.)

BY MS. WHATLEY:

Q. Special Agent Norris, at that point in time, had a search warrant been executed on a storage unit in Russellville, Arkansas?

A. Yes.

Q. And just so the record is clear, these are not all of the phone calls that were ever made between the two defendants. Is that correct?

A. That's correct. These are not all of the phone calls.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: Yes.

MS. WHATLEY: No further questions.

THE COURT: Okay. Cross-examination.

MR. HENDRIX: Judge, can we have a moment with you?

THE COURT: Yes.

(Proceedings at the bench as follows:)

MR. HENDRIX: I need to ask for some time. This thing is so unbelievably screwed up. It's not the government's fault. Pulaski County needs to hire a new phone service. What they do, they have these long file numbers. Those are related to dates. Ms. Whatley has done a good job of saying, here's a date, it relates to this exhibit. Ours are all out of order.

THE COURT: How much time do you need?

MS. CASSINELLI COUCH: Here's what we need. We need to know -- like if we have a copy of what was just presented to

the jury -- they did give us copies of what they intend to introduce. They are larger. We couldn't keep up and find any of what was happening.

THE COURT: How much time do you need?

MS. CASSINELLI COUCH: It depends.

MR. HENDRIX: Fifteen minutes.

MS. WHATLEY: I offered --

MR. HENDRIX: We can all sit down and work it out. I have to get it organized in a fashion -- 15 minutes.

THE COURT: That's fine. We can take 15 minutes.

MS. WHATLEY: Okay.

(Proceedings continuing in open court as follows:)

THE COURT: We're going to take a 15-minute recess. We'll be in recess until 11:10.

(Recess from 10:55 a.m. until 11:12 a.m.; jury not present.)

THE COURT: You can bring in the jury.

(Jury present.)

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Agent Norris, I just want to begin with, in analyzing these phone calls from Pulaski County, I gather, because I know it was for us, it's really complicated in trying to get a file number compared to a date and so forth. Is that fairly accurate?

That's the form y'all got them in from Pulaski County, and it took a lot of time to sort of figure it out.
A. Once you understood kind of how their system worked, yes. But it took a little bit to kind of figure out how their system worked.
Q. So it got a little bit confusing, so I think we've got it straightened out now and we can have an exhibit number. So what I'm going to do is I'm going to address some specific issues in these tapes and in these transcripts, specific government exhibit numbers, and ask you again to reidentify when that phone call was made. Okay?
A. Okay.
Q. So Government's 143-B, that phone call was when?
A. That phone call is going to be on 3/6 of '09.
Q. What time?
A. 8:49 p.m.
Q. Agent Norris, I'm just going to give you all these. The first one I'm going to ask you about is 143-B.
A. Okay.
Q. Instead of us having -- instead of us listening to it again, there are some portions of the transcripts that I just want to go over and highlight. Okay?
A. Okay.
Q. So on 143-B, again, it's a conversation from March 6. I think it was the first one that got played. If we could go

down, the numbering system I'm about to use, on our transcript it says "SM," meaning Sue Mann. Correct?
A. Right.
Q. "RM" meaning Randeep Mann?
A. Correct.
Q. I'm going to start with one being SM, two RM, and count down. Okay?
A. Okay.
Q. So one, two, three, four, five, six, seven, eight. On eight --
A. Uh-huh.
Q. -- where it is Dr. Mann talking, he says: "It's good" -- unintelligible over and over again -- "you know that. It's a very good thing they keep coming back every two days."
Sue says: "Say that again."
Dr. Mann says: "It's very good they keep coming back" -- unintelligible -- "keep coming back."
What he's referring to, is he not, already by March 6th there have been several searches. Right?
A. By March 6th?
Q. Yeah. I think at least two. Right? Is that right?
A. I believe only one. I was not personally involved in those, so my dates might be a little wrong. But I believe there was only one at that time.
Q. Well, I think it is actually on March 5th you have the

state search warrant that's been introduced; right, and also on March 5th then the federal search warrant. Is that right?

A. I think -- I'm not sure.

Q. Okay. It's close enough for jazz. But this is clearly a reference to Dr. Mann as saying, fine, let them search. Fair rendering?

A. That's what it seems to be.

Q. Okay. Skipping to 144-B, can you give us the date on that one?

A. It's going to be 3/7 of '09 at 5:44 p.m.

Q. 5:44 p.m. It's another phone call from Dr. Mann to Mrs. Mann. Correct?

A. Correct.

Q. And just for clarity, starting up at the first "RC," I'm going to use that as a one. One, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 12 lines down -- actually, 11 lines down, it starts with Dr. Mann. Are you with me?

A. Yes.

Q. And he asks Sue: "Any more witnesses?"

And she says: "No, no. I haven't heard anything. I've just been calling different people to get some letters for Monday."

And so the jury understands the context of that statement, that was March 7th. Two days later, March 9th, is when the detention hearing was held. Is that right?

A. Yes. I believe so.
Q. So this is a reference to gathering of witnesses and character letters to present to the judge at that time.
A. I believe that it is.
Q. Okay. Now, the second page of that transcript?
A. Yes.
Q. From the bottom, let's count up, one, two, three, starting with Dr. Mann.
A. Uh-huh.
Q. Are you with me?
A. Uh-huh.
Q. And I'll start out with the first sentence. "That's great." And he says: "And then the thing is, I am going to, on Monday, if I get out" -- that's a reference to the detention hearing. Right?
A. I believe so.
Q. "I can do this." And I think the context is is to look at his firearms records. "I can do this, or these lawyers are going to do it and charge me a shit-load of money." Right?
A. Yes.
Q. He says that. And then he says: "At some stage some shotguns had to be registered. I remember calling them in Atlanta and saying, you know, 'What do I do?' They said, 'Well, when you sell them, just file, do the form.'"
Sue responds: "Yeah."

Dr. Mann then says: "Well, I haven't sold them. I haven't done the form, and I am in possession of destructive devices."

Is that correct?

A. Yes.

Q. Skip over now to Government's Exhibit 149-B.

A. Okay.

Q. Up at the top, actually the second sentence, starting with Dr. Mann, it says: "Okay, uh, uh, uh. I'm fucked on the USAS-12. Okay. That is the one that looks like an M16 with a carrying handle on top, okay, that I did not register. They" -- something unintelligible. I think what the jury will hear is they didn't come to check that. Wait. I'm lost. "They didn't come to check. They have to come every year. They haven't come in 20 years. There's a seven-year period where you had to register it. And when I called them, they said, 'Don't worry about it. Register it only when you sell it.'"

Sue says: "Right, right. But you haven't sold it, so you didn't do anything wrong."

Now, you've been in here in the courtroom the entire time as the case agent. Right?

A. Correct.

Q. And you've heard all the testimony about the USAS-12, the 12-gauge shotgun that in 19 -- before 1994 didn't have to be registered, you bought just like a regular 12-gauge shotgun. But in 1994 an ATF regulation was passed to say now it is a

destructive device; here's a grace period to register it.
A. Correct.
Q. Do you remember all that?
A. Right.
Q. And so the two statements that I have now just read to you, it's clear the context of that is Dr. Mann is telling Mrs. Mann, Oh, I had this USAS-12; and, he says, bought legally before 1994. I failed to register it. Right?
A. Yes.
Q. And then he says: "But I called ATF in Atlanta." Right?
A. That's what he says.
Q. And that's where -- we've had Atlanta ATF people in and out of this case. Right?
A. Right.
Q. He says: "I called them to ask about this, and they told me I didn't have to register it until I sold it." Right?
A. That's what he is saying.
Q. That's what the transcripts reflect, and that's what the government's exhibits are. Right?
A. Correct.
Q. And we know he didn't sell it, because you guys found it in his gun collection on March 4th of 2009. Right?
A. Yeah. It was located at that residence.
Q. Okay. And just to be clear, if you will look at 145-B.
A. Okay.

Q. Going down two paragraphs from the bottom, it starts with Dr. Mann?
A. Uh-huh.
Q. He is asked a question. And he says: "No. They -- it -- they would -- the date I bought them is fine. There was a law later on that had to register them. I called ATF, and they said whenever we sell it."
And Sue says: "Yeah, yeah. You told me that."
That's the same reference to this USAS. Right?
He said, "I bought it fine."
A. He doesn't state that it's the USAS, but that's what I think he is talking about.
Q. Right. In the context, that's what you understand he is talking about. Right?
A. Yes.
Q. And then just as a side, that's sort of important. And the point that I'm trying to make here is, you can't take statements in isolation. In order to understand them, you have to be provided the entire context. Is that a fair statement for me to make?
A. Yes.
Q. Okay. And I think you said that of the Pulaski County phone calls, which go from March 5th of '09 to March 13th of '09, there are 21 phone calls. Right?
A. Correct.

Q. But we're dealing with not all 21. How many are we dealing with out of the 21?
A. I believe it's 11.
Q. Eleven of the 21. And then only portions of those 11. Correct?
A. That's correct.
Q. Okay. So just to make sure the jury understands, they are not hearing right now the entire phone call that's made. Right?
A. That's correct.
Q. Okay. If you will then look at 147-B -- is it 147-B1? 147-B1. Go to the second page. Agent Norris, I'm going to go from the top, one, two, three, four, five, six, seven, eight nine, ten. After I read this, the question I'm going to have for you is, now, this is in the context of, I believe, the house has already been searched, and the topic would be an upcoming or probable search of Dr. Mann's clinic. Okay? That's where I'm going.

So to read it, Sue says: "And he said" -- I'm assuming "he" is referring to Drake Mann from earlier. "And he said they will probably come and search the office and that storage."

Dr. Mann says: "Well, that's fine. Office. Just make sure, you know, just tidy up there."

Sue says: "Huh?"

Dr. Mann: "Just tidy up the receipt books and everything. Just tidy up and make it look half-respectable."

Sue says: "Yeah, yeah."

Dr. Mann: "Okay. Just go and spend some time and --"

Sue: "Huh?"

Then Dr. Mann: "Just spend some time in the office. Take out Dan's papers, ownerships, and all that stuff and give it to Dan."

Sue says: "I can't hear you. You are breaking up."

Dr. Mann: "Dan's ownership papers for his property, just give it to him."

Sue says: "Okay."

Dr. Mann: "Okay. His car deal, ownership titles, give." It says "unintelligible." But I think he says, "Give it to Dan."

Then I'm going to stop you right there, and I'm going to ask you about something else. Now, at that point he is talking -- to put it in context, does it appear that he is saying -- Dan is his son. Right?

A. Yes.

Q. Oldest son?

A. I believe so.

Q. And Dan has car titles and owns some property. Right?

A. I can only assume so. I don't know that.

Q. The context is -- let me see if you would agree with this. His house had already been searched. Right?

A. Yes.

Q. And no offense. But when officers oftentimes search, they can leave a big mess, can't they? You don't necessarily go back and put up everything that you've taken out. Right?
A. I can't answer that question for what other officers do. I try to be polite and put things back where I found them.
Q. It can be left in a state of disarray after a search warrant is executed, don't you think?
A. In some cases, yes.
Q. Okay. And in this case he is talking about, obviously, financial records. Right?
A. Yes.
Q. And would it be fair to say that -- what was it -- 20-something officers have just been rummaging around his house. Knowing that that's going to happen at his medical clinic, and particularly if there's a checkbook with signed checks but no amount on them, you might want to make sure that that gets secured. Wouldn't you think?
A. I don't think he is talking about the checkbooks in this instance.
Q. He is talking about Dan's ownership papers principally; right, financial documents?
A. It's things related to Dan. He mentions a person named Dan. He says, "Dan's papers, ownership."
Q. Now, to go back to where you and I left off, in the transcript on the last page --

A. Of the call we were just on?
Q. Yes, sir. The very last sentence. And I just want to make sure we put this in context, because this one I think can be particularly misleading. Dr. Mann says: "Disposing of everything. Get mom and dad involved. Okay. Can't do this alone. I'm, you know, you can't do this alone." Are you with me?
A. Yes.
Q. It's left out there isolated. And I guess with a jury looking at disposing of everything, what is he talking about? Is he talking about disposing of evidence? There is another entire phone call that Dr. Mann and Sue Mann have about liquidating assets, isn't there?
A. Yes, there is a phone call.
Q. And he's talking about, look, sell the house, sell the cars, you know, look, sell everything, essentially is what he is saying. Right?
A. There is a separate phone call where they discuss that.
Q. Yeah. And we know these things. He is in jail. Right?
A. Yes.
Q. If he's in jail, as a solo practitioner, he has no medical practice. Right?
A. I would assume so.
Q. So he's not going to get any income from medicine. Right?
A. I would assume not.

Q. He knows he has a wife whose income is dependent pretty much on the medical practice, four kids. Right?
A. I believe he has four kids.
Q. And assumably he is getting ready to incur some legal bills too. Right? Yes?
A. I can only assume so.
Q. So a fair reading to put that sentence, disposing of everything, in context can easily be read when you put it in context with a subsequent conversation of talking about having to sell assets. Right?
A. I couldn't say that.
Q. Okay. Now, 147-B2, and this is another snippet from that same phone call in 147-B1. Right?
A. Correct.
Q. Just so the jury understands, this is not an entire conversation. This is another part that's been extracted from a bigger conversation. Right?
A. Correct. It's a portion of a phone call.
Q. Sir?
A. It's a portion of a phone call.
Q. And from this one, this is where Dr. Mann says: "They have no clue. First of all, you know" -- I'm sorry. What date is this?
A. On 147-B2?
Q. Yes, sir.

A. 3/10 of '09.
Q. By 3/10 of '09, there's already been a detention hearing. Correct?
A. I believe so.
Q. Yeah. And so lawyers have been hired. The detention issue has been presented to a judge, and facts are being developed at that stage. Right?
A. Correct.
Q. So this is the next day. And to continue on where I was, it says: "First of all, you know, the forensics haven't come back. Uh, they, they are, they took those nuts and are trying to link it to Memphis, the fucking nuts. I mean, I know they are the fucking nuts from the bloody Maxima, E.J.'s Maxima, man."

Now, let's make sure we understand the context of that statement. You were asked in direct examination about that statement. And what you were asked was had Dr. Mann been charged in the West Memphis bombing at that time. Right?
A. Correct.
Q. And your answer was no?
A. No. He had not been charged with the bombing.
Q. And, in fact, wasn't charged until January. So I guess, what is that, nine months later. Right?
A. Correct.
Q. For the West Memphis car bombing. Right?

A. In January of this year.
Q. But you know that on February 4th, six weeks before this phone call, he had been paid a visit by an Arkansas State Police officer and an ATF officer, Tony McCutcheon, right, on the night or the evening of the bombing?
A. Correct.
Q. And was asked, "Did you do this bombing?" Right?
A. I'm not sure if he was asked, "Did you do this bombing?"
Q. That's imprecise on my part. But if you will go with me for a second, at that point, as we heard David Oliver testify, after the bombing that day, they call the medical board and get five names and then assign agents to go interview these five doctors. Right?
A. That's what I understand, yes.
Q. And the purpose was to go to them to say, "Hey, did you do this bombing?" That's the point of these interviews of these doctors. Right?
A. I don't know that that would be the point of the interviews.
Q. Trying to find out if this person --
A. Where they were.
Q. -- was involved. Fair enough? Okay. That had already -- that had already happened to Dr. Mann. Right? By March 10th, when he said this in this statement, that interview had already occurred. Right?

A. When Tony McCutcheon interviewed him?
Q. Right.
A. Yes. He was interviewed the day of.
Q. Yeah. So it wasn't any big secret to him. It wasn't any big secret to the other doctors that had been interviewed about the car bombing. And therefore, you put this in context, and it makes sense. It's not like he came out of the chute and is going to start talking about the car bombing without already being told that he was being looked at for it. Right?
A. I don't know that the agents -- I was not there the day of the interview, and I don't know that they told him specifically anything about, "We're here about the bombing." I think they asked him what his -- what he was doing the prior day and the day of, the morning of.
Q. Sure. Again, we're talking about context right now. When you put that in context, and any reasonable person, using their common sense, is going, they are asking me about the car bombing and did I know anything and inferentially was I a participant in it. Right? That's just common sense.
A. I don't think they ever said, "We're here to investigate you for the bombing." But I wasn't there.
Q. Okay. Here's my point. I didn't want that comment to be left out there and taken out of context like Dr. Mann was talking about a car bombing and nobody had ever asked him about it before. Right? Is that a fair context for that statement?

A. I think they asked him about his activities that day. I don't think they asked him anything about the scene itself.
Q. Well, my point, Agent Norris, is this. Based upon the question that was asked you and your response, it seemed to me to try to get the jury to infer that he was talking about the car bombing when he had not even been charged with it, and therefore there must be something suspicious, why would he be talking about the West Memphis car bombing as early as March 10th of '09? Was that the inference you were trying to make?
A. Can you say that again? I'm sorry. I'm sorry.
Q. That's all right. It seemed to me that the inference that was trying to be made to the jury was it must be suspicious if he's not charged in the car bombing until January of '10, but he is in a phone call in March of '09 talking about it, that that raises some suspicion. Is that the inference you were trying to draw?
A. That I was trying to draw an inference from his statement?
Q. That was my question to you. Were you trying to draw an inference based on the question and your response?
A. No, I was not.
Q. Okay. And it would make sense for him to be talking about the West Memphis car bombing since clearly he was already on notice that he was one of several suspects in it at that point. Right?
A. I wouldn't say he was a suspect.

Q. A person of interest?
A. A person of interest.
Q. Along with several other doctors at that point?
A. Correct. At that point several other doctors.
MR. HENDRIX: I'll pass the witness.
THE COURT: Mr. Dudley? Redirect?
MS. WHATLEY: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. WHATLEY:
Q. Agent Norris, if we can look at Government Exhibit 147-A1, and the transcript I believe is 147-B1. Can you give us the date of that phone call again?
A. On 147-A1, the date is 3/10 of '09.
Q. What's the time?
A. 4:02 p.m.
Q. At this point in time, had the search warrant at the office been executed yet?
A. Let me go back to that phone call. This search warrant -- say that again.
Q. Had the search warrant at the medical clinic been executed by 4:02 p.m. on March 10th, 2009?
A. I'm not sure what time it was executed, but I don't think so.
Q. And looking at Government Exhibit 147-B2 -- no offense to Mr. Hendrix. But he asked you a very, very long question.

Correct?
A. Yes.
MR. HENDRIX: Several.
BY MS. WHATLEY:
Q. Several very, very long questions. From Government Exhibit 147-B2, which is taken from 147-A2, does this just show that he was aware of the West Memphis bombing investigation?
A. Yes.
MS. WHATLEY: May I have a moment?
THE COURT: Yes, you may.
BY MS. WHATLEY:
Q. Okay. If we can go back to one more call.
A. Okay.
Q. 149-B1.
A. Okay.
Q. Do you have that in front of you? I'm sorry. 149-B, not B1, just B.
A. Yes.
Q. Mr. Hendrix read basically what are lines 2 and 3; correct, talking about the USAS-12?
A. Yes.
Q. Earlier he said that we had people here from Atlanta testify for ATF. Correct?
A. Yes.
Q. Weren't those the lab people that testified from Atlanta?

A. Yes.
Q. The people that testified regarding registration of guns, where were they from, just for purposes of clearing up the record?
A. I believe they were from Virginia. I'm not sure.
Q. In looking at 149-B, Mr. Hendrix stops where he says, "And when I called them, they said, 'Don't worry about it. Register it only when you sell it.'" And Mrs. Mann responded and said: "Right, right. But you haven't sold it, so you didn't do anything wrong." Isn't that where Mr. Hendrix stopped?
A. Yes.
Q. If we're going to put this call completely into context, can you please read what the next line is that Dr. Mann states?
A. Where were you at again? I'm sorry.
Q. Where it says "RM" on the second time on that sheet, where it says, "No. But they said you had"?
A. Uh-huh.
Q. Can you please read that?
A. Yes. It says, "RM," Randeep Mann: "No. But they said you had four years from '07, '04, so till 2001 you had to get it done. Now, no one checked on this gun to tell me, 'Dude, wake up.'"
Q. And Mrs. Mann responds: "Yeah." And then what is Dr. Mann's response?
A. "If they told me seven years in a row, 'wake up,' then I

was at the freaking fault, although I'm still at fault, but fuck, so let's see where it goes from here, uh."

Q. Then after that, they start talking about something else besides the USAS-12. Is that correct?

A. Correct.

MS. WHATLEY: No further questions.

MR. HENDRIX: Nothing.

THE COURT: You can stand down.

Call your next.

MS. WHATLEY: Your Honor, I'm going to call a witness out of order so he doesn't have to sit here all day. It's Cary Dunn.

THE COURT: Has Mr. Dunn been sworn in?

MS. WHATLEY: He has, Your Honor.

CARY DUNN, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Would you please state your name.

A. Cary Dunn.

Q. And where are you employed?

A. Dallas County Sheriff's Office, Fordyce, Arkansas.

Q. What is your position at the Dallas County Sheriff's Office?

A. I am a deputy and the administrative assistant to the sheriff.

Q. Are you responsible for any part of the jail?
A. Yes, ma'am.
Q. Does Dallas County house federal prisoners for the United States Marshal's Service?
A. Yes, ma'am, we do.
Q. Do you have a contract with the Marshal's Service?
A. Yes, ma'am.
Q. As part of your job, can you determine who is housed at the jail?
A. Yes, ma'am.
Q. To your knowledge, was Randeep Mann ever housed at the Dallas County jail?
A. Yes, ma'am.
Q. Does the Dallas County jail keep records regarding the booking of inmates?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government Exhibits 166-A and 166-B. Have you seen these before?
A. Yes, ma'am.
Q. And what are they?
A. They are the Dallas County Detention Center booking

documents.
Q. And who do they relate to?
A. They relate to Randeep Singh Mann.
Q. And do these accurately reflect his booking information?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, at this time I request admission of Government Exhibit 166-A and 166-B.
MR. HENDRIX: No objection.
THE COURT: They are received.
(Government's Exhibits 166-A and 166-B received in evidence.)
BY MS. WHATLEY:
Q. Let's look at Government Exhibit 166-A, please.
A. All right.
Q. Does everybody but me have it? If we go to the top left-hand corner of this exhibit, who did you say was the inmate?
A. Last name Mann, Randeep Singh.
Q. Going not quite halfway down that page, what is the intake date?
A. The intake date is March the 13th, 2009, at approximately 10:00 a.m.
Q. Then going to -- does it show that he was released?
A. Yes, ma'am.
Q. And what was the release date?

A. It would have been April 21st, 2009, 6:45 a.m. But this shows that he was changed from one cellblock to the other.
Q. And he was released to the marshals. Correct?
A. Yes, ma'am.
Q. And did he come back to the jail that day?
A. Yes, ma'am, he did.
Q. Let's look at Government Exhibit 166-B. Is this also a booking sheet for Randeep Singh Mann?
A. Yes, ma'am.
Q. Does it show he came back in on April 21st, 2009?
A. Yes, ma'am, at 4:36 p.m.
Q. And was he -- did he have a release date?
A. Yes, ma'am. He was transferred to Pulaski County on July the 16th, 2009, approximately 6:30 a.m.
Q. Are inmates at the Dallas County jail allowed to make telephone calls?
A. Yes, ma'am.
Q. And do you contract with any company in order to have those calls made?
A. Yes, ma'am.
Q. And what is the name of the company you contact?
A. City Tele Coin.
Q. And where is City Tele Coin located?
A. It's in -- I'm not sure where the corporate headquarters is. It's in Louisiana.

Q. And what does an inmate need in order to make a telephone call from your jail?
A. They buy what we call a phone card, which gives them a unique account number on each card.
Q. And are these calls subject to monitoring and recording?
A. Yes, ma'am.
Q. And are the inmates informed of this?
A. Yes, ma'am. There's a recording on each call that every time they make a call that's given to them.
Q. And are the persons to whom the inmates are calling notified that the calls are subject to monitoring?
A. Yes, ma'am.
Q. And how does that occur?
A. It's an automatic, before it's connected to them, before the call is completed.
Q. And who is your contact at City Tele Coin?
A. Well, Jerry Juneau is, I believe, the company president. He's my main contact.
Q. And does Dallas County maintain the calls, or are they maintained at City Tele Coin?
A. They maintain the calls on their database and on their mainframe.

MS. WHATLEY: I have no further questions.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. I have just a few. Officer Dunn, what I would like to ask you to do is give a description of the physical layout of the inmate portion of the Dallas County jail.
A. Yes, sir.
Q. I kind of want to go through that. First of all, it's in Fordyce, what, about an hour and 15 minutes from here. Right?
A. Fordyce is approximately 63 miles south, yes, sir.
Q. You have -- are they called blocks?
A. Cellblocks, yes, sir.
Q. Cellblocks. And describe those. Kind of give a physical description for the jury so they kind of can see this.
A. We have a jail or cellblocks that branch off a central tower area. It's more like the spokes on a wheel. We have a main tower operator that can see every cellblock, and he has other people that assist him to watch that. Also, it's camera monitored also. In the tower, he has the main control over anything at our complex, other than the administrative offices. He must see you and press a button that opens an electronic door or releases a lock to come and go.
Q. How many cellblocks are there?
A. There are eight cellblocks.
Q. Eight?
A. Yes, sir.
Q. Are they identified by letter?
A. Yes, sir.

Q. Cellblock A, Cellblock B. Which ones did you identify that Dr. Mann had been in while he was at Dallas?
A. Dr. Mann was in Cellblock B and Cellblock D.
Q. The cellblocks, do they have individual cells or two-man cells, or is this barracks style?
A. Our barracks are in E and F. Our cellblocks, if I recall correctly, are two-man cells in B and D.
Q. I might have to ask you to go back to Dallas County and come back up and see if you get that right.
A. Right.
Q. You are saying the cells, the two-man cells, are B and D?
A. Yes, sir.
Q. Is everybody in those cells?
A. No, sir.
Q. Okay. Maybe that clears it up. To your information, was Dr. Mann in a cell, or was he in the barracks-style portion of the block?
A. The best of my recollection, he was in the barracks area.
Q. Okay. That contains how many other inmates?
A. Twelve to 15.
Q. Okay. How big are those quarters, if you could just sort of estimate it in comparison to, say, the size of this room?
A. Approximately the seating area, on either side, on the wide side of the aisle over here, on the left-hand side.
Q. Let's try to identify that a little better for the record.

Say that one more time.
A. Where the bench areas are over here, the barracks area itself would be approximately that size. We have a shower that's also in addition to that.
Q. Can you give us a very general dimension?
A. It would be approximately 20-feet wide and approximately 40-feet deep.
Q. Okay. And 12 to 14 men housed barracks style. Right?
A. Yes, sir.
Q. So fairly close quarters?
A. Yes, sir.
Q. It's hard to maintain any private conversations without other people being around and being able to hear.
A. I wouldn't know, because I've never lived in there, to be honest with you.
Q. Fair enough. That's all I've got, Officer Dunn. I appreciate you.

MS. WHATLEY: No further questions.

THE COURT: I have a question. Do you sing? Do you sing?

THE WITNESS: Sing? No, sir.

THE COURT: With my back turned to you, you have -- my clerk over here says you sound like Johnny Cash. I think you sound more like Conway Twitty.

THE WITNESS: I may do that in my next life.

THE COURT: Before you leave, can you say, "hello darling"?

THE WITNESS: Hello darling.

THE COURT: You can stand down. Thank you.

You can call your next.

MS. WHATLEY: Stacie Rhoads.

THE COURT: You know, Conway Twitty is a Helena guy. So if I say you sound like Conway Twitty, I'm saying something really positive about you.

STACIE RHOADS, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. I can say "good morning" for nine more minutes. Good morning, Ms. Rhoads.

A. Good morning.

Q. Will you please state your name.

A. Stacie Rhoads.

Q. And spell that for the record, please.

A. S-t-a-c-i-e R-h-o-a-d-s.

Q. And Ms. Rhoads, where are you employed?

A. The Arkansas State Police.

Q. And what is your position with the Arkansas State Police?

A. I'm a special agent.

Q. How long have you worked for them?

A. Twelve years.

Q. Prior to working for Arkansas State Police, what did you do?
A. I was in the United States Marine Corps.
Q. How long were you in the Marine Corps?
A. Six years.
Q. What did you do for the Marine Corps?
A. I was a truckdriver.
Q. What part of the state do you currently work in?
A. Pope County.
Q. Have you always worked in that part of the state?
A. No.
Q. Where did you work before that?
A. I was assigned to the highway patrol division here in Little Rock.
Q. When did you move to Pope County to start working there?
A. In the fall of 2001.
Q. In February of 2009, were you asked to assist the ATF with an interview in your area?
A. Yes, I was.
Q. And who was the subject of that interview?
A. Dr. Randeep Mann.
Q. Do you remember the date of the interview?
A. February the 4th.
Q. Did you actually attend the interview?
A. Yes, I did.

Q. Were you the only law enforcement officer present?
A. No. I assisted ATF Agent Tony McCutcheon.
Q. And where did that interview take place?
A. At Dr. Mann's residence.
Q. Did you go to the residence that day?
A. Yes, we did.
Q. If we can look at Government Exhibit 100-A, is this the residence you went to that day?
A. Yes, it is.
Q. Had you ever been there before?
A. No.
Q. Did you contact Dr. Mann before you went to the residence?
A. No, ma'am, we didn't.
Q. What time of the day was the interview?
A. It was about 5:20.
Q. Was the Defendant Randeep Mann home when you arrived at the residence?
A. He was just pulling up as we arrived.
Q. Was anyone else at the house?
A. I believe his wife was there.
Q. Just briefly kind of take us through what happened once you got to the residence.
A. Once we got to the residence, Agent McCutcheon told Dr. Mann who he was. I introduced myself. He invited us into his residence. We went in. Dr. Mann said, "Let me get my wife."

He went and got Mrs. Mann, and we sat in the dining room and visited.

Q. Were you there about a specific -- were you there to ask specific questions?

A. Yes.

Q. What was that?

A. We wanted to know about his whereabouts on February the 3rd and February the 4th.

Q. Did he tell you his whereabouts?

A. Yes, he did.

Q. And can you briefly go through what he said?

A. Dr. Mann told us that on February the 3rd --

MR. HENDRIX: Excuse me. Officer, I'm so sorry. Your Honor, can we approach?

THE COURT: Yes.

(Proceedings at the bench as follows:)

MR. HENDRIX: Judge, I object to the officer testifying to the statement for two reasons. One is Tony McCutcheon has already testified to that. Two is this is a statement of our client. We got it as Jencks material. Correct me if I'm wrong. We got it as Jencks material during the trial, whereas the pretrial order says a statement of the witness, under Rule 16, it's two weeks after the request is made. So it suggests that we have a discovery issue. More importantly, I have a problem that I want to avoid if Your Honor is not

persuaded by the cogent argument.

MS. WHATLEY: I'm not going there at all.

MR. HENDRIX: Can we keep her from saying it?

MS. WHATLEY: We're not going there at all. Another thing, Your Honor, this was provided to them during discovery. I can probably tell you what date it was if you will give me a minute.

MR. HENDRIX: Unless Your Honor is persuaded by that argument, that's fine.

THE COURT: Unless this witness is going to say something you didn't know she was going to say, I'll overrule it.

MR. HENDRIX: That's fine.

MS. CASSINELLI COUCH: We got that in a stack early on, but during the trial. We did. But you may have given it to us before. I do want to find it if you did, so after the witness --

MS. WHATLEY: It's been given twice. I gave it as Jencks. I also gave it during the course of discovery in this case.

MR. HENDRIX: I accept it. I accept that.

MS. WHATLEY: I mainly am kind of giving background, because she's involved in so many things, because she's the one that gets the state search warrant, so I have to get back and go back.

MR. HENDRIX: She is going to generally do this.

MS. WHATLEY: I'm not going into details.

MR. HENDRIX: Thank you.

(Proceedings continuing in open court as follows:)

BY MS. WHATLEY:

Q. We're going through his whereabouts on February 3rd and February 4th. And where had he said he had gone?

A. On February the 4th he stated that he had worked at his medical clinic all day. He stated that he thought he left sometime after his wife. His wife, who was present for the interview, indicated that she had left around 4:48. And she knew that time because she had phoned her mother on the way home. And she looked on her phone, and it was 4:48 on her cell phone.

Q. Let me stop you. You said on February 4th. You are interviewing him on February 4th. This is what he did February 3rd.

A. That's correct. I'm sorry. So he said that he had left sometime after his wife. He recalled that he had left the medical clinic and went to Lowe's. He stated that he had purchased black sheeting from Lowe's using a gift card. And as we were sitting there, he pointed up to the bar and showed that there were two rolls of plastic sheeting on the bar.

He said after he got home they had dinner and that he and his wife had gone to the fitness center and that they were at

the fitness center until it closed, which was at 10 p.m., and that they came home. Mrs. Mann had gone to bed, and he stayed up watching television and went to bed sometime after midnight.

Q. In talking about the black plastic, he was pointing to what he had purchased the day before?

A. Yes.

Q. And that was where?

A. It was on the bar in the kitchen.

Q. And did you do a report of your interview?

A. Yes, I did.

Q. And is that in your report?

A. Yes.

Q. Did you talk to him about the Arkansas State Medical Board?

A. Yes, we did.

Q. Did he acknowledge that he had had dealings with the board?

A. Yes.

Q. Can you describe his demeanor when he talked about the board?

A. Dr. Mann seemed to be very irritated is how I perceived when he spoke about the medical board and the issues that he had with the medical board.

Q. Did you discuss Trent Pierce?

A. Yes, we did.

Q. What did he say about Dr. Pierce?

A. We spoke about any one-on-one communication that he had had

with Dr. Pierce. And he said that in December of 2008 that he had written him a letter. He also talked about seeing Dr. Pierce at a meeting that he was also in attendance and that he tried to talk to Dr. Pierce, you know, about his, you know, situation, and that Dr. Pierce told him, you know, "We can't keep meeting like this without the other members of the board. If we do, I'm going to have to recuse myself." And then Dr. Mann said that he, you know, discontinued any one-on-one communication with Dr. Pierce because he felt that Dr. Pierce was going to help him pull a favorable vote. That was his words.

Q. I'm already going to tell you, Ms. Hinson is about to look at me, so can you slow down?

A. Okay. I'm sorry.

Q. At the time of the interview, were you aware that the defendant had a gun collection?

A. Yes.

Q. Had you ever investigated Dr. Mann prior to this date?

A. No.

Q. Had you had any contact with him prior to this date?

A. No.

Q. Had you assisted any other law enforcement agencies with him prior to this date?

A. No.

Q. When you finished the interview, did something unusual

happen?
A. He showed us his gun collection.
Q. Before that, did Mrs. Mann request anything from you?
A. Yes. At the conclusion of the interview, Dr. Mann asked if he could have a copy of the notes that I had taken during the interview. And I had never had that asked of me before, but I gave them to him. I didn't have anything, you know, to hide, so they copied my notes and then returned them to me.
Q. Did you ever see those notes again?
A. Yes, I did.
Q. When was that?
A. At his medical clinic.
Q. While you were at the residence that night, did he let you see his gun collection?
A. Yes.
Q. And where were those located?
A. In the basement, just downstairs through a workout room. There was a little room off that had no windows, and there were gun safes in there.
Q. If we can look at Government Exhibit 100-MM, what room is this?
A. That's the workout room.
Q. And were there any weapons located in this room?
A. Yes.
Q. Can you point them out?

A. If you will look in kind of the center of the room, there's a flag. If you will look to the left, down on the floor, there was a .50-caliber machine gun.
Q. If we can go to 100-NN, is that the .50-caliber machine gun?
A. Yes, ma'am.
Q. And going back to 100-MM, you said there was a room with gun safes. Can you show us the --
A. Yes. At the very back, in the right-hand corner, there's a door that's open, and the gun room was in there.
Q. Can you touch the screen where that was?
A. Right there.
Q. And let's go to 100-PP. What is this?
A. That's the inside of that room.
Q. Could you see all of this from where you were standing?
A. Yes.
Q. Did you actually go into the room?
A. No. I stood at the doorway.
Q. Who went into the room?
A. Agent McCutcheon.
Q. But you were able to see what is seen in this picture?
A. Yes.
Q. Did Agent McCutcheon remove any of the firearms that night?
A. Yes, he did.
Q. And do you recall which one he removed?

A. I recall that he removed the -- what I just touched, which is an AR-15 with an M203 attached.
Q. And what's an M203?
A. It's a grenade launcher.
Q. And you saw it that evening?
A. Yes.
Q. What time did you leave the residence that night?
A. I recall it was probably about 6:20, 6:30.
Q. Had you ever been to that area before?
A. No.
Q. And are you familiar with the area around the defendants' house?
A. Not until that day.
Q. Have you been back since?
A. Yes.
Q. Can you kind of describe the area for the jury?
A. It's kind of isolated out there. Going to Dr. Mann's house, the street that he lives on is a dead end. There's only one way in and one way out. It's kind of surrounded by the lake, Lake Dardanelle.
Q. What street is Dr. Mann's house on?
A. Milky Way Lane.
Q. And is there a road that you can see from his house that goes down to a cul-de-sac?
A. Yes. Galaxy Lane.

Q. And if you are at the defendants' house, can you see Galaxy Lane?
A. Yes.
Q. Agent Rhoads, where is your office physically located?
A. My office is at the Pope County Sheriff's Office.
Q. On March 4th, 2009, did you learn of grenades being at the sheriff's office?
A. Yes, I did.
Q. Did you become involved in that investigation?
A. Yes.
Q. What was your role?
A. When I got to the office that morning, the sheriff's department had found some grenades in an area of Galaxy Lane. And I knew that to be in close relationship to Dr. Mann's residence. And I had knowledge about the M203, and so I prepared a search warrant for Dr. Mann's residence.
Q. Was this a joint investigation between the sheriff's office and the Arkansas State Police?
A. Yes.
Q. And at some point in time was ATF called in?
A. Yes.
Q. Once you -- I'm assuming you obtained a search warrant that day?
A. Yes, ma'am.
Q. And once you obtained that warrant, what did you do?

A. I went to Dr. Mann's business, his clinic. And as I was arriving, he also was arriving. And I greeted him and told him that I had a search warrant for his residence. And Dr. Mann stated, "Well, I've been expecting it." And I just told him that I was there as a courtesy and if he would like to come with us to his house and unlock his doors and to also open the gun safes so that we wouldn't have to tear up any of his personal property, and he agreed to do that.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government Exhibits 152-A through 152-C. What are these?

A. These are pictures of Dr. Mann's medical clinic.

Q. And do they fairly and accurately show Skyline Medical Clinic?

A. Yes, they do.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 152-A through 152-C.

MR. HENDRIX: No objection.

THE COURT: They are received.

(Government's Exhibits 152-A through 152-C received in evidence.)

BY MS. WHATLEY:

Q. Agent Rhoads, approximately how far is the clinic located from the residence?
A. About eight miles.
Q. And what time did you get to the medical clinic that day?
A. It was around 3:30.
Q. If we can look -- this is 152-A. Is this taken from Skyline Drive?
A. Yes.
Q. And 152-B, what is this?
A. That's just the sign outside the clinic.
Q. And 152-C?
A. And that's the back side of the clinic.
Q. What did Dr. Mann tell you when you asked --
A. That's not the back side. I'm sorry. That's the front. I apologize.
Q. What did Dr. Mann say when you asked whether he would go with you to the residence?
A. He stated that he needed to see a couple of patients first, or he asked if he could see a couple of patients first. And I said, "Well, we really need to do the search warrant. You know, you don't have to come." And I told him he didn't have to be present. And he agreed just to come with us right then.
Q. And how did he get to his house?
A. He drove.
Q. And was any law enforcement with him in his car?

A. No.
Q. And how did you get there?
A. I drove my vehicle.
Q. Were you in front of him or behind him?
A. I was behind him.
Q. Were you able to observe him as you were driving to the residence?
A. Yes.
Q. And what was he doing?
A. He appeared to be talking on the phone.
Q. Tell us what happened after you arrived at the house.
A. We got to the residence. And he unlocked the -- opened the garages and unlocked the house. And we went downstairs, and he unlocked the gun safes.
Q. Did you tell him why you were there?
A. Not initially. Well, I mean, I told him we had a search warrant, but I didn't tell him the specifics about the search warrant initially.
Q. Did you eventually tell him?
A. Yes.
Q. And when did you tell him?
A. Dr. Mann was preparing to leave. And I told him that we had found some grenades close to his house. And I asked him if he knew anything about them. And he just shook his head, what I took to be a negative response.

Q. Once you got into the house, were photographs taken?
A. Yes.
Q. And who took those photographs?
A. Investigator Rowdy Sweet with the Pope County Sheriff's Office.
Q. Did Dr. Mann stay at the residence while the search warrant was being executed?
A. No, he did not.
Q. Did he say where he was going?
A. The best I remember, he was going to pick someone up.
Q. Did you stay while the search warrant was being executed?
A. Not entirely.
Q. Why not?
A. Once we got to the residence, in his home office there was a computer. And I had not put a computer on the search warrant, and so I left and prepared a search warrant to take the computer.
Q. Who did you leave in charge while you were gone?
A. Investigator Sweet.
Q. And did you go back to the residence?
A. Yes.
Q. Did you see the Defendant Randeep Mann when you got back to the residence?
A. He came. I believe I was already back when he was there.
Q. Was he alone?

A. No.
Q. Who was he with?
A. A gentleman, but I don't know who he was.
Q. Did he say anything about that man?
A. He just said that he had flown in, and I think he said from India.
Q. Was the defendant arrested that evening?
A. Yes.
Q. And what happened to the evidence that was collected from the residence that night?
A. It was put in custody with the Pope County Sheriff's Office.
Q. Was it eventually turned over to ATF?
A. Yes.
Q. Did you ever go back to the residence?
A. Yes.
Q. When?
A. The next day.
Q. Why?
A. The ATF had obtained a federal search warrant for the residence.
Q. Was there anything in particular you were going back for?
A. Yes. A wheel, like a donut tire.
Q. So the search warrant that you drafted was the state search warrant, and that was regarding the grenades?

A. That's correct.
Q. The search warrant you go back to the next night, was that a federal search warrant?
A. Yes.
Q. What was the purpose of that part of the investigation?
A. It was my understanding it was related to the bombing of Dr. Pierce.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government Exhibit 153.
A. Yes.
Q. What is that?
A. It's a federal search warrant.
Q. And does it appear to be a certified copy of the search warrant?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move -- I'm sorry. I have the wrong search warrant, don't I? I'll get back to that one, Your Honor. I'm sorry.
BY MS. WHATLEY:
Q. When you went back to the house on the evening of March 5th, were any family members present?
A. Not when I first got there.

Q. After March 5th, did you help execute more search warrants?
A. Yes.
Q. Is this where I was getting ahead of myself?
A. I think so.
Q. When was the next, or where was the next search warrant executed?
A. After the March 5th?
Q. Yes.
A. The next one that I recall was at Dr. Mann's medical clinic.
Q. And is that what is Government Exhibit 153?
A. Yes.
Q. And what is the address?
A. 111 Skyline Drive.

MS. WHATLEY: Your Honor, at this time we move for the admission of 153.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 153 received in evidence.)

BY MS. WHATLEY:
Q. When was this search warrant executed?
A. On March the 11th, I believe. I'm sorry. It was March 10th.
Q. And if we can look at Government Exhibit 153, is this search warrant signed by a United States magistrate judge?

A. Yes, ma'am.
Q. And who is that judge?
A. H. David Young.
Q. And what was the date and time that this search warrant was issued?
A. March 10th, 2009, at 5:10 p.m.
Q. And did you go to the medical clinic that night?
A. Yes.
Q. And can you please just kind of describe the layout of the medical clinic?
A. We entered through the entrance on the north side. I mean, it was just a typical medical clinic. We didn't go in through the front door, which a person would normally enter through. You walk in, and there's a long hallway. There's, you know, offices on the right. And then there were exam rooms on the left.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification as Government Exhibits 154-A through -I. What are these?
A. These are photographs of the clinic.
Q. Do these pictures fairly and accurately depict how the medical clinic looked that evening when you arrived?
A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 154-A.

MR. HENDRIX: No objection.

THE COURT: Received.

(Government's Exhibit 154-A received in evidence.)

BY MS. WHATLEY:

Q. If we can look at 154-A, please.

A. Okay.

Q. What does this picture show?

A. That was Dr. Mann's office.

Q. And is this how it looked when y'all got there?

A. Yes.

Q. And going to 154-B?

A. Yes. That's also in his office.

Q. And 154-C, what is this?

A. That was a room that they stored medication in.

Q. Did you search through any of the items in 154-C?

A. I did not, no.

Q. Going through 154-D, what does this show?

A. It's the hallway.

Q. And are exam rooms down this hallway?

A. Yes.

Q. On both sides of the hall or just on one side?

A. I think they were just on one side.

Q. And 154-E?

A. That's the other end of the hallway.
Q. And is this how it looked when you arrived?
A. Yes.
Q. 154-F, what area of the office is this?
A. That was an area off of the reception area.
Q. And 154-G?
A. That's another area off of the reception area, or it's actually the other wall of that one you just looked at.
Q. 154-H?
A. That was the reception area.
Q. And 154-I?
A. This is the doorway looking from out. Does that make sense?
Q. So this is the doorway looking out of the doorway that's depicted in 154-H?
A. Yes.
Q. Were you assigned to search a certain area of the clinic that night?
A. Yes.
Q. And which area were you assigned to search?
A. The reception area.
Q. And which picture best depicts that area you searched?
A. 154-I.
Q. And just so that I'm clear, is this what the area looked like before you searched it?

A. Yes.
Q. Did you find anything in that area?
A. Yes.
Q. What did you find?
A. Various newsletters from the medical board, letters written from the medical board to Dr. Mann, newspaper clippings, things like that.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification as Government Exhibits 155-A through -J. Have you seen these before?
A. Yes.
Q. And is this what you found that evening?
A. Yes, it is.
Q. And does it appear to be in substantially the same condition as when you located it that evening?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 155-A through -J.
THE COURT: Any objection?
MR. HENDRIX: No, Your Honor.
THE COURT: They are received.
(Government's Exhibits 155-A through 155-J received in

evidence.)
BY MS. WHATLEY:
Q. If we can just briefly go through those.
A. Okay.
Q. 155-A, are these just some newspaper articles --
A. Yes.
Q. -- regarding his --
A. Medical license, yes.
Q. Going to 155-B?
A. It's a letter issued to Dr. Mann from the medical board.
Q. 155-C?
A. It's a letter to Dr. Mann from the medical board.
Q. 155-D?
A. It's a letter from the medical board to Dr. Mann.
Q. 155-E?
A. A letter to Dr. Mann from the medical board.
Q. 155-F?
A. It's a letter to Dr. Mann from the medical board.
Q. You said there were also newsletters that were located?
A. Yes.
Q. I show you Government Exhibit 155-G, just the first page of that. Is this one of the newsletters?
A. Yes, ma'am.
Q. What is the date on this newsletter?
A. It says winter of 2007.

Q. Let's look at Government Exhibit 155-H. What is the date on this newsletter?
A. Spring of 2007.
Q. Does this have a picture in the middle of this newsletter?
A. Yes.
Q. And who is depicted in the picture according to what it states on the newsletter?
A. Dr. Trent or Trent Pierce, M.D., chairman of the medical board.
Q. And 155-I, what is the date of this newsletter?
A. Summer of 2007.
Q. And 155-J, what is this?
A. This appears to be a copy of something that was taken off the Internet and printed.
Q. What is the date of the article?
A. February 4th, 2009.
Q. And is this regarding the car bombing in West Memphis?
A. Yes.
Q. And where were all of these items found?
A. In the reception area at Dr. Mann's clinic.
Q. Did you find anything that evening that showed Dr. Mann's e-mail address?
A. Yes.
Q. And do you recall what his e-mail address was?
A. Mannrs@hotmail, something like that.

Q. And did you also find an e-mail address for Sangeeta Mann?
A. Yes.
Q. And do you recall what that was?
A. I believe it was mannss@hotmail.com.
Q. Were firearms located in the medical clinic that evening?
A. No.
Q. After that search warrant, did you assist ATF any further?
A. Yes.
Q. What was the next thing they asked you to do?
A. Mrs. Mann had testified at a detention hearing or some kind of hearing, and she had indicated that they maintained a storage unit at Space World in Russellville.
Q. And what did you do once you learned that information?
A. I contacted -- there's actually two Space World locations, and I contacted both. And they said that they did not have storage units issued to Dr. Mann.
Q. Did you later get further information regarding that?
A. Yes. I later learned that Dr. Mann did have a storage unit there, but it was in his brother's name.
Q. What did you do after you got that information?
A. I went to Space World on Boulder Avenue and inquired about it and also was given a grand jury subpoena and took it and served it at Space World.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government Exhibits 157-A through 157-D. What are these?

A. These are the records that I obtained from Space World.

Q. And have these been certified as business documents from Space World?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 157-A through 157-D.

THE COURT: They are received.

(Government's Exhibits 157-A through 157-D received in evidence.)

BY MS. WHATLEY:

Q. We'll just briefly look at these, if we can look at 157-A. Oh, I'm sorry. Can we take that down, please? Take it down.

Can I have the ELMO, please?

The jury doesn't have it. Do you?

Your Honor, I'm sorry. I think I'm causing all sorts of technical difficulties today.

Is this the customer information sheet that you obtained that day or obtained?

A. Yes.

Q. And who is the name of the person that rented this unit?

A. Sandip Singh.

Q. And what's the mailing address?
A. 2874 Waterleaf Drive.
Q. And what city?
A. Germantown, Tennessee.
Q. And is there something that shows the employment information for the individual?
A. Skyline Medical Clinic.
Q. And did you know who Sandip Singh was?
A. I knew that to be Dr. Mann's brother.
Q. Did you also receive Government Exhibit 157-D?
A. Yes.
Q. And what is this?
A. That's an activity log showing the dates and the times that the unit rented by the Manns was accessed.
Q. If we can go toward the bottom, does it show access date on February 2nd?
A. Yes.
Q. February 5th?
A. Yes.
Q. February 27th?
A. Yes.
Q. And all those are of 2009. Correct?
A. Yes.
Q. Other than documents, did you get anything else from Space World that evening, or did you see anything else at Space World

that day?
A. Yes. We tried to view videotapes that evening. They maintain survey -- video surveillance at Space World.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government Exhibit 158-A1 and -A2. What are these?
A. These are videos that I was provided from Space World.
Q. And how do you know that those are the same videos?
A. This is my handwriting on the front.
Q. And were these also certified as business documents from Space World?
A. Yes.
Q. Did you review the videos?
A. Not that evening.
Q. When did you review them?
A. The next morning.
Q. Why didn't you review them that night?
A. There were some technical difficulties, and they had to call the owner to come in and get the kinks worked out so we could view it.
Q. When you viewed the videos, did you notice anything different between the time on the video and the time on the log?
A. Yes. There was a 22-minute difference.

Q. Which one was farther --
A. The time on the gate was -- when you get there, you have to punch in a code at the gate, and that was the correct time. The time on the video was 22 minutes off.
Q. While you were reviewing these videos, were you able to see either or both of the defendants in either video?
A. Yes.
Q. And what about the February 2nd video?
A. On February 2nd, I observed Dr. Mann and also his wife on the video.
Q. And what about February 5th?
A. That was just Dr. Mann.
Q. Just so that the record is clear, Government Exhibits 158-A1 and -A2 cover a span of dates. Correct?
A. That's correct.
Q. Can you give us the span of dates that the videos cover?
A. The first one shows that it's from January 31st of 2009 until February the 9th of 2009.
Q. While you were reviewing these videos, did you have any pictures taken of what was on the videos?
A. Yes. From the February 5th access.
Q. And have you caused those pictures to be printed off?
A. Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government Exhibit 159-A and 159-B. Have you seen these before?

A. Yes.

Q. What are they?

A. Those are pictures taken of the video screen.

Q. And do these pictures fairly and accurately depict what is on the video?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 159-A and 159-B.

MR. HENDRIX: No objection.

THE COURT: They will be received.

(Government's Exhibits 159-A and 159-B received in evidence.)

BY MS. WHATLEY:

Q. If we can look at 159-A, please. And who is depicted in this picture?

A. Dr. Mann.

Q. And can you give us the time and date of this picture?

A. February 5th of 2009. It just shows 57, but it was 12:57.

Q. 12:57 p.m. or a.m.?

A. A.m.

Q. And 159-B, is that just a closer view of 159-A?

A. Yes.
Q. And can you remind us again what time you left the Manns' residence on the evening of February 4th, 2009?
A. About 6:30.
Q. How far is it from the Mann residence to the storage unit?
A. It's about 12 miles roughly.
Q. And how long would it take to drive there if you took the most direct route?
A. Fifteen, 20 minutes at the most.
Q. And taking the most direct route, does that actually even go by the medical clinic?
A. Yes.
Q. After you obtained this information for the ATF, did anything else happen regarding the storage unit?
A. Yes.
Q. What happened?
A. The ATF obtained a search warrant.
Q. Was that a federal search warrant?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification as Government Exhibit 160. Have you seen this before?
A. Yes.

Q. What is this?
A. This is a search warrant for the storage unit.
Q. And were you present during the execution of this search warrant?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 160.
THE COURT: It's received.
(Government's Exhibit 160 received in evidence.)
BY MS. WHATLEY:
Q. And going to the top of that page, what was allowed to be searched through this search warrant?
A. Space World storage unit C-03.
Q. At 2810 South Boulder?
A. Yes.
Q. Is that the same place you had received the documents from?
A. Yes.
Q. And who issued this search warrant?
A. H. David Young.
Q. What is the time and date the search warrant was issued?
A. The date was March the 12th, 2009. And it was issued at 11:40 a.m.
Q. I believe you stated that you were present at the execution of this warrant.
A. Yes.

Q. Were there any items located in the storage unit?
A. Yes.
Q. Was the unit full?
A. No.
Q. How much of the space in the unit would you think was being utilized?
A. Roughly half.
MS. WHATLEY: Your Honor, may I approach?
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government Exhibits 161-A through -G. What are these?
A. These are photos that were taken during the search warrant of the unit.
Q. And do these fairly and accurately reflect what happened during the execution of that search warrant?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 161-A through 161-G.
THE COURT: They are received.
(Government's Exhibits 161-A through 161-G received in evidence.)
BY MS. WHATLEY:
Q. Let's look at 161-A. Is this the outside of the storage unit?

A. Yes, prior to the search.
Q. Can you kind of explain where this storage unit is located when you walk in the back of the area?
A. It was down a long hallway, right in -- kind of in a corner.
Q. And look at 161-B. Is this what the unit looked like when you first --
A. Yes. That was prior to the search.
Q. And 161-C, what is this?
A. Just a label that was on a suitcase located in the storage unit.
Q. And what was located in that suitcase?
A. VHS videotapes.
Q. Is that what's depicted in 161-D?
A. Yes.
Q. Was anything else located that night?
A. Yes. We found some trigger housing groups.
Q. If we can go to 161-E, are these a picture of where those were located?
A. Yes.
Q. And you said trigger housing groups. Can you tell the jury what those are?
A. Those are kind of the thing you pull when you are shooting guns.
Q. And how many were located?

A. Four.
Q. Those four trigger groups, were those the only firearm-related items that were located in the storage unit?
A. Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I'm not going to go very far, because it's kind of heavy. I'm showing you Government Exhibit 162. Have you seen this before? If you need to get down, you can.
A. Yes. That looks like the suitcase that was recovered from the unit.
Q. Do you want to come look at it just to verify?
A. Yes, yes. That's it.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 162.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 162 received in evidence.)
MS. WHATLEY: May I approach?
BY MS. WHATLEY:
Q. I've just handed you what's been marked as Government Exhibit 163-A through -D, I believe.
A. Yes.
Q. What are those?

A. These are the trigger groups that were recovered.
Q. Are those what are depicted in Government's Exhibit 161-E?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 163-A through -D.
THE COURT: They are received.
(Government's Exhibits 163-A through 163-D received in evidence.)
BY MS. WHATLEY:
Q. At this point in time -- at this point in time, you had been to both the house and the clinic. Correct?
A. Yes.
Q. Was there a storage room at the residence?
A. Yes.
Q. How many storage locations were there at the residence?
A. Oh, there were six or seven. There was a lot of closets, an attic, lots of room.
Q. And was there a storage room at the clinic?
A. Yes.
Q. And approximately how much of this storage unit did you say was being utilized?
A. I would say roughly, you know, half of it.
Q. Would all of these items have been able to be stored at the house or the clinic?
A. I believe so, yes.

Q. Let's look at 161-F. Is this what it looked like after the search warrant was executed?
A. Yes.
Q. And 161-G.
A. Yes. That's what it looked like right as we were leaving.
Q. And was a copy of the search warrant left at that location?
A. Yes.
Q. And Government Exhibit 162, does this appear to be the same suitcase that Dr. Mann was carrying in Government Exhibit 159-A?
A. The size and shape appear to be the same.
Q. From February 5th, 2009, until the execution of the search warrant at his residence on March 4th, 2009, was this storage unit accessed again?
A. Yes.
Q. If we can look at Government Exhibit 157-D. And what was the date that it was accessed after February 5th but prior to the execution of the search warrant at the house?
A. February 27th of 2009.
Q. Do we have a video from that date?
A. No.
Q. Why not?
A. I believe there was an issue that the tape that had that had been rerecorded on.
Q. Did you execute another search warrant?
A. Yes.

Q. Do you recall where that search warrant was?
A. It was on a piece of property owned by Dr. Mann.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification as Government Exhibit 164. What is that?
A. It's a search warrant for a parcel of land in Pope County.
Q. And does this appear to be a certified copy of that search warrant?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 164.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 164 received in evidence.)
BY MS. WHATLEY:
Q. If we can briefly look at that, describe the area to be searched.
A. A 30.78 acre parcel of land, Pope County, Arkansas.
Q. And did H. David Young also issue this search warrant?
A. Yes.
Q. On what time and date?
A. March 13th, 2009, at 3:35 p.m.
Q. Did you actually go out and help execute this search

warrant?
A. Yes.
Q. Were pictures taken during the execution of that warrant?
A. Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification as Government Exhibit 165-A through 165-G. Have you seen these before?
A. Yes.
Q. And what are they?
A. These are photographs taken at the property that we searched.
Q. Do these fairly and accurately depict the location on the date of the search?
A. Yes.
MS. WHATLEY: Your Honor, we move for the admission of Government Exhibit 165-A through 165-G.
MR. HENDRIX: No objection.
THE COURT: Received.
(Government's Exhibits 165-A through 165-G received in evidence.)
BY MS. WHATLEY:
Q. If we can look at 165-A, do you know what the purpose of

this area or this land was?
A. It was my understanding that Dr. Mann used it for a firing range.
Q. Is this showing it going into that area?
A. Yes. That's from the road.
Q. And 165-B, we're just getting closer in?
A. Yes.
Q. Did you find anything at that location?
A. Just some spent shell casings, things like that.
Q. 165-C, what is that?
A. That appears to be a box that has been shot.
Q. 165-D, can you tell us what that is?
A. That appears to be an area where it looks like someone had laid down. It just appeared that somebody had been there recently.
Q. And 165-E?
A. That was a blanket that had shell casings on it.
Q. Are these the only shell casings that were located at that area?
A. No.
Q. Can you tell us how many shell casings were found?
A. Oh, we found quite a few of varying caliber.
Q. And 165-F, what does this show?
A. That's the berm. That's where you would fire so that the bullets wouldn't proceed through or --

Q. And 165-G?

A. That's just another view of the property.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: Yes.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

MR. HENDRIX: Yes, Your Honor. That was a whole lot of ground that just got plowed. I expect it will be a bit.

THE COURT: Now, you know we have six more witnesses this afternoon that we have to get on, so hopefully we can push. I'll give you time and give you lunch to get prepared. But we have six people we need to get on the stand today, so we just need to move pretty quickly this afternoon.

All right. I'm going to give you your lunch break. We'll come back at 2 o'clock. That will give you an hour and about 15 or 20 minutes to go to lunch. We'll be in recess until 2 o'clock.

(Recess at 12:43 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Elaine Hinson, RMR, CRR, CCR Date: March 11, 2011.
United States Court Reporter

(Proceedings continuing at 1:59 p.m.; jury present.)

THE COURT: We can bring in the jury. Thank you. We can bring them in.

Mr. Hendrix, cross-examination.

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Agent, Detective, or Officer?

A. You can call me Agent Rhoads. That's fine.

Q. Agent Rhoads, I kind of want to go back through the areas and just a few questions about each. Let's begin with the evening of February 4th of 2009, your and ATF Agent McCutcheon's interview of Dr. Mann and his wife at their residence.

A. Okay.

Q. The sense of this that I got was they were very hospitable to you all?

A. They invited us in, yes, very cordial.

Q. Very cordial and very cooperative?

A. Yes.

Q. You did not get a sense of evasiveness from either one throughout this?

A. No.

Q. A few things in there. And to sort of settle something, I have -- you took notes that evening --

A. Yes.
Q. -- correct, handwritten notes?
A. Yes.
Q. And the process is when an agent takes handwritten notes, at some point they go back to the office and then type those notes up into a more formal statement; is that correct?
A. That's correct.
Q. And I have access to your formal statements?
A. Yes.
Q. Do you remember the date that you sat down and typed up the statement from your notes?
A. Oh, I think, it was late March.
MR. HENDRIX: May I approach, Judge?
THE COURT: You may.
BY MR. HENDRIX:
Q. And just to refresh your memory, would March 20th be the date?
A. Yes.
Q. Okay. Thank you. And I know that there was a lot going on. Was there a reason -- would it be typical to wait six weeks to sit down with your rough notes and then type out a --
A. It really just depends on how much other things I have going on, but six weeks is not typical.
Q. That was longer than --
A. Yes.

Q. -- normal? Okay. And a few other things I want to go over with you briefly is, in your formal statement, you -- Dr. Pierce was mentioned -- well, let me actually back up. In your statement you said "I," meaning you, "told Dr. Mann that others working the bombing case involving Dr. Pierce would want to know if he," meaning Dr. Mann, "was involved." And you asked him that question?

A. That's correct.

Q. So it was clear on February 4th, 2009, at least from Dr. Mann's perspective, that's why you all were there was to inquire about this bomb?

A. Yes.

Q. And what was his response?

A. His response was, "It was a cowardly act, and I'm not a coward."

Q. So he adamantly denied being involved in the bombing in any way?

A. I don't know if that's really -- it's not an "I didn't do it." I mean, it is what it is. "It was a cowardly act, and I'm not a coward."

Q. "I'm not a coward." Dr. Pierce was mentioned. Did you guys bring up the name Dr. Pierce?

A. Yes.

Q. And is it true that he saw Dr. Pierce as an ally?

A. Yes.

Q. Okay. "At the end of the interview, I told Mann that investigators may have additional questions, and he stated that he would cooperate"; is that correct?
A. Yes.
Q. And, in fact, the next series of events is the search at their home, correct?
A. Yes.
Q. And as I understood it, you and another agent -- was it Agent McCutcheon -- met Dr. Mann out at his clinic?
A. No. It was myself and Agent Carter with the State Police.
Q. And Joe Carter?
A. Yes.
Q. Okay. And you all did that as a courtesy to come and say, "Doctor, we've got a search warrant for your home. Do you want to cooperate or not"?
A. Yeah. We just didn't want to have to tear up his stuff.
Q. Right. And like he had said at the end of the interview on, I guess, a month before on February 4th, he said, "I'm happy to cooperate." And a month later when you came for the search warrant and met him at -- let me be clear for the record -- when you came for the search warrant for the home, but met him at his office, he was fully cooperative with you?
A. Yes.
Q. And he went out there voluntarily to the home --
A. Yes.

Q. -- from the clinic, opened up the front doors --
A. Yes.
Q. -- and showed you around the house essentially?
A. He took us down and he willingly opened the safes.
Q. Okay. The next thing, I think, you were involved in was in the search of his clinic; is that right?
A. Well, there were two searches of his residence, one by state warrant and one by federal, that was the next thing that I was involved with, and then it was the clinic.
Q. And now skipping forward, the searches of the home in relationship to the search of the clinic, that's just a couple of days?
A. I think it was about maybe five.
Q. About five days?
A. Yeah.
Q. And do you remember the time that you all executed the search warrant, what time of the day it was?
A. It was late in the evening, maybe around 7:00.
Q. And I just wanted to show you, the government had introduced several pictures of the clinic. And this is one of those, it's Government's Exhibit 154e.
A. Yes.
Q. And that's one of them?
A. Yes, that's one of the photos of the clinic, yes, sir.
Q. Okay. And, again, this was at the end of the business

day, right?
A. Yes.
Q. And so you see trash piled up, assumably for the trash guy to come and pick up, right?
A. I guess, yes.
Q. Assumably, the office had been up and running all day --
A. Yes.
Q. -- by the time you guys came? Okay. And you all took various documents from there that included, for instance, 155g, which is a newsletter from the State Medical Board, right?
A. Yes.
Q. And I think 155h and i are the same things --
A. Yes.
Q. -- newsletters from the medical board?
A. Yes.
Q. And then various documents that related specifically to his involvement with the board; is that right --
A. Yes.
Q. -- a letter dated January 11th of '08 talking about, "I'm in receipt of your letter dated December 19th regarding medical board"?
A. Yes.
Q. And there's several of those that I won't bore us with. I know the jury has already looked at them. And another thing was then some newspaper articles that related to him, right?

A. Yes.
Q. Okay. And, again, this is his medical clinic, right?
A. That's correct.
Q. And these are business-related, medical clinic-related documents, right?
A. I suppose, yes.
Q. No surprise to find --
A. That stuff.
Q. -- material related to his medical practice at his medical clinic, right?
A. Right.
Q. Okay. And one of the other things was Government's 155j, which was a fax, it looks like, off a website for MSNBC.com?
A. Yes.
Q. That is a news report of the bombing of Dr. Pierce, right?
A. Yes.
Q. And I just noticed if we can see it, this is a fax line at the top of this document, correct?
A. Yes, that's what it appears to be.
Q. Showing that it was faxed?
A. Yes.
Q. And does it appear that it was faxed from a Dr. Mike Umerah --
A. Yes.
Q. -- to Dr. Mann or his medical clinic, right?

A. To a phone number. I don't know if that's his clinic.
Q. Okay. We can assume that this was one doctor faxing information to another doctor about a tragedy that occurred to a third doctor?
A. It could be, yes, sir.
Q. And that happened, looks like, on February 4th at 1516. And that's --
A. 3 --
Q. You're a former marine, so you can help me. What time?
A. Was it 15?
Q. I think.
A. If it's 15, it was 3 -- yeah, 3:16.
Q. In the afternoon?
A. Yes.
Q. Okay. Okay. I think the next area that you went over with Ms. Whatley was Space World?
A. Yes.
Q. And you went and you subpoenaed documents and all of that, right?
A. Yes.
Q. And I think there's a witness I'll ask most of the questions to on this. But sort of a critical area that I wanted to cover with you were these still photographs. So I understood your testimony to be that you went out to -- you had heard through the detention hearing when Mrs. Mann testified

that they, the Manns, owned a storage unit?
A. Yes.
Q. And it was at a place called Space World?
A. Yes.
Q. And you figured out where that particular unit was at Space World, right?
A. Yes.
Q. And then you got videos?
A. Right, the VHS tapes.
Q. And I understand there were some technical difficulties, but whatever through the process, you guys were able to come up with a couple of still photographs?
A. Yes, sir.
Q. I'm going to show you Government's Exhibit 159a. And now, Agent Rhoads, what I want to cover with you, because I think it's important, is this represents itself as a photograph still of Dr. Mann entering Space World, correct --
A. Yes.
Q. -- with this suitcase --
A. Yes.
Q. -- right? And it's a little bit confusing because I have to say that the first time I saw this, I thought he's walking out of it. But it's a little bit deceptive, I guess. The -- in the background of the photograph -- and this will probably easily be cleared up with some more photographs later, but

behind Dr. Mann is one of those sliding garage door type things?

A. Yes.

Q. And so his vehicle, one would assume, would be parked behind that, right?

A. Not necessarily. There are -- that's not the only way to access that building. There are glass doors.

Q. Understood. And here's the point that I'm trying to make. Beyond the garage door and I guess right next to it is a -- is that a door?

A. Yes.

Q. Okay.

A. And then a trash can.

Q. And a trash can. On the other side of those is the outside?

A. Yes.

Q. The outside world?

A. Yes.

Q. So he's likely entered from the regular door --

A. Yes.

Q. -- not the garage type door. And he's walking into what would be a communal area of the storage facility?

A. Yes.

Q. And if we are to extrapolate, if he were to continue walking, he's going to come to a hallway --

A. Yes.
Q. -- correct? And that long hallway is what has the actual storage units on it?
A. Yes.
Q. So the entrance to the storage units is on the inside of the building?
A. Yes.
Q. Okay. And just for completeness, that's then the blowup of it that represents the same thing, him entering into it?
A. Yes, sir.
Q. And were there any stills of him exiting?
A. No.
Q. Why not?
A. The reason that I took those photographs is -- the purpose was I was going to e-mail those to the ATF agents. That was the whole purpose, so they could identify it as him for the purposes of their search warrant. But they did that through me, so I didn't take stills of him exiting.
Q. Understood. But we know for a fact -- even though we don't have the exit photographs, we do know this, this is him entering the whole facility. We assume he walks down the hall, enters his unit. He's got this suitcase in his hand, correct?
A. That's correct.
Q. And then during the search a month later, you find this suitcase?

A. Yes.
Q. So circumstantial evidence proved beyond a reasonable doubt that he went in and dropped this off, right?
A. Yes.
Q. You also found -- let's see. There was the suitcase, there were some other boxes -- oh, here it is. And that was the contents of the storage unit when you --
A. Yes.
Q. -- guys executed the search warrant on it, right?
A. Yes.
Q. Suitcase, some other assorted material, all, we assume, noncontroversial, right?
A. Right.
Q. And then you did talk about a group of -- was it three trigger housing groups?
A. Actually there were four.
Q. There were four?
A. Yes.
Q. And as you explained, that's the attachment that's actually the trigger you put on them?
A. Right.
Q. Nothing unlawful about any of that, right?
A. Not to my knowledge.
Q. Okay. You were asked -- on direct examination, it was established that you had been to both Dr. Mann's house and

involved in the search of it, so you're familiar with it?
A. Yes.
Q. And been to his office --
A. Yes.
Q. -- and were familiar with it, and now had been to the storage unit. And the question was asked, did it appear to you that this stuff could have been stored at his house or his clinic? Was there enough room?
A. Yes.
Q. Is that right? Is that an observation that's important to this case?
A. I don't know. I'm just answering the questions that are asked of me.
Q. Understood. I understand. All right. The final, then, area that you covered was the shooting range, right?
A. Yes.
Q. Okay. And was it your understanding that Dr. Mann at some point had bought this land? Was that your understanding?
A. It was my understanding that he owned it.
Q. Okay. And was it your understanding that it was a preexisting shooting range?
A. I don't know that.
Q. Okay. You didn't know that. Y'all searched -- and I'm assuming what really the goal, y'all were searching for anything related to illegal weapons offenses. And I think in

the application for the search warrant, you're looking specifically for items to try to connect -- that may connect to the bombing scene in West Memphis, correct?

A. Sure.

Q. And did you find anything?

A. No.

Q. You guys searched this thoroughly? And by that, I mean, you used metal detectors and so forth, right?

A. Yes.

Q. And you did find what would be evidence to confirm that this was, in fact, a shooting range, you found cartridges and so forth. And I guess there was a photograph we saw that you noted looked like a person lying down?

A. Yes.

Q. Which would be like a person --

A. In a prone position.

Q. -- at a shooting range shooting?

A. Yes.

Q. You did not find any grenades --

A. No.

Q. -- of any sort?

A. No, not at the firing range, no, sir.

Q. And/or propelled?

A. No.

Q. Didn't find any casings for grenades of any sort, correct?

A. No.
Q. And even using metal detectors, didn't find the little -- the little pins on hand grenades --
A. No, we did not.
Q. -- or little strings that may be attached to tops or --
A. No.
MR. HENDRIX: May I have just a moment, Judge?
BY MR. HENDRIX:
Q. The question is, at the medical clinic, there's a parking area as part of the medical clinic, right?
A. Yes.
Q. And when you guys went there, were there several cars? Do you remember?
A. When I went to ask -- tell Dr. Mann about the search warrant, or when we actually did the search warrant on the clinic?
Q. Either.
A. There were cars on the back side under the -- there's covered parking on the back side, there were vehicles there, yes, sir.
Q. And that's the way I understand it, right, there's a covered parking area that you would assume would be for Dr. Mann and his wife and so forth?
A. Yes.
Q. And then there's more open --

A. That would be more for the --
Q. Patients?
A. -- the patients. Yes, sir.
Q. And you saw cars under the covered parking?
A. Yes.
Q. Thank you, Agent Rhoads.
A. Sure.

THE COURT: Any redirect?

MS. WHATLEY: No, Your Honor.

THE COURT: You can stand down, Ms. Rhoads.

Call your next.

MS. WHATLEY: Amber Waldron.

THE COURT: Has Ms. Waldron been sworn in?

MS. WHATLEY: I think so. May I retrieve my exhibits, Your Honor?

THE COURT: You may.

AMBER GARRISON, GOVERNMENT WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good afternoon.
A. Hi.
Q. Would you please state your name?
A. Amber Garrison.
Q. If I called you Amber Waldron, where would I have gotten that from?

A. That was my maiden name. I was married in April 2009. Sorry.

Q. Sorry about that.

A. No problem.

Q. And what do you do for a living?

A. Currently I'm unemployed. I stay home with my kids.

Q. And what town do you live in?

A. Lamar, Arkansas.

Q. And were you currently employed before you decided to stay home?

A. Yes, ma'am, I was employed at Space World and Moving Center.

Q. And when did you work there?

A. Originally I worked there, I believe, January of 2007 to August of 2007. And then I came back March 2008 to March 2010.

Q. You said just -- will you sit up a little closer to the mic? And what is Space World?

A. It's a storage facility.

Q. And how many locations does Space World have in Russellville?

A. Two.

Q. Which location did you work at?

A. I worked at the South Boulder location, 2810 South Boulder.

Q. Just so that we're getting it straight, the other location

is actually up near the Interstate 40?
A. Yes, ma'am. It's on the north side of town.
Q. And then the one on South Boulder is on the south side of town?
A. Uh-huh, going towards Dardanelle, Arkansas.
Q. And what was your position at Space World?
A. I was an assistant manager.
Q. At the time you worked at Space World, was Unit C03 rented?
A. Yes, ma'am.
Q. And during the course of this, are you aware that Space World provided documents to the United States?
A. Yes, ma'am.
Q. Were you actually the one that kind of helped get those together for us?
A. Yes.
Q. Let's look at Government's Exhibit -- I'll do this one on the screen here. Let's look at Government's Exhibit 157a. Okay. Is this the rental agreement for -- that began this whole rental history?
A. Yes, ma'am, it's the -- actually the customer information sheet that goes with the rental agreement.
Q. And what is the name of the person that rented this unit?
A. Sandip Singh.
Q. And is it signed?

A. Yes, ma'am.
Q. Can you tell us what the signature says?
A. I believe it says "Sandip Singh." It's hard to read.
MS. WHATLEY: And the -- if we can actually flip, Your Honor, and go to -- we can go to Government's Exhibit 157b.
BY MS. WHATLEY:
Q. When was the storage agreement first entered into?
A. July 16th, 2002.
Q. And what was the space that was originally rented?
A. Unit No. C82.
Q. What was the size of that unit?
A. 5 by 5.
Q. And does this also show that it was for Sandip Singh?
A. Yes, ma'am.
Q. And if we can go to Government's Exhibit 157c. Can you tell us what this is?
A. It is a storage receipt. It's a receipt for a monthly payment, but this one looks like it may have been paid a year in advance.
Q. And does that show a move-in payment in the middle of the screen?
A. Yes.
Q. And if we can go to the second page of that, does this show that at some point in time, this unit later changed from C82 to C03?

A. Yes, ma'am, it was transferred.
Q. Is there a way to figure out exactly when that occurred?
A. It would actually be on this date, I believe, if it's going to show up on this receipt.
Q. And how was the unit paid for?
A. In this respect, I believe it was a check.
Q. I guess what I'm asking is, was it paid monthly, or paid a year at a time?
A. Yearly. We give a 10 percent discount if you pay a year in advance, so ...
Q. Now, both of the units in question, C82 and C03, are in the same building; is that correct?
A. Yes, ma'am.
Q. And what type of building is Building C?
A. It's a climate-controlled storage.
Q. And what's the difference between the units of C82 and C03?
A. Location in the building. C03 is going to be to your right when you walk in the back door, I believe to your right down the first corridor. And then C82, I believe, is going to be -- I'm not exactly sure where in the building, but it's going to be off to the left. So they are kind of on two separate sides.
Q. And is C03 kind of in a corner?
A. Yes.

Q. Right by the back door?
A. Yes.
Q. And C82 on down the hallway?
A. Yes, it's farther down, kind of in the middle off to the left.
Q. Was the rental agreement renewed every year?
A. Yes. Your payment automatically renews your contract. So as long as the customer continues to pay for it, then it just -- the original contract is only going to be --
Q. Slow down just a little.
A. Sorry. The original contract is only going to be usually monthly. But it automatically extends every payment that you make. So whatever time frame you paid for, it would extend it through that.
Q. And we just kind of jumped through 157c fairly quickly. In July of '02 is when it was first initiated, correct?
A. Yes.
Q. And then it was renewed in July of '03?
A. Yes.
Q. And so now we just keep going through the various years; is that correct?
A. Yes, ma'am.
Q. At any point in time were the name and address on the unit or the rental agreement ever changed?
A. No, ma'am.

Q. We can go to the last page of Government's Exhibit 157c. So it's still in the upper left-hand corner still maintaining the original name and address?

A. Yes. Yes, ma'am.

Q. When you worked at Space World, did you ever see Dr. Randeep Mann?

A. Yes, I believe I took a payment once from him. And he was kind of an acquaintance or a friend with the current manager, and they had a conversation. So that's the main time that I recall.

Q. Were you a patient of his?

A. No, ma'am.

Q. Did you know him outside of just him being a customer of the --

A. No, ma'am.

Q. Did you know what his relationship to Sandip Singh was?

A. I believe it was his brother.

Q. Unit CO3, how do you -- how is access made to the unit?

A. Generally you access -- you type in a gate code from the front keypad and you drive the length of the climate-controlled building, and where there is an access like a door and a bay at the very back of the building closest to that unit.

Q. If we can look at Government's Exhibit 157b as in "boy." On the very top of this document in the middle is a code. Can you tell us what that is?

A. Yes, ma'am. That's their gate code. Each customer is assigned one when they initially rent the unit.
Q. And is it just one code that's assigned per unit?
A. Yes, ma'am.
Q. In order to get into this area to go around to the back, do you have to drive through a gate?
A. Yes.
Q. And does this code have to be punched into the gate upon entry?
A. Yes, ma'am.
Q. Does it also have to be punched into the gate upon exit?
A. Yes.
Q. When people use their codes to make entry into the facility and leave the facility, is that information maintained by Space World?
A. Uh-huh. Yes.
Q. Let's look at Government's Exhibit 157d. Can you tell us what this is?
A. It's the activity log. It's kind of just the log that -- the gate software that we used. It maintains, like, an archive, and it's the activity log for this particular unit.
Q. So if we can just look at that top one right there, 11-08 of 2006, it shows -- what's the first line?
A. November 8th, 2006.
Q. Does that show the entry into the facility?

A. Uh-huh, and the exit.
Q. So the activity log should log the entry time and the exit time?
A. Yes.
Q. If we can go to the bottom of that page, are these the entries and the exits for February of 2009?
A. Yes, ma'am.
Q. And can you tell us what days in February someone entered and exited the facility?
A. Okay. February 2nd, 2009, February 5th, 2009, and February 27th, 2009.
Q. Does Space World have security cameras?
A. Yes. Yes, ma'am.
Q. And are those kind of running all of the time?
A. Yes.
Q. Does Space World maintain some sort of documentation of what's on those security cameras?
A. Yes. We keep the security tapes for, you know, a certain length of time.
Q. For Building C -- let me back up. Is there a security camera on the keypad where you log in?
A. Yes.
Q. And for Building C, are there security cameras outside the building and inside the building?
A. Yes, ma'am.

Q. And do those cameras capture when someone enters and exits the building?
A. Yes.
Q. And also when they code into the gate?
A. Uh-huh.
Q. How many cameras are there total, do you think, or at least back in 2009, were there at Space World?
A. I think there's probably somewhere around 16.
Q. And just so the jury understands, this isn't like just some -- one steady stream of video going into a tape?
A. No. No. It's kind of time lapsed to a certain extent. I mean, there's just so many videos to record, that it kind of like pans out to each one in a few seconds.
Q. So it goes from camera to camera to camera to camera?
A. Uh-huh.
Q. So it's not like I can sit down -- like I was watching a movie and it just tell the whole story?
A. No.
Q. And in March 2009, did the Arkansas State Police request video from Space World for the February dates?
A. Yes, ma'am.
Q. And were you able to provide those dates -- or the video for those dates to Arkansas State Police?
A. I was able to provide February 2nd and the 5th, but the 27th, the manager at the time didn't maintain the tapes

properly, so we were unable to retrieve that, that one.
Q. And these tapes were taped over?
A. Uh-huh.
Q. Fairly often, correct?
A. Yes, ma'am.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I've just handed you what's been identified as Government's Exhibit 158a1 and a2. Do these appear to be the tapes that you had for the Arkansas State Police?
A. Yes, ma'am.
Q. And you said you could not find one for February 27?
A. No, ma'am.
Q. In the length of time you worked at Space World, did y'all ever buy new tapes?
A. No.
Q. So is it fair to say that these tapes are in pretty bad condition?
A. Yes, it would be totally fair to say that.
Q. And at the time that you provided these videos to Arkansas State Police, did y'all actually take a couple of pictures --
A. Yes.
Q. -- from the stream?
A. There were some still shots taken.

Q. If we could look at Government's Exhibit 159a. Is this one of the still shots that was taken?
A. Yes, ma'am.
Q. And just so the jury kind of understands, I can walk through this very quickly, this is the door you would enter from the back?
A. Uh-huh.
Q. Did that make --
A. It didn't, but it's by the far left by the trash can.
Q. Why don't you touch the screen where the door is?
A. (Witness complies.)
Q. And this is -- the area that Dr. Mann is seen in right now, that's just kind of an open area?
A. Uh-huh. It's like a bay because there's that loading door to make it easy on people to load things.
Q. And then Unit C03, can you kind of draw an arrow to where that is?
A. You would walk back this way and then go off to your left. And it's at the far left end. Sorry.
Q. C03 is just the third one?
A. Yes, I believe so. It's been awhile since I've been in there.
Q. If we can look at Government's Exhibit 161a. If you turn that corner walking into that back bay, is this pretty much what you're looking at?

A. Yes, it's going to be at the very end.

MS. WHATLEY: No further questions, Your Honor.

THE COURT: Cross-examination?

MS. WHATLEY: Your Honor, may I ask one more question?

THE COURT: Yes.

BY MS. WHATLEY:

Q. Who was the name of the manager who was friends with Dr. Mann?

A. Brent Tremayne.

MS. CASSINELLI COUCH: May I, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Good afternoon. Ms. Garrison?

A. Yes, ma'am.

Q. Ms. Garrison, I believe you testified you worked at Space World twice?

A. Yes.

Q. January '07 to August '08?

A. Uh-huh.

Q. And March --

A. No, January 7 to -- January '07 to August '07. And then I came back to the company March '08 to March 2010.

Q. Okay. Were you an assistant manager during both of those?

A. Yes. Yes, ma'am.

MS. CASSINELLI COUCH: May I approach, Your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. Ms. Garrison, I'm going to ask you to flip through these pictures and tell me if you recognize what's in them.

A. Sure. Do you want me to just list them as I go along, or --

Q. Well, let's look at the first one. Do you recognize what's in this photograph?

A. Yes, ma'am. That's the entrance at the back of the climate-controlled building for customers.

Q. How about flip through them -- they all look like pictures from Space World?

A. Yes, ma'am.

Q. Ms. Garrison, can you tell the jury what -- I'm going to put -- actually I'll put it on the ELMO. If you could just explain --

MS. CASSINELLI COUCH: Okay. What do I do?

MS. WHATLEY: Ms. Couch, are you admitting these?

MS. CASSINELLI COUCH: She's identified them.

(Ms. Couch and Ms. Whatley confer briefly off the record.)

BY MS. CASSINELLI COUCH:

Q. Ms. Garrison, these are all pictures of Space World?

A. Yes, ma'am.

Q. Do they accurately depict what Space World looks like?

A. Yes.
Q. Okay.
MS. CASSINELLI COUCH: Your Honor, I would move to admit -- I don't know what number we're on.
MR. HENDRIX: The next is 7, I think.
MS. WHATLEY: 8.
MS. CASSINELLI COUCH: 8, 9, 10, 11 and 12.
THE COURT: Any objection?
MS. WHATLEY: No, Your Honor.
THE COURT: They are received.
(Defendants' Exhibits 8 through 12 received in evidence.)
BY MS. CASSINELLI COUCH:
Q. Can you tell us, what's that a picture of?
A. Yes. It's the front entry gate. It's the only entry gate. There is one other gate, but it's just an exit.
Q. Okay. And if you go through this gate, would you go all the way back and take a right to get to the back door?
A. Yes, ma'am.
Q. Okay. And tell us what that is.
A. That is if you go all the way back and take a right, that's what you'll see. It's the entry door and the bay door.
Q. So this is the outside of the door that you looked at where Dr. Mann had just come in; is that right?
A. Yes, ma'am.
Q. Okay. And there's the garage door as well?

A. Uh-huh.
Q. And can you tell us what that is?
A. Yes. That is -- well, the far back is going to be the unit in question, but that's kind of a picture of the corridor, like when you come in that door. And if you came to the end and turned right, that's what you would see.
Q. Okay. And it looks like there are maybe two hallways right there or --
A. No, just one. It's at the very back of the building, so these two units that are to the right are the only ones on the right, and then there's that one, and there are no units to your left, but there's that hallway.
Q. Okay. If I'm looking at the pictures, there's a hallway on the left side right there?
A. Yes.
Q. And there are just more units all around there, I assume?
A. Yeah.
Q. And is that just the door on the --
A. Yeah. The other side of the door.
Q. That's the door that Dr. Mann would have been entering from?
A. Uh-huh, and exiting.
Q. Okay. And how about that?
A. That is the front of the climate-controlled building that's not behind the access gate.

Q. This is the front of the building where you go from 8:00 to 5:00, where you would enter during the normal business hours?

A. Generally we keep that door locked for security purposes for customers who have things in there. And they can come into the front office during office hours, and we can go manually unlock that door for them. Some people have units that are closer and it's easier for them to unload, so we can give them access to that door and they can open that garage door, but they can only do it from 8:00 a.m. to 5:00 p.m.

Q. Okay. So everybody else, either during the business day or after hours, would go through the gate and enter through a back door of a building?

A. Uh-huh. Yes, ma'am.

Q. And Building C is climate controlled; is that right?

A. Yes.

Q. Are all of the buildings climate controlled?

A. No, no, just that building itself.

Q. Now, we went through when you were employed at Space World, you were not there when the storage unit was first rented; is that right?

A. No, ma'am. No.

Q. You don't know if Sandip came in to rent it or Dr. Mann or whoever?

A. No. I'm assuming he did. I have no idea.

Q. I'm going to show you what's been admitted as Government's Exhibit 157a, that is the original contract --
A. Yes.
Q. -- and 157b.
A. Okay.
Q. And on those two documents it does say Sandip Singh; is that right?
A. Yes, ma'am.
Q. And it also has contact information for an address in Tennessee?
A. Uh-huh.
Q. And it has an identification number --
A. Yes.
Q. -- is that right --
A. Yes.
Q. -- on the customer information sheet --
A. Uh-huh.
Q. -- which is, I think, 157a?
A. Yeah.
Q. It has a Social Security number?
A. Yeah. You generally will use a driver's license, but this appears like it would probably be a Social Security number, which that would be acceptable. The contracts were a little bit different when they first opened, then, you know, they kind of just gradually evolved to what they use today, so I'm

assuming that is his Social Security number.
Q. That's what the box says anyway?
A. Yeah.
Q. Okay. And you mentioned on direct that these automatically renewed every year so long as you kept paying; is that right?
A. Uh-huh. Yes, ma'am.
Q. And on 157a, it indicates that the renter did not want monthly invoices mailed out; is that right?
A. Correct.
Q. And, in fact, the history -- I believe you looked through 157c at some of the invoices?
A. Uh-huh.
Q. Does it appear to you that typically each year the balance was paid for the year?
A. Yes.
Q. And, in fact, y'all gave a discount if you paid the whole thing, right?
A. Yes. That's why most people do it, even though it's just 10 percent.
Q. Still saving a little money?
A. Yeah.
Q. And I think you said that you had seen Dr. Mann at the storage unit at some point?
A. No, I never saw anybody at the actual storage unit other

than the security film. I saw him in the office where he made his payment.

Q. All right. On the last page of 157c, which is the entry and exit log --

A. Uh-huh.

Q. No, it's not. It's 157d. This is -- this records who enters and exits the unit or when they enter and exit?

A. Uh-huh. Yes.

Q. There's a couple on here where there's no exit, just an entry. Sometimes would it not record --

A. No, it is possible to tailgate behind somebody. And in that instance, it's just going to log the person that actually entered their gate code. And the gate has sensors on it, so sometimes people will just drive through behind somebody else.

Q. Oh, so this actually records at the gate --

A. The keypad.

Q. -- not at the door to the building --

A. No.

Q. -- or the unit door?

A. No, ma'am. The keypad.

Q. How long -- I think you discussed this on direct. Do you know how long these security tapes are kept before they are recorded over?

A. They are supposedly kept for seven days. The amount of space on here will record up to seven days, and then you have

to, you know, switch the tapes.
Q. Okay. And I'm just a little confused about the recording. You said there were maybe about 16 cameras; is that right?
A. Yes.
Q. And they all kind of record at the same time?
A. Uh-huh. Yes.
Q. So would there be one steady tape off of one camera?
A. There's actually two tapes. And I'm not 100 percent sure how it works. Our alarm person always handles it. But it kind of like bounces around every few seconds and captures images.
Q. Okay. So let's say -- and not specific to this case and those tapes. But the Camera A -- would Camera A, wherever Camera A is, record it 24 hours a day, or would it only record every so many minutes like take a clip?
A. It's every so many seconds. It's not going to be that large of a time frame where it would be minutes. But I do think -- once again, I'm not 100 percent sure. I just changed the security tapes when it was my turn to.
Q. Sure. I understand. Do you know who your alarm company is?
A. It's Alarms USA. I believe he came and actually accessed the videos because the machine is quite old and nobody really knew how, so ...
Q. I think that's all I have. Thank you.
A. Thanks.

THE COURT: Any redirect?

MS. WHATLEY: No, Your Honor.

THE COURT: Ms. Garrison, you can stand down.

THE WITNESS: Thank you.

THE COURT: Call your next.

MS. WHATLEY: Steve Greene. And, Your Honor, Mr. Greene has not been sworn.

MS. CASSINELLI COUCH: Your Honor, may I, for the record, clarify which ones are which of the defendants' exhibits?

THE COURT: Yes.

MS. CASSINELLI COUCH: If the Court will permit, I can do it after Ms. Whatley --

THE COURT: We can wait until afterwards. We can do that during a break.

MS. CASSINELLI COUCH: I'm sorry?

THE COURT: We can do that during a break.

MS. CASSINELLI COUCH: Great.

THE COURT: Mr. Greene, come down and let me swear you in.

STEVE GREENE, GOVERNMENT WITNESS, DULY SWORN

THE COURT: Have a seat right over here.

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Would you please state your name?

A. Steve Greene.
Q. Spell your last name for the record.
A. G-R-E-E-N-E.
Q. And how are you employed?
A. I work for the Bureau of Alcohol, Tobacco, Firearms and Explosives.
Q. And what do you do for ATF?
A. I operate and maintain the audio video lab.
Q. And what does that require you to do?
A. I process, enhance, analyze, repair audio and video recordings.
Q. Were you tasked with the project in the Randeep Mann case?
A. Yes.
Q. And what were you tasked to do?
A. I was asked to review the videotapes and see if I can find anything of interest that Special Agent Oliver asked me to find.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:
Q. I've handed you what's been marked for identification and has been previously identified as Government's Exhibits 158a1 and a2. Have you seen these before?
A. Yes, I have.
Q. And what are they?

A. They are the two videotapes that Special Agent Oliver sent me.
Q. And how do you know that?
A. I -- on the front side on the spine, I initial -- put my initials on each of the tapes.
Q. And on one of the tapes did you have to do something special?
A. Yes, I did. On 158a2, I received the videotape with the front door broken on the hinge, so I had to remove the videotape reels from the broken housing and put it into a new housing.
Q. Did you do anything to damage or destroy the data that was on the video prior to putting it --
A. No, I did not.
Q. -- in the casing? Is it fair to say that those videos were in pretty bad shape when you got them?
A. Yes.
Q. And after you received those and fixed the one, what did you do?
A. I then placed them in several different professional VCRs to be able to view them properly, and I found the best one in my lab, and then played them back on to -- and captured the video on a forensic video work station.
Q. Can you kind of explain to the jury what you were looking at? I mean, was it a continuous flow of video? Was it jumping

from camera to camera?
A. No. The two videos -- they are both time-lapsed. One of them was in a quad mode, which has four cameras showing all at the same time. So when you watch the video, you see four camera views of different locations. The other videotape was in a multiplex time-lapsed mode, which each frame of video showed a different camera angle. In looking at my notes, there were 16 camera -- 16 camera views ran in a random order. So when you watched the videotape on a regular VCR, it's just flashing all of the different cameras, and it's really difficult to make sense. At my work station, I digitized it on the computer in an uncompressed format to enable me to review the video at the highest quality manner possible. And then I can go frame by frame and then separate all of the different camera angles out so I can see at the right time frame where each camera recorded.
Q. And did you have specific time frames that you were looking at?
A. Yes. Special Agent Oliver requested that I look on February 2nd and the 5th of 2009 at -- wait a second here. Excuse me. He asked me to look for around 6:30 p.m. on the 2nd and around 12:30 a.m. on the 5th.
Q. Is it fair to say there were numerous days of recordings on these two --
A. Yes. These tapes are in time-lapsed mode and there are

approximately ten days of video on this videotape, which normally videotapes are in a two-hour mode. So the video is basically time-lapsed so there's only one frame -- one frame of video to the next frame could be several seconds between the two.

Q. How long have you been working for ATF doing audio, video stuff?

A. I started in June of 2004.

Q. And what kind of training have you had to let you do all of this?

A. I've been to several manufacturing trainings from the forensic video work stations that I have purchased. I'm a member of the National Technical Investigators Association, which I go to annual conferences. And I'm a member of the Law Enforcement Videographers Association. And these are all groups that put on training conferences specifically for the forensic video and audio world.

Q. Once you digitized the videos, were you able to narrow it down to the specific time frames that had been requested by Agent Oliver?

A. Yes. He told me what I was looking for on the videotape, and then after reviewing the time frame on those dates, I was able to find the vehicle and the subject he was looking for.

Q. You said there were 16 different cameras, correct?

A. On the one videotape; and the other one was in a quad

mode, there were four views.
Q. Were all 16 different cameras pointing to the area where you needed to see?
A. No. They were pointed throughout on the storage facility, storage company, all over on the certain drive areas, parking areas, inside certain storage units. And I did not know where -- on which camera that the subject would appear.
Q. So you kind of had to physically go through it yourself and figure it out?
A. Yes, basically frame by frame to find -- to pick the camera angles of interest.
Q. Were you able to find the camera angles of interest?
A. Yes.
Q. After you found the camera angles of interest, did you do anything?
A. Yes. Then I produced a DVD showing the camera angles showing that the -- when the subject or the vehicle arrived at the storage facility, went through the gate, I guess, drove throughout the -- or drove till he parked, I'm assuming, and then got out, went into the storage facility, and then left and then drove out, both on the 2nd and the 5th.
Q. So you narrowed it down just to those camera angles --
A. Yes.
Q. -- and created a DVD?
A. Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government's Exhibits 158-B1 and B2. Have you seen those before?

A. Yes, I have.

Q. And what is 158-B1?

A. b1 is the copy of the processed videos that I made showing of the select camera views of interest from the dates of the 2nd of February and also of the 5th.

Q. And does 158-B1 fairly and accurately reflect those camera angles from 158-A1 and A2?

A. Yes.

MS. WHATLEY: Your Honor, at this time we move for the admission of 158-B1.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 158-B1 received in evidence.)

BY MS. WHATLEY:

Q. What is 158-B2?

A. B2 are select -- the frame grabs basically still images taken from the videos and just put into a folder showing the vehicle at the front storage area driving through the storage facility and the subjects walking in and out of the

storage facility.
Q. When you say frame grabs, you mean still photos?
A. Yes.
Q. And does the information on 158-B2 fairly and accurately reflect what is contained on 158-A1 and A2?
A. Yes.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibit 158-B2.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 158-B2 received in evidence.)
BY MS. WHATLEY:
Q. Mr. Greene, how long did it take you to do that?
A. I received the videotapes on the 9th. I came in on a Saturday to start processing this over the weekend, and then came back the following week and worked probably three days, so probably four days total.
MS. WHATLEY: Your Honor, at this time we would like to play Government's Exhibit 158-B1.
THE COURT: Okay.
MS. WHATLEY: May I retrieve it so we can put it in the system?
THE COURT: Yes. We're over here just trying to make sure we have this working.
MS. WHATLEY: Just hold our breath. She has it

offline right now, so --

What is this first thing we're looking at, Mr. Greene?

Your Honor, I just don't think it's my day when it comes to technical issues --

THE COURT: Okay. Here we go.

(Government's Exhibit 158-B1 commences playing in open court.)

THE WITNESS: This will be the July 2nd video showing -- the quad view shows the front entrance, and then these -- basically the middle camera angles will be from the multiplex tapes. And this shows -- right now we're looking at what will be the headlights of the vehicle as he's driving through the storage facility. And you can see, if you look at the time stamp, it will go from the time frame and then it'll -- could be two seconds later, maybe 10, 15 seconds later, and that's just the nature of the time-lapse and when the recording was -- when each camera was actually recorded.

BY MS. WHATLEY:

Q. What is this black area?

A. The black area shows this is the edited portion, and flipping from one camera to another because now we're at 57:51, and it appears that a female is entering this room.

Q. And with time-lapse, you just kind of have to grab it as you get it, right?

A. Yeah. And I believe there's going to be some -- a time

difference between when you last see her entering in this camera and then leaving. So I believe there's an edit marking as well since there would have been possibly several minutes of nothing going on.

Q. And with the time-lapse, you were just able to pull from camera angles that showed something?

A. Right.

Q. And from what it appeared, there weren't cameras going in every different direction?

A. Yeah. These are the only ones that captured the subjects. Like, there's a time-lapse -- the difference between, like, the door opens and someone could walk in can be between the time that the camera angle was recorded from one time to the next. So somebody -- I can see a male and a female leaving the place, but I didn't see the male come in.

Q. So that's because the camera went -- the camera -- the camera that was in there was no longer being put on the tape? It was a camera from another area?

A. Correct.

Q. Now are we to the point they are exiting?

A. Right. Now you can see it's a minute and a half later and you can see the headlights leaving the storage facility. This is a -- showing how bad the tape was -- the shape the tape was in, I'm getting this footprint.

Q. What do you mean a footprint?

A. The videotape was so old, it was in bad shape. And this is what happened when I played it back. I was getting this flipping between the 28 and 30 on this. And then it switches to the next camera view at 19:01:40. And then this is the quad view camera, and it shows the vehicle pulling up, you can see the headlights through the gate, and then it will be leaving.

Q. Now, had we just popped 158-A1 into a VCR, could it have been viewed in this format?

A. No, the -- a normal VCR probably would not be able to play this back properly.

Q. Okay. Now, if we can go to the -- not the quad view, but go to -- there's actually four videos on this DVD, correct?

A. Yes.

Q. And the one we looked at was?

A. From February 2nd. And that was with both VHS tapes edited together. And then the second chapter -- this camera view shows the quad view of the second.

Q. So it would be the exact same thing we just saw?

A. Yes, but without the inside camera, the other multiplex videotape.

Q. Okay.

A. Just showing that during this time period that the only vehicle that came and left the storage facility was the one that I was looking for.

Q. If we can go to Title 3 that is on this DVD, what is this?

A. This is basically the same scenario, but on February 5th, where the subject enters, punches in his code or swipes his card. I don't know how the access is to the storage facility.
Q. In this video, does it appear that the subject goes to the same location as was in the February 2nd video?
A. Yes, the same camera angles that were seen on the -- captured the same subject and activity on the 2nd and on the 5th.
Q. I'll talk over this until we get --
A. Yeah. And you can see the headlights coming, and I believe on this one, there's actually a recording of the vehicle as he drives in.
Q. Now, this video, this DVD, also has the quad angle from February 5th, correct?
A. Right.
Q. Were there any other vehicles that came in during that time period?
A. No. And on the tape it shows -- in the upper corner, it says "168H," which is 168 hours, that's the recording length. That's how slow the tape is being played to record this. And then it switches to the inside view, the subject, looking like he's carrying a suitcase of some sort.
Q. So if I were to play that videotape, it would take me 168 hours to watch it?
A. If you played it back in realtime in regular normal time,

yeah, it would take a very long time to view.
Q. And this black screen is just the edit?
A. Yes. Between the time he entered and he leaves, you have that 57:39 the doors closed, I believe the next frame you'll see the door --
Q. So did you take out any relevant or pertinent information during those edits?
A. No. And then at 48, that door is open, so nine seconds later, you know, the door is open, and then the next frame will show the door closed several seconds later.
Q. So is this when you believe the subject has exited?
A. Correct. Then we switched to the outside camera again and the vehicle is now leaving. There was a time on the quad view camera and the multiplex camera -- there is a slight time discrepancy, they are not exact, the time stamp is not exact. So on this one, it was several seconds or maybe a minute or two I had -- you'll see the car is leaving at 58:32, and then on the quad view, you'll see him leaving out the storage gate and the time will be basically backwards. That's because the time stamps were not synced up with each other at the storage facility.
Q. So it's not something that wasn't synced up on your end. It just wasn't synced up when they were created?
A. Correct.
Q. While we're finishing watching that, can you tell us again

what's on 158b2?
A. Those are the frame grabs, the select frame -- that's the other disc, right?
Q. Yes.
A. Yeah, the still images taken from the videotape.
Q. And does that actually -- you can actually click through those?
A. Yeah, you can just go -- you can just watch it on -- in the Windows Fax Viewer and go through the images.
MS. WHATLEY: Your Honor, at this time if we can watch Government's Exhibit 158-B2.
THE COURT: Yes.
BY MS. WHATLEY:
Q. We're going to start with the February 2nd, 2009, view. And we'll kind of flip through those. So what these are, you're just grabbing certain frames from the video itself?
A. Correct.
(Government's Exhibit 158-B2 commences playing in open court.)
MS. WHATLEY: And we can go to the 2-5 views.
(Government's Exhibit 158-B2 continues playing in open court.)
MS. WHATLEY: Your Honor, I have nothing further of this witness.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. How are you?

A. Fine.

Q. The way I understood your testimony, and I'm not technologically savvy, but you basically took pieces of video and compiled them to try to make -- put them in sequence, in chronological sequence; is that right?

A. Yes.

Q. And you did that to the best of your ability, but because of the camera, you don't have certain pieces that go in the chronology; is that right?

A. No. I have all of -- the way the camera -- like the multiplex one, it has 16 cameras throughout, say, this building. It shows one camera at one time, and then the next frame, you know, half a second later, shows another area, then shows another. And it might come back to the first camera. It could go to camera 6 to 12. It can rotate in various ways. So one camera angle could have videos shown every three seconds, it could be a ten-second delay, could be a 15-second delay. But everything that's on the video -- when I digitize and capture, I have all of the camera angles in the time frame.

Q. Sure. And I didn't mean that you left something out. But the cameras themselves, because of the delay, you might not -- for instance, with Dr. Mann and Mrs. Mann on the 2nd, you were

not able to get Dr. Mann walking in because it was at a different camera?

A. Correct.

Q. And you weren't able on the 5th to get him leaving because it was on -- the video was on a different camera?

A. Correct.

Q. Was the -- I'm not going to use the right word. The seconds, you said the delay, was it the same for every camera?

A. No. I don't know how the surveillance system was set up at the storage facility. It could be on motion so when there's something happening, the camera sees it, it records more often. And in the parking lot that does not have any activity, then it only captures maybe every 30 seconds of frame. So if you -- when you watch the video sometimes, it was every -- a second or two you got a couple of frames of video, and then when there's nothing occurred, then there was no activity recorded.

Q. And we know there was some activity, for instance, when Dr. Mann came in on the 2nd and out on the 5th, but it just didn't pick that up?

A. Right.

Q. And there was no camera that showed the unit door that he entered; is that right?

A. Correct, yeah. There was no other video frames showing any activity.

Q. And you were asked to look at specific days; is that

right?
A. Yes. Yeah, I believe Agent Oliver told me that the time frame that the code was punched in -- something like that, I was looking for that time. There was about a 23-minute difference between the time frame on the security system than on the videotape.
Q. And when did you complete this project?
A. On the 23rd of June. They started on the 12th of June and finished -- and we Fed Ex'd everything back to Special Agent Oliver on the 23rd.
Q. Of this year?
A. Yes.
Q. Thank you very much.
THE COURT: Anything else?
MS. WHATLEY: No, Your Honor.
THE COURT: You can step down, Mr. Greene.
Call your next.
MS. WHATLEY: Shannon McKittrick-Cruse.
THE COURT: Ms. Cruse, come down. Have you been sworn?
MS. MCKITTRICK-CRUSE: I have, yes, sir.

SHANNON MCKITTRICK-CRUSE, GOVERNMENT WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:
Q. Good afternoon.

A. Good afternoon.
Q. Would you please state your name?
A. Shannon McKittrick-Cruse.
Q. And where are you employed?
A. With the Bureau of Alcohol, Tobacco, Firearms and Explosives, Little Rock field office.
Q. You're from Mississippi. Talk slower than that.
A. I'm sorry.
Q. How long have you been with ATF?
A. I've been with ATF since January of 1999.
Q. How long have you been an agent with them?
A. It'll be 10 years in September.
Q. What did you do before you were an agent?
A. I was a regulatory inspector with ATF.
Q. Did you participate in the execution of a search warrant on March 10th, 2009?
A. I did.
Q. And where was that search warrant executed?
A. Skyline Medical Clinic in Russellville.
Q. Can you kind of describe the layout of the medical clinic?
A. It's a freestanding building that's just the sole purpose, it's a medical clinic. I mean, you know, there's a reception area, offices, exam rooms, typical kind of doctor's office layout.
Q. And were you tasked with searching any particular area of

the clinic that night?
A. I was primarily in the area of what was Dr. Mann's personal office space.
Q. If we can look at Government's Exhibit 154-A. Is this the area you searched?
A. Right. That's part of the room in that view, yes, ma'am.
Q. And let's look at 154-B. Was this also in that room?
A. It was.
Q. Did you locate anything that evening?
A. I did.
Q. What did you locate?
A. There were medical transcripts from the Arkansas State Medical Board.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q. I just handed you what has been marked for identification as 156-A and B. What are these?
A. These are the -- well, it's volume 1 and volume 2, I believe, of the same transcript from the Arkansas State Medical Board.
Q. And they were found in Dr. Mann's office?
A. They were.
Q. And are they in substantially the same condition as they were when you located them?

A. Yes, ma'am.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 156-A and B.

MR. HENDRIX: No objection.

THE COURT: They are received.

(Government's Exhibits 156-A and 156-B received in evidence.)

BY MS. WHATLEY:

Q. We can just look at the cover of 156-A.

A. Sure.

Q. Is this the cover of that transcript?

A. It is.

Q. And what was the date -- wow.

A. I can read it here.

Q. What was the date of the hearing, if you can tell?

A. Do I need to read it from the computer screen --

Q. No.

A. -- because I've got it here? Yeah. Let's see. The 6th of July 2006.

Q. And looking at Government's Exhibit 156-B, the front cover of that as well, what is the date of this?

A. I'm cheating from my own copy. That actually says July 7th, 2006, there. I see it there. July 7th, 2006.

Q. I notice when I handed those to you there's actually some sticky notes on one of them?

A. Yes, on the first one.
Q. Were those tabbed when you found them?
A. Yes.
Q. So this is how you -- they were when you found them?
A. Yes.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

MR. HENDRIX: I think the search warrant has already been introduced, has it not?

MS. WHATLEY: Yes.

MR. HENDRIX: May I switch over to the ELMO?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. And this is the copy of the search warrant that's already been introduced showing the authority for ATF to search 111 Skyline Drive, correct?
A. Yes, sir.
Q. And it looks like Judge Young, the magistrate judge, signed it and authorized it March 10, 2009, 5:10 p.m.?
A. That's what it appears, yes, sir.
Q. And is that consistent with your memory? I mean, you were at the medical clinic then --
A. I was at the medical clinic. I wasn't there when the warrant was issued, but I was at the medical clinic and it was that evening.

Q. Right. You were there sometime after 5:10 --
A. Yes.
Q. -- because it had to be executed after --
A. It was very dark when we left and it was getting dark when we were there.
Q. Right. The way the search warrant works is, for instance, in this case, ATF comes to a judge and has an affidavit saying, "We believe there's probable cause to believe contraband is contained in a specific place"?
A. It doesn't have to be contraband. Evidence of a crime.
Q. There's a difference?
A. Between contraband and evidence of a crime?
Q. Yeah.
A. In my opinion there is, yes.
Q. Okay. ATF, the affiant, has to convince the judge there's probable cause to believe evidence of something is contained in a particular place, right? So what ATF in this case said was, "We believe, Judge, there's probable cause to find in the -- Dr. Mann's medical clinic explosives to include TNT, explosive components, and parts to include grenades and a pin to a hand grenade," right?
A. That's what it says.
Q. And ATF represented to the judge that it believed it had probable cause to believe that there would be duct tape and green canvas material found in Dr. Mann's lab, right?

A. I wasn't the affiant, but that's what it says.
Q. Sure. And also probable cause to believe they would find explosive manuals and literature on how to construct an improvised explosive device, correct?
A. Yes.
Q. Computers is the E or documents showing who owned the place, right?
A. Yes.
Q. And white string.
A. Yes.
Q. And, again, just to be sure, no explosives, duct tape, green canvas, explosive manuals, or white string was found, right?
A. I don't think so.
Q. Well --
A. I know there were firearms-related documents, but nothing that we seized under the search warrant.
Q. Here. Here's the return -- what we call the return or the inventory that shows what was seized.
A. Yes, sir.
Q. Assorted miscellaneous paperwork, two bound notebooks containing transcription. And that's what you just introduced?
A. Yes.
Q. Okay. Computer, file folder containing paperwork on the Maxima, three-ring binder containing firearm transaction

records, another computer, looks like a third computer, and assorted miscellaneous paperwork from the reception area?

A. Yes.

Q. Okay. And, again, I didn't mean to waste anybody's time, but my point is the only thing that was relevant for your testimony was to introduce the transcript of the --

A. Yes.

Q. -- 2006 medical board hearing?

A. Correct.

Q. Understood. Thank you, Agent.

THE COURT: Any redirect?

MS. WHATLEY: Just briefly.

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Mr. Hendrix just went through the return, correct?

A. Yes.

Q. That was actually your handwriting, wasn't it?

A. It was.

Q. Those are the only items of interest that were located at the clinic that night?

A. Yes.

Q. There were no firearms located that night?

A. No.

Q. And there were no other documents other than the ones Mr. Hendrix referenced?

A. No. Right.

THE COURT: You can stand down.

Call your next.

MS. WHATLEY: Steve Juneau.

THE COURT: I think he was sworn in earlier, wasn't he?

MS. WHATLEY: No.

THE COURT: He wasn't?

Mr. Juneau, come down and let me swear you in.

MS. WHATLEY: You haven't been sworn, have you?

MR. JUNEAU: No.

STEPHEN JUNEAU, GOVERNMENT WITNESS, DULY SWORN

THE COURT: Come and have a seat over here, Mr. Juneau.

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good afternoon.

A. Good afternoon -- yeah, it is afternoon.

Q. It is afternoon. Would you please state your name?

A. My name is Stephen Juneau.

Q. You're going to have to get closer to that microphone.

A. Stephen Juneau.

Q. Spell your last name.

A. J-U-N-E-A-U.

Q. Where are you employed?

A. City Tele Coin, Bossier City, Louisiana.
Q. And what type of business is City Tele Coin?
A. We are an inmate telephone provider.
Q. What does that mean?
A. That means that we have the phones for the jails inside the correctional facilities.
Q. And City Tele Coin has a contract with the Dallas County Sheriff's Office to do that for their inmates?
A. Yes, ma'am, we do.
Q. And did they have that contract in 2009?
A. Yes, ma'am, we did.
Q. Explain to the jury the process by which inmate calls are recorded and maintained by City Tele Coin.
A. Okay. The person or inmate at the facility, he goes to the phone, he picks it up, he dials a zero --
Q. Slow down, please.
A. Sorry. The inmate, he makes a call. He dials zero, area code and telephone number. It prompts him to state his name. He places his name on to the call. It rings to the person that he is calling. Once the person answers the phone, it prompts him, tells him that you have a collect call from whoever the person's name, an inmate at the correctional facility. And at that point they can either press 1 to accept the call, or they can simply hang the phone up to not talk to him.
Q. You said the inmate's first kind of prompted to insert

their name?
A. Yes, ma'am.
Q. Do they have to insert their name?
A. No, ma'am, they do not have to. They can put messages in there with that system that was in place at that time. They could place messages, "I'll call you later" --
Q. So it just doesn't have to be their name?
A. Correct.
Q. Is there anything on those -- anything in the process that the inmate does that allows the inmate to know that his calls are being monitored and recorded?
A. Yes, ma'am. The Science Dynamic --
Q. I'm sorry. The what?
A. The Science Dynamic, they're the company that we bought it from, purchased it from, the inmate phone system. It randomly places an announcement, but it also places it when the call was first processed. It states that, "This call can be monitored or recorded for" -- it's an old system. I'm trying to think. It states that it can be recorded and/or monitored. It also has random announcements throughout the call. It will come up there and play -- say that this call can be recorded and/or monitored.
Q. Now, does the person receiving the call also give -- get some sort of indication that their calls are being recorded?
A. Yes, ma'am. It notifies both persons.

Q. In 2009, did the United States Attorney's Office request telephone calls that had been made from the Dallas County jail?
A. Yes, ma'am.
Q. And did your company provide those calls?
A. Yes, ma'am, we gave y'all access to it via the website.
Q. Is that how your system works? You don't send us a CD. You actually put them on a website?
A. That's correct.
Q. And once they are on that website, can they be downloaded and put onto CDs?
A. Yes, ma'am, they can be downloaded to CDs.
Q. Has that been done in this case?
A. Yes, ma'am.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've handed you what's been marked for identification purposes as Government's Exhibits 167 through 178. Have you seen these before?
A. Yes, ma'am, I have.
Q. And what are they?
A. These are the recordings of the conversations.
Q. And how do you know that these came from your system?
A. The CDR record, the call detail record, it gives me all of the information of the telephone number that was dialed, the

facility it was made from, the time, the date, the cost. The way I did it was I took the total length of the call, I subtracted the time before the call was accepted, and it came back with a billable time which matched up to the CDR records.

Q. And have you actually initialed each one of those calls to say that you have verified that they came from your system?

A. Yes, ma'am.

MS. WHATLEY: May I retrieve them?

THE COURT: You may.

BY MS. WHATLEY:

Q. On each one of these CDs, a date, a time, and a telephone number is marked, correct?

A. Yes, ma'am.

Q. And have you verified that the time, date, and telephone number is correct?

A. Yes, ma'am.

Q. And the telephone number that is written on each one of these CDs is the telephone number which was called?

A. That is correct.

Q. Now, some of these calls are not completed calls; is that correct?

A. That is correct. Some of them were attempts.

Q. What is an attempt?

A. Where he tried to call. Whether the person did not answer, did not go through due to that they were on the phone,

did -- just did not answer the call, it was not a completed call.

Q. But were you able to use your call detail record in order to verify that those had been attempted through your system?

A. Yes, ma'am.

Q. Now, on these CDs, the listener, as in the listener as in me, can't hear the admonition that they are subject to monitoring and recording?

A. That is correct.

Q. But can you testify today that each one of these calls would have had that admonition at the beginning of the call?

A. Yes, ma'am. And also during the random -- it will randomly pop up.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: You may.

MS. WHATLEY: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. HENDRIX: No questions. Thank you.

THE COURT: You can stand down.

For the record, Mr. Juneau looked very surprised when I told him he could leave, like that was very quick.

MS. WHATLEY: Back to Bossier City.

THE COURT: Do we need to take a break now?

MS. WHATLEY: We really do.

THE COURT: Let's take a break and be back at 3:45.

We'll be in recess until 3:45.

(Recess at 3:30 p.m. until 3:45 p.m.)

MS. CASSINELLI COUCH: Your Honor, I apologize for confusing myself in my exhaustion and the Court. For the record, through Ms. Garrison, we introduced Defendants' 8, which is the gate to Space World, Defendants' 9, which is the outside back door, Defendants' 10, which is the inside back door, Defendants' 11, which is a picture of the hallway leading to Unit C3, and Defendants' 12, which is a picture of the front door of Space World.

THE COURT: Gotcha'.

MS. CASSINELLI COUCH: Thank you.

THE COURT: We can bring them in.

MS. WHATLEY: Your Honor, these contain the redactions Mr. Dudley and I agreed upon for not this witness, but the next one.

(Jury enters the courtroom.)

THE COURT: Ms. Whatley, call your next.

MS. WHATLEY: John Norris.

JOHN NORRIS, GOVERNMENT WITNESS, PREVIOUSLY SWORN

MR. NORRIS: I'm back.

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Okay. You're back. Please state your name again for the record.

A. My name is John Norris.
Q. For purposes of the record, are you the same John Norris who testified earlier today and earlier in this trial?
A. Yes.
Q. I'll remind you you're still under oath.
A. Yes.
Q. And just for purposes of the record, remind us again what you do for a living.
A. I'm a special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives.
Q. Earlier today we talked about some telephone calls that had been made from the Pulaski County Regional Detention Facility.
A. Correct.
Q. During the course of the investigation did we also obtain telephone calls from the Dallas County jail?
A. Correct.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: Yes.
BY MS. WHATLEY:
Q. I've just handed you what's been marked for identification purposes as Government's Exhibit 167 --
MS. WHATLEY: Actually, may I approach and retrieve one? I don't think you need all of those.
THE COURT: Yes.

BY MS. WHATLEY:

Q. -- through 177. Is that correct?

A. Yes.

Q. Have you seen these before?

A. I have.

Q. What are they?

A. They are the CDs that were taken off of the system that Mr. Juneau just testified about from Dallas County.

Q. And have you reviewed these?

A. I have.

Q. And how do you know that?

A. My initials are on these CDs from the day I reviewed them.

Q. And did you -- are the dates, times, and telephone numbers the call was made to also listed on each one of these CDs?

A. Yes.

Q. Were portions of those calls taken and put on separate CDs?

A. They were.

Q. And what was the purpose of that?

A. It was, again, places and phone calls where certain discussions were taking place about different things occurring related to the investigation.

Q. And is it fair to say that these 10, 11 calls -- 10 calls were just a portion of the overall telephone calls that were made through Dallas County?

A. Yes.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WHATLEY:

Q. I'm handing you what's been marked as Government's Exhibits 167-A1, A2, and then 168-A through 177-A.

A. Yes.

Q. Have you seen these before?

A. I have.

Q. What are they?

A. These are the portions of the phone calls from the total phone calls on these CDs.

Q. And have you compared those phone calls to the full phone calls?

A. I have.

Q. And is what is contained on those exhibits a portion of what is contained on Government's Exhibits 167 through 177?

A. Yes.

Q. And do these fairly and accurately depict those calls or portions of the calls?

A. Yes.

Q. And are these CDs also marked with the dates and times the calls were made?

A. Yes.

Q. Is the telephone number the calls were made to also on

that, or not?
A. Yes.
Q. And how were you able to make a determination that everything on the CDs in your hand is the same as what was on the larger CDs?
A. There was an index on the phone calls like before, and that's how it was compared.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 167-A1 and A2 through 177-A.
THE COURT: Those are received subject to the objections that were lodged earlier.
(Government's Exhibits 167-A1 and 167-A2 through 177A received in evidence.)
BY MS. WHATLEY:
Q. Have transcripts been made of the conferences on these CDS?
A. They have.
Q. And have you reviewed them?
A. Yes.
MS. WHATLEY: May I approach?
THE COURT: Yes, you may.
BY MS. WHATLEY:
Q. I'm handing you 167-B1, 167-B2, and then 168-B through 177-B.
A. Correct.

Q. Have you reviewed these transcripts?
A. I have.
Q. And do they fairly and accurately depict the conversation on the CDs?
A. Yes.
Q. Have you reviewed them in conjunction with Government's Exhibits 167-A1 and A2 and 168-A through 177A?
A. I have.
Q. Do you feel the transcripts would aid the jury while listening to the CDs?
A. I do.

MS. WHATLEY: Your Honor, at this time, we request permission to play the CDs in this case.

THE COURT: You may.

MS. WHATLEY: We can start with 167-A1.

(Government's Exhibit 167-A1 played in open court.)

BY MS. WHATLEY:
Q. And for the record, what is the date and time of the call on 167-A1?
A. 3-22 at 11:32.
Q. And what phone number was called?
A. It's going to be the (479) 293-3030, the Manns' residence.
Q. And in this call, it references a person named Phil. Do you know who that is?
A. It would be Phil Barthelme, I think, is how you say the

name.
Q. And do you know who his wife is?
A. Rita Barthelme.
Q. She previously testified in this case?
A. She did.
Q. We can go to 168-A2. Is this a portion of the same call?
A. Yes.
MS. WHATLEY: If we can please play 167-A2.
(Government's Exhibit 167-A2 played in open court.)
BY MS. WHATLEY:
Q. That code that they were talking about, is that the same code that is featured at the top of Government's Exhibit 167-B?
MS. WHATLEY: May I approach?
THE COURT: Yes.
THE WITNESS: It is.
BY MS. WHATLEY:
Q. So that's the code to Space World?
A. Yes.
Q. But this conversation was actually after the search warrant at Space World had occurred, correct?
A. That's correct.
Q. We can go to 168-A. What is the date and time for this telephone call?
A. 3-22 of '09 at 11:57 a.m.
Q. So if my math is right, about 25 minutes after the

previous phone call we just listened to?
A. Correct.
MS. WHATLEY: We can play 168-A, please.
(Government's Exhibit 168-A played in open court.)
BY MS. WHATLEY:
Q. Agent Norris, was that, in fact, the entire phone call and not just a portion of it?
A. I believe so.
Q. We can look at Government's Exhibit 169-A. What is the date and time of this telephone call?
A. 3-28-09, 5:44 p.m.
MS. WHATLEY: If we can please play Government's Exhibit 169-A.
(Government's Exhibit 169-A played in open court.)
BY MS. WHATLEY:
Q. Did this conversation change to just talking about other things at this point in time?
A. It does.
Q. If we can look at Government's Exhibit 170-A. What is the date and time of this telephone call?
A. 4-22-09, 2:55 p.m.
Q. And what telephone number is this call made to?
A. It's going to be the residence again.
Q. Is that the same call the other one was made to, the same number?

A. Yes.

MS. WHATLEY: If we could play 170-A, please.

(Government's Exhibit 170-A played in open court.)

BY MS. WHATLEY:

Q. And, Agent Norris, is that actually the full call of that telephone conversation?

A. Yes.

Q. Do you know who Gerald is?

A. Gerald Riley.

Q. And who is Tim?

A. Tim Harrell.

Q. The next sequence of calls, 171-A through 177-A, are these attempts?

A. Yes.

Q. And whose telephone number are these phone calls made to?

A. These are made to Gerald Riley's cell phone.

MS. WHATLEY: Your Honor, may I have one moment?

THE COURT: You may.

BY MS. WHATLEY:

Q. So these are fairly short, correct?

A. Correct.

Q. If you can look at Government's Exhibit 171-A, can you tell me the date and time of this call?

A. 4-28-09 at 3:02 p.m.

MS. WHATLEY: If we can play 171-A.

(Government's Exhibit 171-A played in open court.

BY MS. WHATLEY:

Q. And 172-A, the date and time of that call?

A. 4-28-09, 3:45 p.m.

Q. So 43 minutes later?

A. Correct.

MS. WHATLEY: If we could listen to that call.

(Government's Exhibit 172-A played in open court.)

BY MS. WHATLEY:

Q. And 173-A, what is the time of day of this call?

A. 4-28-09, 3:56 p.m.

Q. So 11 minutes later?

A. Correct.

MS. WHATLEY: So can we play this one.

(Government's Exhibit 173-A played in open court.)

THE WITNESS: 4-28-09, 3:59 p.m.

BY MS. WHATLEY:

Q. So three minutes later?

A. Correct.

MS. WHATLEY: If we can play 174-A.

(Government's Exhibit 174-A played in open court.)

BY MS. WHATLEY:

Q. Agent Norris, I've already gotten permission to ask the question. Whose number is 376-0679?

A. That would be Mr. Blake Hendrix' office number.

Q. And if we can go to 175-A, what's the date and time of this phone call?
A. 4-30-09, and 8:15 p.m.
Q. And this is, once again, a phone call to Gerald Riley's phone number?
A. Correct.
MS. WHATLEY: If we can play that, please.
(Government's Exhibit 175-A played in open court.)
BY MS. WHATLEY:
Q. And 176-A, what time is this phone call?
A. 4-30 of '09, and 8:17 p.m.
Q. So less than a couple of minutes later?
A. Correct.
MS. WHATLEY: If we can play 176-A.
(Government's Exhibit 176-A played in open court.)
BY MS. WHATLEY:
Q. And 177-A, what's the date and time of this phone call?
A. 4-30 of '09, and 8:20 p.m.
Q. So about three minutes after the call we just heard?
A. Yes.
MS. WHATLEY: If we can play this.
(Government's Exhibit 177-A played in open court.)
MS. WHATLEY: I have no further questions, Your Honor.
THE COURT: Okay. Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Agent, the transcriptions we've been looking at, who transcribed these?

A. Individuals at the U.S. Attorney's Office, from my understanding, had parts in transcribing these. I did not.

Q. The U.S. Attorney's side is the one that transcribed these, correct?

A. Right.

Q. And that's why it was important. I wanted to make sure that my phone number was correctly transcribed. It might be fairly good advertising for me.

Let's go back. These start on March 29th. Dr. Mann is in Fordyce in the -- the Dallas County jail, correct?

A. Correct.

Q. Now, at that point he's been through the bond hearing, right?

A. Yes.

Q. Which was, I think, March 9th, right?

A. Correct.

Q. And you're also aware that Phil and Rita Barthelme are patients of Dr. Mann's and also have some personal connections, correct?

A. Yes. I'm not sure about Phil being a patient. I don't know that, but I do know that Rita was. I'm not sure about Phil though.

Q. And I think earlier we saw an exhibit, there was some questioning that Phil Barthelme and Rita owed Dr. Mann some money. He had helped them buy some equipment, the lawn mowing equipment and so forth, and he was working that off?
A. That's the way I understand it. He was working it off.
Q. And there was also, I think, a motorcycle that they were paying off?
A. I'm not sure about the motorcycle. I never heard that story.
Q. Okay. In 167-B1, do you have that transcript?
A. Yes.
Q. Starting up at the top, 1, 2, 3, 4 -- 5 down, it starts with Sue Mann, and this is after our reference to a Phil. And she says, "No, she said she would. She'd keep taking care of it."

Dr. Mann: "Huh?

Sue: "She said she'd keep taking care of it.

Dr. Mann: "What's that?"

And Sue says: "She said she would keep taking care of it," the transcript has "every night," correct?
A. Correct.
Q. I don't know if it's possible to do this. And if it's not, it's okay. The jury will take these back. I heard, "She would keep taking care of it every month." Have you listened to that very closely?

A. I have listened to these calls and compared it to the transcripts, and that's what I thought it said.
Q. And here's the perfect example. I thought it said "every month," but that's an issue for the jury to determine. If it says "every month," would that not be consistent with paying a monthly bill like paying off a motorcycle debt?
A. If they had a monthly bill, it would be consistent with paying a monthly bill, yes.
Q. Okay. And in the remainder on that first page, it's clear he was saying: I sure would like their support, correct?
A. Yes.
Q. And are you aware at that time, the truth of the matter is, we lost the detention hearing, we were trying to determine whether we wanted to appeal that detention hearing. Were you aware of that at all?
A. That you guys were trying to appeal it?
Q. Yeah.
A. I wasn't aware that you guys were trying to appeal it.
Q. And that we had talked. You wouldn't know that stuff. But assume that is true, would it make sense that he would still want their support for two things: one, another detention hearing, and certainly, two, for trial?
A. That would make sense, yes.
Q. Okay. 167-B2?
A. Okay.

Q. And this is just for clarity, 1, 2, 3, 4, 5, 6 -- 7 down. Are you with me?

A. Uh-huh.

Q. It says Randeep Mann. It says -- what's transcribed is Garmin, G-A-R-M-I-N, "Garmin and go to him and talk to him." And apparently that's a reference to saying: Sue, go talk to Phil, right? You can assume that from the context of this thing?

A. You can assume that.

Q. Do you know what a Garmin is?

A. I know that there is a device that's called a Garmin.

Q. The reason -- the only reason I bring it up is when I first listened to it and read it, I did the same thing, like who is Garmin? But Garmin is a GPS device, right?

A. Yes. There's a GPS called a Garmin.

Q. And Sue says, "Yeah, okay."

Dr. Mann says, "Okay. That'll be better. Also, did you find" -- and, again, this is a very important one -- "hundred thousand dollar blank check post dated check written?" Do you read that?

A. Uh-huh.

Q. Again --

A. Yes.

Q. -- we'll leave that to the jury, but what I heard was: Also, did you find the hundred -- thousand dollar blank check.

I'm assuming you listened to it and disagree with what I have heard?

A. This is what I remember when I listened to these, I guess, about a month ago or so, with these transcripts.

Q. Okay. 168-B, obviously it would assumably be still about Phil or Rita, or do you think this is about Tim or Gerald? And it's basically saying: I should have my lawyer call them. Do you know?

A. I believe it's talking about Tim and Gerald.

Q. Again, it may or may not, so let me make this point. These, again -- if my memory is right, isn't the maximum time of a phone call, a county jail phone call, 15 minutes?

A. I have no idea.

Q. Okay. If you've listened to them all the way through, when it gets close to the end, the recording comes on and says, "You have one minute left." Do you remember hearing that?

A. Yeah, I remember hearing that.

Q. And if you time that, I think that happens at 14 minutes. Assuming that these are all 15-minute phone calls -- and you heard many times the warning come on to say, "You have one minute left," right?

A. Yes.

Q. That would assume that they are eating up the full 15 minutes, right?

A. That would assume that, yes.

Q. So, again, just contextually, we're talking about taking a few minutes out of an entire 15-minute conversation in each one of these, right?
A. That each one is 15 minutes long? I'm not sure about that. But, yes, these are portions of the total phone calls, yes.
Q. Well, on your direct examination earlier when you were talking about the Pulaski County calls, I noted that you said most of them were between 8 and 15 minutes. Would that be the same for the Dallas County calls?
A. No, because when you consider that a large majority of these calls are just where he's placing a short message and it's a very short call --
Q. Sure. Sure.
A. -- that's the entire call.
Q. Yeah. And that's next up, I think, on the Gerald Riley calls. But the ones with Sue, they are predominantly longer phone calls?
A. Yes.
Q. Would you say 8 to 15 minutes each?
A. I didn't time them, but that would be a safe assumption.
Q. Full, long conversations that involved many topics, right?
A. Correct.
Q. We get to 170-B, and, 1, 2, 3, 4, 5, 6, 7, 8 -- 9 lines down. Dr. Mann: "Did you convey my apologies?"

And the way I heard this was Sue wasn't quite sure. He goes: No, did you convey my apologies to Gerald and Tim? Is that right?

A. Yes.

Q. And do you know -- let's see. On page 2, the second line, Dr. Mann says, "Well, I just want to apologize to them." See that?

A. Uh-huh.

Q. Do you remember the testimony earlier, and it was when Gerald Riley was on the stand, I think, where he was saying, "I just didn't want to be drug into this," and Sue and the son Dan came over. Remember that?

A. Yes.

Q. And said -- Sue said, "I am so sorry to have gotten you involved where ATF is having to come and talk to you." Do you remember that?

A. Yes, I remember that.

Q. And that's the context of the short ones, pretty much, to Gerald. It's him apologizing, right? I'm looking at 172-B, and he says: I'm sorry. No one has talked to me yet. Is that right?

A. Yes.

Q. Okay. And then there's the one call that references me where he says, "Need an attorney? Call Blake," right?

A. Correct.

Q. Do you know, did he have a grand jury appearance coming up?
A. I'm not sure.
Q. If he did, I know he didn't hire a lawyer -- obviously he didn't hire me, right, and couldn't have hired me, right?
A. Correct.
Q. That's all I've got. Thanks.
A. Thank you.
THE COURT: Mr. Dudley?
MR. DUDLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. DUDLEY:
Q. Agent, I want to challenge you on the accuracy of that transcription a little more directly than Mr. Hendrix did.
MR. DUDLEY: Can you get up 167-A1? Actually, can you play the recording without the transcript? Okay.
And, Mary Anne, if you can, what I'm talking about starts at 26.
BY MR. DUDLEY:
Q. I want you to listen to this without a transcript and tell the jury what you hear. You've got the transcript in front of you?
A. Yes.
Q. Can you turn it over?
A. Yes.

LEGAL ASSISTANT: 167-A1.

(Government's Exhibit 167-A1 played in open court.)

BY MR. DUDLEY:

Q. Can you tell the jury what that last sentence was?

A. "I want their support."

Q. No, the one after that. She's asking you to keep taking care of it.

A. Uh-huh.

Q. Every what?

A. Sounds like it says "every night" to me.

Q. You're going to stick with she said "night" there?

A. That's what it sounds like to me.

Q. When she said that, she was talking about Rita, right?

A. Yes.

Q. And the ATF has interviewed Rita more than once, correct?

A. I believe so.

Q. And she came here and testified, right?

A. That's correct.

Q. Who at the ATF asked Rita what she was taking care of every night?

A. I don't know.

Q. Well, if this is important, don't you think it would be fairly easy to just ask Rita, "What were you taking care of every night?"

A. I would assume so, but I didn't interview her.

Q. And, to your knowledge, nobody from the ATF or the U.S. Attorney's Office or anybody in the world said, "Rita, what are you taking care of for the Manns every night?"

A. Not that I know of.

MR. DUDLEY: Okay. Let's pull up, if you can, 167-A2. And this one, I don't care if the transcript stays up.

(Government's Exhibit 167-A2 played in open court.)

MR. DUDLEY: Stop. Pause it just a minute. I'm sorry. I'm getting this all messed up, not you.

BY MR. DUDLEY:

Q. A 100,000-dollar check, that's what we're getting ready to listen to. I want you to listen to this and see whether Dr. Mann wasn't starting to say 100-dollar check, and changed his mind and said 1,000-dollar check. Just listen to it and see if that's a reasonable interpretation of what he is saying.

(Government's Exhibit 167-A2 played in open court.)

Q. Okay. That's good. Did you hear him say, "Did you find 100 -- 1,000-dollar"?

A. Yes.

Q. Did it sound to you like he started to say 100-dollar check and changed his mind and said thousand-dollar check?

A. It could be, yes.

Q. On Government 169 -- and I don't know if that's 169-A, or just 169 -- the transcript, 169-B, if you've got that in front of you.

A. Okay.
Q. And I'm on -- you can actually -- if you want to put what I'm going to ask you about in context, I'm going to start on the second page. And rather than read all of this, Dr. Mann is asking her: Did you get something from the van? "Did you clean the van?" Do you remember that?
A. Yes.
Q. Okay. And she eventually said: Look, it wasn't anything in the van. I drove the Lexus. And what you're talking about was in the Lexus.
A. Right.
Q. Essentially is that what she said?
A. Correct.
Q. And when they talk about what it was, he's talking about medical records on the last page of that. Do you see that?
A. Uh-huh. Yes.
Q. Now, this recording was made March 28th, correct?
A. Let me compare that to the CD. Yes. Yes, it was.
Q. The Lexus had been searched long before this, hadn't it?
A. Yes, I think that's right.
Q. The Lexus was searched on March 4th, was it not?
A. I wasn't there, so I don't know if the Lexus was searched that day.

MR. DUDLEY: May I approach, Your Honor?

THE COURT: You may.

MR. DUDLEY: I am showing him Report No. 3 from Agent Oliver.

BY MR. DUDLEY:

Q. Just go ahead and take a look at that. That appears to be a report prepared by Agent David Oliver?

A. Yes.

Q. Would you turn -- and go ahead and tell us the date of it.

A. 3-25 of '09.

Q. Would you turn to the second page and look at what I've highlighted? You don't have to read it out loud. Just look at it.

A. Uh-huh. Yes.

Q. Would you agree that the Lexus was searched on March 4th?

A. I would agree with that.

Q. So if there was something in that Lexus that they were trying to hide or that the government wanted, ATF agents weren't good enough to find it when they searched it the first time; is that right?

A. If it were in that vehicle at that time.

Q. And at the time of this phone call, there wasn't any search warrants or any plans of any kind to search the Lexus, the van, or any other vehicle again, was there?

A. Not that I'm aware of.

Q. One more thing, Government's Exhibit -- transcript, 170-B, the phone call on April 22, '09?

A. Yes.
Q. I'm going to go about halfway down the page. They're talking about Tim Harrell and Gerald Riley, correct?
A. Yes. Yes.
Q. And he says, "You know, regarding Tim and Gerald, did you apologize to them?"
And Sue says, "Yeah, yeah, yeah."
And he says, "Were they tweeking?" Do you see that?
A. I see that.
Q. What's tweeking?
A. Tweeking can have a lot of different terms.
Q. What do you understand it to be?
A. In law enforcement, a lot of times it will be used in conjunction with individuals who use methamphetamine.
Q. And so he's basically -- and I agree with that. He's basically saying: Were they high when you talked to them?
A. He could be saying that.
Q. And the next thing he says -- she says, "I don't know, I don't know."
And the next thing he says, "Were they all kicked out," it says, "or something," might be on something? Do you see that?
A. "Were they all kicked out or something"?
Q. Right.
A. Yes, I see that.
Q. Indicating that they had something going on?

A. I've never heard anybody use that term "kicked out."
Q. But you have heard "tweeking"?
A. I have heard that term before, yes, sir.
Q. Thank you.
THE COURT: Redirect?
MS. WHATLEY: Yes, Your Honor.
REDIRECT EXAMINATION
BY MS. WHATLEY:
Q. In non-law enforcement terms, what are other things that tweeking refers to?
A. I couldn't even tell you. I've never heard that term.
Q. So you don't know if it could mean are they freaking out?
A. It could mean that.
Q. Okay. Let's clear up a couple of things. You testified on cross with Mr. Hendrix that Government's Exhibit 168-B -- do you have that in front of you?
A. Yes.
Q. This was a phone call on 3-22 at 11:57 in the morning, correct?
A. Correct.
Q. And Government's Exhibit 167-A1 and A2 is a call that was made on March 22nd at 11:32 in the morning?
A. Correct.
Q. And who is being discussed in the telephone call in 167-A1 and A2?

A. Phil and Rita.
Q. And that was a fairly lengthy call, correct?
A. Yes.
Q. Then on 168-B, it's a call that's made at 11:57, so it's pretty much right after the phone calls referenced in 167, correct?
A. Correct.
Q. And he says, "Have you called them yet?"
A. Yes.
Q. Who is he talking about in 167?
A. In 167, or 168?
Q. 167.
A. He mentions: Have you called Phil -- "Call Phil."
Q. And could that be the same person he's referencing in 168?
A. Yes.
Q. And Mr. Hendrix was saying, "Aren't some of these calls 15 minutes in length?" Do you recall that?
A. I recall that.
Q. And for purposes of the record, aren't the calls that are referenced in 168 and 170 and then 171-A through 177-A -- aren't those the full calls?
A. Yes.
Q. And 168-A and 170-A are both relatively short phone calls?
A. Yes.
Q. So they are not 15-minute calls?

A. No.
Q. And if we can go to 169, is this the telephone call about whether or not a vehicle was cleaned out?
A. Yes.
Q. And you were in here when Agent Oliver testified yesterday, correct?
A. Correct.
Q. And do you recall Agent Oliver talking about searching a vehicle before Dr. Mann was allowed to leave the residence during the warrant?
A. Yes.
Q. The state search warrant?
A. Yes.
Q. So who was in that car at the time: Dr. Mann, or Mrs. Mann?
A. Dr. Mann.
Q. And do you recall from the testimony whether or not Mrs. Mann was even present at the house at the beginning of the state search warrant?
A. Not at the beginning.

MS. WHATLEY: No further questions.

THE COURT: Anything further?

MR. HENDRIX: Nothing further, Judge.

MR. DUDLEY: One more, Your honor.

RECROSS-EXAMINATION

BY MR. DUDLEY:

Q. I may have misunderstood what y'all were saying. Let me see. On 168, are you saying when the -- when Dr. Mann asked have "You called yet," and Sue says, "No," that he's talking about Phil?

A. He could be.

Q. Oh, he could be?

A. Uh-huh. He doesn't mention the name.

Q. Let's read the rest of it and see if that makes any sense. He says, "You haven't even called yet?"

And Sue says, "I will, I will. I figured it's, it's Sunday. They're" plural, right --

A. Correct.

Q. -- "probably not available until after one." Do you see that?

A. I see that.

Q. Have you got any idea who "they" are?

A. It doesn't say -- it doesn't say a direct name --

Q. Okay.

A. -- anywhere on this.

Q. And you don't have any idea why they are probably not available until after 1:00?

A. Why they would be available until after 1:00, no, I --

Q. That might be the time business opens on Sunday, mightn't it?

A. It could be. It could be when people get out of church.
Q. And then if you go down two more lines, Dr. Mann says, "It's important. Just because, maybe just meet them face to face and, and just see if they are willing to help me," right?
A. Yes.
Q. It sounds like he's talking about more than one person, doesn't it?
A. Yes.
Q. Probably not Phil? You don't know?
A. I couldn't tell you if it was -- for sure if it was Phil, but that's --
Q. Yeah. You're guessing; isn't that right?
A. From the previous phone call just minutes before.
Q. Yeah. But in the previous phone call when they talk about Phil, they say "Phil," right?
A. Correct.
Q. And in this phone call, they are talking about they, them, right?
A. That is correct.
Q. And you're going to say they are the same?
A. No.
Q. Thank you.

THE COURT: Anything final?

FURTHER REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Agent Norris, was the previous phone call about Phil and Rita?
A. Yes.
Q. And are Phil and Rita two people?
A. Yes.
Q. Is that a plural?
A. Yes.

MS. WHATLEY: No further questions.

THE COURT: Mr. Dudley, are you going to go at it again?

MR. DUDLEY: I didn't major in English. I quit.

THE COURT: All right. You can stand down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Call your next.

MS. WHATLEY: Melanie Miller.

THE COURT: Has she been sworn in?

MS. WHATLEY: No, Your Honor, she has not. May I approach your clerk and retrieve my copies?

THE COURT: Ms. Miller, you can come down here and let me swear you in.

MELANIE MILLER, GOVERNMENT WITNESS, DULY SWORN

THE COURT: Come and have a seat right here on the witness stand.

MS. WHATLEY: Sorry, Your Honor. Trying to get some copies put together.

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good afternoon.

A. Good afternoon.

Q. Will you please state your name for the record?

A. Melanie Miller.

Q. And how long -- jumping ahead, what do you do for a living?

A. I'm a certified court reporter.

Q. Would you sit up to the microphone just a little bit? I'm kind of hard of hearing.

A. Sure.

Q. How long have you been a court reporter?

A. For seven years.

Q. In April of 2009, were you the court reporter for the federal grand jury in Little Rock, Arkansas?

A. Yes, ma'am.

Q. And were you present when Sangeeta Mann testified before the grand jury?

A. Yes, ma'am.

Q. Do you see the Sangeeta Mann that testified before the grand jury in the courtroom today?

A. Yes, ma'am.

Q. Can you please identify her for the record?

A. Third party from the left at the table.

MS. WHATLEY: Your Honor, if the record may reflect she's identified the defendant?

THE COURT: It will reflect.

BY MS. WHATLEY:

Q. How many times did Mrs. Mann testify that day?

A. She testified two different times.

Q. And did you prepare a transcript of each one of those testimonies?

A. Yes, ma'am.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I'm showing you what's been marked for identification as 179-A and B. Is this a copy of that transcript?

A. Yes, ma'am, it appears to be.

Q. And going to the last page of each one of these transcripts, are they signed?

A. Yes, ma'am.

Q. And what is the purpose of signing that page?

A. As a court reporter, you have to sign your certificate stating that the testimony was taken before you and that you certified that this is the true and correct copy of the testimony that you transcribed.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government's Exhibits 179-A and 179-B.

MR. DUDLEY: No objection.

THE COURT: It's received.

(Government's Exhibits 179-A and 179-B received in evidence.)

MS. WHATLEY: Your Honor, may I retrieve it?

THE COURT: Yes.

MR. DUDLEY: Your Honor, may we approach one moment?

THE COURT: You may.

(Bench conference reported as follows:)

MR. DUDLEY: Your Honor, I don't have any problem with the transcript. But parts of it had been redacted because she asserted privileges, a couple of different privileges. Are you going to publish it to the jury, show it to them on the overhead?

MS. WHATLEY: I was going to.

MR. DUDLEY: I don't mind doing that, but I would like some kind of instruction from the Court. Parts of it are just not relevant and they shouldn't guess what's in there, they've been struck out.

MS. WHATLEY: I have no objection to that.

THE COURT: I guess I need to get the instruction together.

MR. DUDLEY: Judge, if you just tell them parts of it have been struck out because it's not relevant and they ought not guess what's in there, that's fine with me.

THE COURT: We can do that.

(Proceedings continued in open court as follows:)

THE COURT: Ladies and gentlemen of the jury, it was brought to my attention we are going to publish this transcript, and certain parts of it have been struck out. As I told you before, there are certain rules of evidence about what we can allow you to see and what we can't allow you to see. You're to disregard any of the parts that are stricken out and not even concern yourselves with it.

MS. WHATLEY: If I can have everything switched over.

BY MS. WHATLEY:

Q. Okay. Ms. Miller, if you can tell us what was the case that was being investigated by the grand jury that day?

A. Randeep Mann.

Q. And what was the date of the testimony?

A. April the 8th, 2009.

Q. And who was appearing on behalf of the United States?

A. Julie Peters.

Q. And who is Ms. Peters?

A. She's an Assistant U.S. Attorney.

Q. Is she the only one that does the questioning during --

A. No, ma'am. There was also Mr. Mike Gordon.

Q. And sometimes, maybe not in this one, maybe it's in 179-B, is there another individual that's referenced as Mr. Harris?

A. Yes.

Q. And who is that?
A. Pat Harris, he's also a U.S. Attorney.
Q. And in the transcript is it delineated in the transcript whether it's Mr. Gordon, Ms. Peters, or Mr. Harris asking questions?
A. Yes, ma'am.
Q. And during grand jury, are members of the grand jury allowed to ask questions?
A. Yes, ma'am.
Q. And is that further delineated when they ask the questions?
A. Yes, ma'am.
Q. And just like in court, do you stop us if people begin speaking over each other?
A. Yes, ma'am, try to.
Q. Let's go through certain portions --
A. Certainly.
Q. -- of these, if we can. Going to page 3 of the exhibit, is she questioned -- is this the normal practice, first questions asked are, what are your name?
A. Yes, ma'am.
Q. And she states it's Sangeeta Mann, and she also goes by Sue?
A. Yes.
Q. And on page 4 of that exhibit does she identify her

husband at line 9?
A. I can't see the line numbers the way it's situated.
Q. I'm sorry.
A. Yes.
Q. And who is her husband?
A. Randeep Mann.
Q. And at page 7 of the transcript, is she asked about her children, where everybody lives and names and dates of birth?
A. Yes, ma'am.
Q. And how many children does she have?
A. Four.
Q. And who is the oldest?
A. Kundan.
Q. And then she has a daughter Shivani, and a son Dushyant, and another daughter named Sarina?
A. Yes, ma'am.
Q. What did she state as her address on line 20?
A. 313 Milky Way Lane.
Q. And how long had she lived at that address?
A. Since 1999.
Q. And at page 14 of the transcript, was she asked -- she hadn't always lived in Arkansas, correct?
A. No, ma'am.
Q. She lived in Baltimore and Boston; is that right?
A. I believe so, yes, ma'am.

Q. And going to line 13, was she asked about what type of work she did?
A. She was.
Q. And what type of work had she previously been involved in?
A. She stated she was in computers, and when asked specifically she said she was a systems analyst.
Q. And then she was asked what kind of medicine her husband practiced, correct?
A. Yes, ma'am.
Q. And her response was?
A. Internal medicine.
Q. And at page 18, is she asked a question about who an individual by the name of Tim is?
A. Yes, ma'am.
Q. And what was her response?
A. At first she said "Excuse me?" and the question was repeated, and she said, "We probably have a quite a few patients named Tim."
Q. Going to page 22 of the exhibit -- actually we start at page 21, is this where the grand jury starts getting involved in asking questions?
A. Yes, ma'am.
Q. And is the grand jury asking questions regarding her children?
A. Yes.

Q. And what does she -- is she asked about -- or does she answer a question about her oldest child starting at line 25 of this document?
A. Yes.
Q. And she says her oldest has graduated. And then on page 22 she says the younger three are at the University of Arkansas?
A. Yes.
Q. Where was the oldest child living at the time according to her answer at line 5?
A. She stated that, "He -- he's living with me right now because -- you know -- we're going through this tough time. But after he finished -- after he finished at UCA, he was working in Memphis."
Q. And then she was asked how long he was working in Memphis; is that correct?
A. Yes, ma'am. And she stated he just graduated in the end of August, so just these past few months.
Q. So this transcript was made April of 2009, so he would have graduated in August of 2008, correct?
A. Yes, ma'am.
Q. And what type of work was he doing?
A. He worked in some motels and hotels.
Q. Was Mrs. Mann excused from the grand jury for a period of time?

A. Yes, ma'am.
Q. And was she called back in a little while later?
A. Yes, ma'am.
Q. Let me show you 179-B. Is this a continuation of that testimony?
A. Yes, ma'am.
Q. At page 5, is she questioned about her telephone numbers and her cell phone numbers?
A. Yes, ma'am.
Q. And does she give those numbers?
A. Yes, ma'am.
Q. What is the home phone number?
A. The phone number was (479) 293-3030.
Q. And the cell phone number?
A. Was (479) 264-3116.
Q. And at the bottom of page 6, does Mr. Gordon start asking questions?
A. Yes, he does.
Q. And what question does he ask?
A. He asks, "What is your son, Dan's, cell phone number?"
Q. And going to the top of page 7, what is her response?
A. "It's 479-970-5914."
Q. Then does she go through and also give the phone numbers for her children?
A. Yes.

Q. For the rest of her children?
A. Yes.
Q. From the looks of this, it appears as though Mr. Gordon and Ms. Peters are kind of bouncing back and forth?
A. Yes, ma'am.
Q. Don't you usually get mad at us when we do that?
Starting at page 8, does she begin to get questioned about a search warrant that was executed at the medical clinic?
A. Yes, ma'am.
Q. And does she acknowledge that she was aware of that?
A. Yes, ma'am.
Q. But she didn't know the exact date?
A. Correct.
Q. So beginning at page 8 they start kind of talking about the different dates that the search warrants were executed; is that correct?
A. Yes, ma'am.
Q. And at page 9, does that continue?
A. Yes, ma'am.
Q. And in the middle of the page Mr. Gordon asks her a question and she asks to talk to Cathi?
A. Yes.
Q. And do you know who Cathi was?
A. I believe that was her attorney that day.
Q. And when people are in grand jury, they are free to get up

and walk out and talk to their attorney any time they want to?
A. Yes, ma'am.
Q. Nothing wrong with that. We let them do it, no problems whatsoever?
A. Yes, ma'am.
Q. When she came back in, did Ms. Peters start to question her?
A. Yes.
Q. And what happened?
A. She interrupted Ms. Peters and asked to answer Mr. Gordon's question that he had asked prior to her asking to leave to go consult with her attorney.
Q. And what was her response to that question beginning at line 24? What does she state?
A. The witness states, "You asked me about -- well you asked me about two things in the office, and I was thinking more in terms of -- you know -- mail, bills, records, things like that but then, when you said my husband's desk, I did remember, and I apologize, it just slipped my mind, that my brother-in-law had some checks that he had left with my husband and they were in his desk and I apologize, it completely slipped my mind, but I did take those because -- you know -- the office, the clinic is empty, there's nobody in there and I just didn't feel that that would be a safe place. So, I did bring those home."
Q. Then is there a discussion about who her brother-in-law

is?
A. Yes.
Q. And what is her brother-in-law's name?
A. Sandip Mann.
Q. And where did he live?
A. He during this -- on this page, if you're talking about, he lived in India.
Q. On page 11 of the transcript, was she asked what address was on the check that she had removed from the clinic?
A. Yes.
Q. What did she state about that?
A. She stated that she didn't know the exact address and then stated, "well, when he used to live in Tennessee, he had -- I assume he had the account then so, I'm not sure what the address is on the checks."
Q. She then asked if the checks were for an active bank account?
A. Yes.
Q. What was her response?
A. "They -- they must be, uh-huh."
Q. And she said she thinks so?
A. Uh-huh.
Q. And then she's asked, "And how did they get in your medical clinic?" And what was her response?
A. "Well, they -- I think my husband just had them in his --

in his desk."
Q. So then Mr. Gordon asked if they are personal or business checks, correct?
A. Yes.
Q. What was her response?
A. "I assume they would be personal because his brother didn't really have a business."
Q. Then there's a continuation as discussing their Bank of America checks and that they were in the name of Sandip Mann; is that correct?
A. Yes, ma'am.
Q. Did they question her further on page 12 regarding who Sonny is, whether or not Sonny is his nickname?
A. Yes.
Q. And when was the last time that Sonny was in the United States?
A. The witness stated 2002, the summer.
Q. And at line 11, is she questioned regarding whether or not she or her husband was authorized to sign on the account on the checks that were in the desk?
A. Yes, ma'am.
Q. What was her response?
A. The witness stated, "I think before he went back to India, he did give Power of Attorney. And I'll -- I think I have that Power of Attorney somewhere and I'm not sure if it's just my

husband or both of us. I'm not sure."
Q. And did she ask what she used the check for?
A. Yes.
Q. Did she give an answer at line 20?
A. She stated, "I couldn't give you any specifics."
Q. And she further questioned if they were continuing to pay bills with them?
A. Yes, ma'am.
Q. And at page 13, does she respond at the top of that page?
A. Yes.
Q. And what does she state?
A. She states, "He had just left them. I don't know if you know he -- you know that he was deported because of his student visa and my understand is that it was -- he only had a few days or -- you know -- maybe not even a week to turn himself in and maybe didn't have time to wind up all of his affairs, and -- you know -- maybe that's why that was left there. I don't know."
Q. So she responded that's maybe why they were left?
A. Yes, ma'am.
Q. Going to page -- page 13, line 17, she stated her brother-in-law was deported in what year?
A. 2002.
Q. And going to page 14, does the grand jury foreman jump in and start asking questions?

A. Yes, ma'am.
Q. And what does the grand jury foreman ask?
A. He asks her -- he states, "So, the checks, was it blank checks, or was it actually checks that had been written?"
Q. And her response was?
A. Uh -- the witness's response was, "Uh, I'm not sure -- they were blank but I'm not really sure if they were. I mean, I don't think they were written out -- you know -- that would -- he wouldn't know in 2002 what --"
Q. And then Ms. Peters interrupted and asked, "Was there a register in the checkbook," correct?
A. Yes.
Q. What did the witness respond?
A. She stated, "I don't know. I don't know -- you know -- I didn't really look."
Q. And Mr. Gordon asked, "What did you do with the checks when you took them out?"
A. Yes, ma'am.
Q. What was her response to that question?
A. The witness said, "They're at home."
Q. So Mr. Gordon asked if she still had them?
A. Yes, ma'am.
Q. And what was the witness's response?
A. "Yes. I just thought it would be safer."
Q. Ms. Peters asked, "So, you removed something because you

thought it would be safer?"

A. Yes.

Q. And the witness's response was?

A. "Yes."

Q. And then what did Ms. Peters ask?

A. Could you move the page up?

Ms. Peters asked, "Is that the only reason you removed them?"

Q. And the witness's response?

A. "Yes. Yes."

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: You may.

BY MS. WHATLEY:

Q. Going back to page 14, line 13, please read Mr. Gordon's question.

A. Mr. Gordon asks, "What did you do with the checks when you took them out?"

Q. And what was her response?

A. The witness said, "They're at home."

Q. At any point in time in any of this grand jury testimony did the witness state that she had taken them to any individual?

A. Not to my recollection, no, ma'am.

Q. No further questions.

THE COURT: Cross-examination?

MR. HENDRIX: Not from us, Judge.

THE COURT: Mr. Dudley?

MR. DUDLEY: No, Your Honor.

THE COURT: Ms. Miller, you may stand down.

Did you have another witness, or have you gone through all 10?

MS. WHATLEY: I've gone through all 10.

THE COURT: Ladies and gentlemen, we have concluded the testimony for today. We will start tomorrow at 9 o'clock. You'll be in recess until 9 o'clock tomorrow.

You're looking at me funny.

MS. WHATLEY: I just wanted to make sure I heard what time.

THE COURT: 9 o'clock unless we need to come in at 9:30. I think 9 o'clock will be fine so we can all get started and start flying through the day.

MS. WHATLEY: Your Honor, are we still off on Monday?

THE COURT: We are off on Monday. I've told the jury already. What time did I have you back in Tuesday, 9:30 or 10:00?

JUROR NO. 2: I think it was 11:00.

THE COURT: Mr. [Juror No. 2], I'm going to keep my eye on you. No, no, no. I see right now I have to keep my eye on you.

Where did you get those pencils you have in your hand?

JUROR NO. 2: The ones I have keep breaking.

THE COURT: We'll start tomorrow at 9 o'clock. Same admonitions as always. I don't have to give them to you again because I've given them to you probably 15 or 20 times. Just keep those in mind until tomorrow morning. We'll be in recess until tomorrow at 9 o'clock.

(Jury exits the courtroom.)

MS. WHATLEY: Your Honor, can we have you for two more minutes, maybe longer?

THE COURT: Yes.

MS. WHATLEY: Mr. Gordon had a goal of staying off the record all day, but I want to make sure he doesn't.

THE COURT: Now, do you need me to stay, or did you just want --

MS. WHATLEY: No. We do have an issue we need to take up.

THE COURT: Okay.

MS. WHATLEY: Sorry.

MR. GORDON: Your Honor, tomorrow is the day that I anticipate that we'll be displaying the rest of the guns that were seized from Dr. Mann's house.

THE COURT: Okay.

MR. GORDON: Our intention was to -- with the Court's permission, for proficiency's sake, to set them up in Judge Volpe's courtroom, and then we'd request the Court walk the

jury into Judge Volpe's courtroom so we don't have 100 -- have to bring in 100 machine guns one at a time in here.

THE COURT: Let me ask you this. When were you going to take them over there? Tomorrow?

MR. GORDON: I anticipate it will probably be after lunch that we get to that point, and so maybe the lunch break --

THE COURT: Couldn't we just bring them in here and set them up in here, or did the defense just not want all of the guns sitting in the room?

MS. CASSINELLI COUCH: Well, I guess I have a preliminary question, and that is, if they are going to be in a different courtroom, then I don't really see how the relevance is going to attach to the guns. I was under the impression you were going to have the agent discuss or something. Are we just going to take the jury, and say, "Here's a big pile of guns that were in the house"?

MR. GORDON: There will be some testimony about the guns.

THE COURT: I would rather that we just bring them in here and set them up. I know there are a lot of them, but can we make room in here?

MR. GORDON: Yes. My only -- then they are pretty much going to be in here all afternoon then.

THE COURT: That's fine.

MR. GORDON: And believe it or not, I'm trying -- not trying to make a spectacle of it.

THE COURT: That works two ways though. Either the guns -- and you can't control how each individual juror will view it. If they are sitting here, some will look at them, and, after seeing them so long, they'll just, you know, stop paying attention to them. Others might be offended. I don't have a problem at all with just bringing them in here. I would rather not get the jury up, walk them into Judge Volpe's room, and do what would amount to going to an art museum or something and looking at them and discussing them. You understand? I would just rather bring them in here.

Now, the question would be where would we put them in here? And it might be that we move some of the benches -- well, I don't want them near the people who come in watching as we put everybody on one side of the room. I wouldn't want people sitting over by the guns. How many do you have?

MR. GORDON: About 100, Your Honor.

THE COURT: And will they be in boxes like the ones you brought in before, or would they be on the carts you pulled in?

MR. GORDON: We were trying to avoid doing that. We really had thought that the most efficient way was to have it set up in Judge Volpe's courtroom while we're doing -- conducting other business in here, and then just have agents

sit with them until the jury sees them, and then bring the jury back out and take all the guns downstairs.

MS. CASSINELLI COUCH: Your Honor, I think we've made a record on how we don't want the guns, but I think I would like an opportunity to talk with all of the other defense counsel and kind of see what our position would be.

THE COURT: Take a couple of minutes and see what you might think.

(Counsel confer briefly off the record.)

MS. CASSINELLI COUCH: You know, I'm being told that I haven't, I guess, properly renewed our relevance objection, but I think I have.

THE COURT: I think you have.

MS. CASSINELLI COUCH: Clearly, it's creating a logistical problem as well. I think we're up for whatever the Court wants to do on this one. I think we lean towards bringing them in here, but if the Court feels like that's not appropriate --

THE COURT: That's what I believe. And if we have to -- what we can do is move out the first couple of rows over here on this side, on the left side of the courtroom, and keep them over there. And when people come in, they can sit on the right side.

Will you bring them in during lunch?

MR. GORDON: Judge, I've got to rethink it all now.

THE COURT: I would rather not, as we're going through the trial, have people marching them in and out. How did you plan to have them set up in Judge Volpe's courtroom, in what arrangement?

MR. GORDON: We were going to -- well, we were going to arrange the tables and have some on tables, some on the wall, some on the floor. Just the other day when we had 17 or 18 in here, that was kind of unmanageable, and five times as many is going to be --

THE COURT: I understand that. But what I'm thinking is if we move some of those benches out of the left side of the courtroom, and so that when everybody comes in who is not attached to the case, they can sit on the right side, then that area over there that -- just have guns over there. Then that way, when you needed somebody to address one of them, we could just go get them and bring it over, or if you need the jury to see them, you could point to them. They would get the full effect of how many there are, they would -- the whole thing. And it wouldn't be a big production of leaving the courtroom, going over to another courtroom. Because I think what that says is that there are so many, that we couldn't handle it in here. So, you know, I think that kind of evens it out a little bit.

MR. GORDON: At the same time, if they are all just piled up in a corner, I mean, that kind of defeats the purpose

of them being allowed to see the characteristics of each gun.

THE COURT: No, I didn't say you had to put them in a corner. I'm saying if we need to get some tables, fold-out tables, and those types of things like you would have had in Judge Volpe's courtroom to put over there to display them, we can do that. All I'd have to do is this evening or maybe early tomorrow morning get somebody to come up here and help me move out those benches and bring in some tables, because we could give you pretty much the same arrangement here that you would get over there. How many tables do you think you need?

MR. GORDON: It's hard to guess, Judge. We've got a whole vault room downstairs full of them. And it's three or four shelves tall lining the entire room on each and every shelf. We'll do whatever the Court says.

THE COURT: What I was going to say is you were going to have to come up with a certain number of tables you were going to use in Judge Volpe's courtroom, so I'm just saying we can do the same here.

MR. GORDON: It's just in Judge Volpe's courtroom, we don't have to worry about the parties and all of that, and we --

MS. CASSINELLI COUCH: We'll be fine.

THE COURT: Here's what I'll do. I'll see if I can arrange or I can work to get these chairs out of here. We need to call Mr. McCormack and see if he can help us or have

somebody come up here and help us, and we'll get some tables up here to -- what I'm saying is I understand the purpose of having them, and I understand the effect and everything. I'm saying that effect is intensified if we all have to get out of here. That is a certain amount of testimony in and of itself if we have to get up and leave the courtroom to go look at them. We can do the same thing as far as the effect of the guns themselves if we have them in the courtroom, and we can set up tables over there so we can lay them out so people can get the full effect of how many there are without the extra point of saying, "There are so many, that we couldn't even bring them into the courtroom."

MR. GORDON: Very well.

THE COURT: Okay. We'll do that. And what this might -- what time does the clerk's office -- do we have anybody down there --

COURTROOM DEPUTY: 8 o'clock.

THE COURT: We need to get in contact with Mr. McCormack and start working on that by 8 o'clock in the morning. I'll call him now. Is there anything else we need to do?

MS. CASSINELLI COUCH: I think we're good.

THE COURT: Okay. So I'll tell those who are visiting with us now and who will be back tomorrow, we're going to have you sit on the opposite side of the courtroom tomorrow so we

can bring the guns in. Okay?

All right. We'll be in recess until 9:00.

MS. CASSINELLI COUCH: Thank you.

(Overnight recess at 5:10 p.m.)

C E R T I F I C A T E

I, Judith A. Ammons, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 9, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and
SANGEETA MANN, a/k/a SUE MANN (2),

July 23, 2010
Little Rock, Arkansas
9:05 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 10
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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[Continued]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - VOLUME 10 (July 23, 2010)

WITNESSES FOR THE GOVERNMENT:	Direct	Cross	Redirect	Recross
THAO DINH LE	1875	1901		
LLOYD HAHN	1916	1966	2020	
EDWIN STARR	2030	2041		
JEFF KIMBROUGH	2046	2063	2091 2097	2095

EXHIBITS: **RECEIVED**

Government's Exhibits 114-H, 115-O, 115-P, 115-Q, and 115-R.....1888

Government's Exhibit 108-A.....1899

Government's Exhibits 114-A, 114-B, 114-C, and 115-B.....1901

Government's Exhibit 235.....1938

Government's Exhibits 114-E, 114-F, 114-G, and 114-I.....1939

Government's Exhibits 115-A, 115-C, 115-D, 115-E, 115-F, 115-G, 115-H, 115-I, 115-J, 115-K, 115-L, 115-M, and 115-N.....1941

Government's Exhibit 116.....1959

Government's Exhibit 234.....1964

Government's Exhibit 191 and 192.....2024

Government's Exhibits 193-A, 193-B, 193-C, 193-D, 193-E, and 193-F.....2036

Government's Exhibit 194.....2040

Defendants' Exhibit 18.....1968

Defendants' Exhibits 13 through 17.....1982

(Continuing at 9:05 a.m., jury not present.)

THE COURT: Are we ready?

MR. GORDON: Yes, your Honor. I suspect during the day, we'll have some issues that need to be presented with the Court, but I don't think anything before this first witness.

THE COURT: Okay. We can bring him in.

MR. GORDON: Okay.

THE COURT: Before you have a seat, let me swear you in. Raise your right hand.

(Witness Le sworn in.)

THE COURT: Okay. Let's bring in the jury.

(Jury entered the courtroom.)

THE COURT: Mr. Gordon, call your first witness.

MR. GORDON: Thank you, your Honor. The United States calls Thao Le.

THAO DINH LE, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good morning, Mr. Le.

A. Good morning.

Q. Do me a favor. Scoot up close to that microphone.

A. This better?

Q. Much better. Thank you. And please state and spell your name for us.

A. My name is Thao Dinh Le. First name T-h-a-o, middle name

D-i-n-h, last name L-e.
Q. Where were you born, Mr. Le?
A. I was born in Vietnam.
Q. How long were you in Vietnam?
A. I was born in 1960 and live there until time I'm 20 years old.
Q. Then you came to the United States?
A. Yes, in 1980.
Q. Did you used to live in Tulsa, Oklahoma?
A. Yes, I did.
Q. From when to when?
A. From 1980 to 1997.
Q. And what did you do when you lived in Tulsa?
A. I used to own a gun shop in Tulsa.
Q. What was the name of your gun shop?
A. Cadre Supply Incorporated.
Q. Cadre, spelled C-a-d --
A. C-a-d-r-e Supply, Inc.
Q. Do you remember the address of your gun shop or what street it was on?
A. 51st Street. 8335 East 51st Street, Tulsa, Oklahoma.
Q. And when did you first open your gun shop?
A. The gun shop was in early '90.
Q. And what did you sell out of your gun shop?
A. Mainly firearm. I used to be a gun dealer, Class 3, which

is selling machine gun, silencer, short-barrel shotgun, and also sport firearm and ammunition.

Q. Did you have an FFL?

A. Yes, FFL and Class 3 holder.

Q. And when did you get your FFL?

A. In early '80, and then Class 3 in the '90s.

Q. Were you also a collector?

A. Yes. I collect machine gun, silencer, and destructive device.

Q. Destructive devices?

A. Yes. Anything bigger than .50 caliber considered destructive device, antitank, grenade launcher.

Q. Go ahead and list out some of the destructive devices that you collected.

A. Like grenade launcher, antitank rifles, cannons. And then I go a little further. I collect hand grenades, land mines, clay mortar, C-4s, TNT, flame thrower, machine gun.

Q. You had it all?

A. I have it all, yes.

Q. Did you get in trouble because of the things you were collecting?

A. Yes, I sure did.

Q. Did you end up in federal prison?

A. Yes, I did.

Q. What were you convicted of?

A. Possession of machine gun and destructive device. I was sentenced on 1997 for 130 months federal prison.
Q. And just to make sure the jury knows everything, you were convicted of unlawful possession of a machine gun by a user of controlled substances?
A. Yes, that were the charge.
Q. And you were also convicted of unlawful possession of an unregistered destructive device?
A. Yes, multiple.
Q. Was that all the stuff that you just listed?
A. Yes.
Q. And then you were also convicted of carrying a firearm in relation to a drug-trafficking crime?
A. Yes.
Q. All of that arose out of -- all that was one case; is that correct?
A. One case, yes.
Q. And you were sentenced to a total of 130 months?
A. That's correct.
Q. What date were you sentenced on? Or what year?
A. That were in, I believe, '98.
Q. Okay.
A. I was arrested on July 2, '97.
Q. When were you released from federal prison?
A. 2003.

Q. And did you get out early because of cooperation with the United States Government?
A. Yes, I did.
Q. And because of that cooperation, are you now in the witness protection program?
A. Yes, I am.
Q. Is that why we have those two guys sitting over there?
A. United States, U. S. Marshal, yes.
Q. The case that put you in the protection -- in the witness protection program, does it have anything to do with why you're here today?
A. No, sir. This is a completely different case. Had nothing to do with it.
Q. The only common thing is that -- is your gun shop; correct?
A. Yes.
Q. Okay. The reason you're in the witness protection program has nothing to do with the defendants in this case; correct?
A. Yes.
Q. And you've been out of prison for how long now?
A. For seven years.
Q. Are you currently in any trouble?
A. No, sir.
Q. Are you getting any breaks from the government today for your testimony?
A. No, sir, absolutely not.

Q. Did you sell explosives out of your gun shop?
A. Not out of the gun shop, but a close circle of friends, yes, I did.
Q. And let's help sort that out. You had your gun shop and that was a legal business; correct?
A. Yes.
Q. But on the side, you were doing some stuff that was illegal?
A. Yes. I collected multiple device. My hobby was love to shoot machine gun and throw hand grenade in the pond. It sound odd, but -- and it escalate, and we have a small circle of friends, we collected and we do the same thing.
Q. But with these things that you collected that were illegal, sometimes you sold those as well?
A. Yes, I did.
Q. And your gun shop, how many employees did you have?
A. Normally three.
Q. Do you remember their names?
A. Jay Riseling, Robert Lewis, Keith Waldron, and a few more -- it's been 13 years. I can't really recall.
Q. That's fine. In your store, did you sell grenade launchers?
A. Yes, I did.
Q. What kind?
A. M-203, the difference of an M-203, it's a destructive

device if you put the barrel on it. But if you separate the barrel from the receiver, it is legal to sell like a firearm.
Q. Okay.
A. So we did sell it as a Title 1 firearm just like any shotgun or rifle you can buy it, but when you assemble it, you have to register it as a destructive device.
Q. So did you sell receivers?
A. Yes.
Q. Were they M-203s?
A. Yes.
Q. What kind of ammunition would the M-203 grenade launcher fire?
A. Fire a 40-millimeter projectile, and it can come in high explosive, dual purpose explosive, like antipersonnel, and also practice rounds, smoke round, flares. It's multipurpose weapon.
Q. Okay. Did you have access to 40-millimeter grenades?
A. Yes, I have a lot of them.
Q. Who were you getting them from?
A. Through the circle in the gun show. Mainly, like, not machine gun shoot and, like I said, the small circle of friend that I acquire, in the hundreds.
Q. Okay. Was one of those friends Daniel Robinson?
A. Yes, he's one of them.
Q. Okay. Did he have a gun shop as well?
A. He's mainly in surplus and gun, yes. Toni Surplus, I

believe.
Q. Toni Surplus was the name of his store?
A. I believe so, yes.
Q. Where was it located?
A. Virginia.
Q. How did you meet Robinson?
A. Through an Knob Creek gun show.
Q. If you would, tell the jury what Knob Creek is?
A. Knob Creek is an event in all folks owning machine gun and gun show circle, and we get together twice a year, in April and October, in Knob Creek, Kentucky. And what we do is, it's the gun show on the side, and then we shoot all day, in the hundreds of thousands of rounds fired per event. And that's when all of us, you know, have the same interest and meet each other and become friends in that small circle. That's what we collect, and that's when I met Daniel. First started out with little thing, and then I start buying those by the case and then by the dozen case. When I got arrested, I got hundreds of unregistered 40-millimeter rounds.
Q. At Knob Creek, I understand it's a bunch of people with the same interests getting together. Is there buying and selling going on there?
A. Yes, all day, actually three days.
Q. All day, all night?
A. All night. We've got daytime shooting, we've got nighttime

tracer shoot, and it's very strange for normal folks because they do things like they tape dynamite on a 55-gallon drum gasoline, and when you hit it, explode, and we get a rush out of it. And I do it twice a year, every year, religiously.

Q. So there's buying and selling going on there?

A. Yes.

Q. Both legal and illegal?

A. Yes.

Q. You've talked about buying crates of 40-millimeter grenades from Daniel Robinson; is that correct?

A. Yes.

Q. How would you get them from his store in Virginia back to Tulsa?

A. I used to have a pickup truck, and I drove up there, make a transaction, and drove back.

Q. Just with them loaded in the back of your truck?

A. Yes. Cases and cases of them.

Q. How many cases?

A. In the dozen. Each case, it hold about 72 for 40 millimeter, and then hand grenade come in little black tube and I had case of them. I'd throw so many of them, I can't even count.

Q. Do you know where Daniel Robinson was getting them?

A. I believe it through soldiers, I think Marine Corps through a training camp by Virginia there.

Q. Were these stolen?
A. It had to be stolen, yes, because they still got -- carry government serial number on it.
Q. What did you do with the 40-millimeter grenades when you got back to Tulsa?
A. I store in my warehouse, and every time we go out, we either shoot at tree, shoot at car. You know, we buy a dead car, and everybody get together and shoot them, blow them up. I use hand grenade to go fishing, throw it in the pond. It's -- sound crazy. I guess I'm eccentric collector.
Q. Who did you sell most of the 40-millimeter grenades to?
A. Majority went to the guy named Eric Contraras in Mexico. Then, of course, among small circle of friends, we kind of split the cost and shoot it up.
Q. Sell some to some of your employees?
A. Yes.
Q. Do you know what an MK3A2 grenade is?
A. MK3A2 is a concussion grenade. It's used for attack, and because it produce no fragmentation, that's why when you throw it and you run into it, the fragment don't hurt you. In Vietnam they use it for guarding bridge because you can throw it in the water and keep diver from it. And I use for killing fish.
Q. I'm going to show you what's been admitted as Government Exhibit 69. Do you recognize that?
A. Yes. That is MK3A2.

Q. And you had some of those?
A. Yes, a lot of them.
Q. And you keep saying that you use them for fishing?
A. Yes, I did.
Q. All right. Tell us about that.
A. Instead of you sit there for hours, wait for a fish, you could throw one and it all come up. You could pick one.
Q. Did you get wet doing that?
A. Yes, sir, you'll have a rush out of it. Trust me.
Q. All right. Then you would eat the fish?
A. Yes. Actually, it is safer. No poison. They don't lose blood. They're all there.
Q. Okay. And where were you getting your MK3A2 grenades from?
A. It's in -- bought in many occasion. Mostly from Knob Creek, from soldier, from other dealer. Daniel one of them. So many. Not like I own one or two pieces. I own those by dozens. When I got arrested, I still got, like, four or five of them.
Q. Let me ask you this: If I came into your shop, and pretend you didn't know who I was or what I did and I was looking in your shop and I saw that you had a 40-millimeter grenade receiver and I bought it from you, and then I was like, "Hey, do you have any grenades that I can fire with this thing?" What would your response be to me?
A. I would not sell to you, sir.
Q. Why not?

A. It's -- for this, the people I know we use for fun, it's different, but it go in the wrong hands with ill purpose, them things can be very deadly and I would not sell it. First, it would get serious trouble if I got caught, so I wouldn't sell out of the store.
Q. What would it take for you to sell me something like that?
A. If somebody vouch you from one of my friends or something. It's almost like a drug deal. I mean, you come up somebody buying drugs, of course, they don't sell you. But then somebody tell you this guy cool guy, somebody to go out shooting, then I would. That, like I said, very tight circle of friends.
Q. So it's got to be one of those people in your tight circle of friends or someone that one of those friends vouched for?
A. Yes.
Q. And within the circle, did you guys talk about people you could trust and who you could not trust?
A. Yes.
Q. Within this circle, did you ever hear the name Randeep Mann?
A. Yes.
Q. And I know it's been 13 years. Tell the jury what you remember about Randeep Mann.
A. I don't believe I recognize the man through all the business and stuff. Only thing strike me funny is because where he live, the town named German, the town easy to remember. And

he's a doctor. That's all I know.
Q. Do you remember personally ever dealing with Dr. Mann face to face?
A. I can't recall, sir. I'm sorry.
Q. Would you know Randeep Mann if you saw him again?
A. I don't believe so.
Q. Okay. Tell you what. I want you to take a second and look around the courtroom and see if you recognize anyone as Randeep Mann, the doctor from Germantown.
Do you see anybody?
A. I not recall, sir. No, I didn't see anybody.
Q. Fair enough. When you ran Cadre Supply, did you keep business records?
A. Yes.
Q. And when customers bought stuff from your store, were they given receipts?
A. Yes.
Q. And were those receipts printed out on Cadre Supply letterhead?
A. Yes.
Q. And would those receipts contain what items had been purchased, who purchased it, when they purchased it, and the cost of the items?
A. Yes, and how to ship.
Q. How they were shipped. If you were selling something

illegal, would there be paperwork on that?
A. No, sir.
Q. Why not?
A. Pretty simple. I wouldn't want any trace on it. It's hard to explain to the government, hey, I sell this guy a couple hand grenades and we go fishing.
MR. GORDON: All right. May I approach the witness, your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. Mr. Le, I'm going to show you what's been marked as Government Exhibit 114-H, 115-O, 115-Q, 115-R, and 115-P. Do you recognize as those receipts from your gun shop, Cadre Supply?
A. Yes, they all come from my shop, and they in three different format. That mean that a lengthy known customer.
MR. GORDON: Your Honor, these items were previously identified by prior witnesses coming from Dr. Mann's house and I'd like to offer them at this time.
MR. HENDRIX: No objection.
THE COURT: They're received.
(Government's Exhibits 114-H, 115-O, 115-P, 115-Q, and 115-R received in evidence.)
BY MR. GORDON:
Q. Mr. Le, let's take a look at Government Exhibit 115-R. It

should pop up on your screen there.

Do you see it, Mr. Le?

A. Yes, sir.

Q. All right. Do you recognize this as an invoice from your store?

A. That's correct.

Q. What was the date of this invoice?

A. 01/13/1993.

Q. What was the name of the customer?

A. We sold to Randy Mann.

Q. At what address?

A. 2874 Waterleaf Drive, Germantown, Tennessee.

Q. And right there in the address area off to the right, it says "3 Dealer." What does that mean?

A. It mean he call in, identified himself as a Class 3 dealer, deal in machine gun.

Q. And looking at this invoice, what was purchased on that date?

A. He bought three caliber .223, 40-round aftermarket magazine, and three 30-round aftermarket .308 magazines at $35 each.

Q. Then down kind of in the middle, there's a note that says, "Thao, call him about G3 housing and replacement parts. Needs dealer pricing."

A. It means one of my salesmen request me for a quote for

dealer to dealer, an HK, Heckler & Koch G3, which is caliber .308 machine gun replacement part kit.

Q. And from looking at this invoice, can you tell us, was this purchase made in the store, on the phone, or how was it made?

A. That would be phone order because you see the authorization number and the shipping date in the bottom.

Q. So this was something that was called in and shipped out?

A. Yes, sir. Also there's an $8.52 credit card charge.

Q. Let's look at Government Exhibit 115-Q.

Do you recognize this as an invoice of your store as well?

A. Yes, it was.

Q. What was the date of the purchase?

A. June 20 of '94.

Q. Who was the customer?

A. It would be the same, Randy Mann, same address.

Q. What was ordered on this occasion?

A. He purchased four 20-round Portuguese aluminum magazine and five United States M14 20-round magazine.

Q. Can you tell us -- do you recognize that handwriting?

A. That --

Q. Is that yours?

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

Q. Okay. And then how was this order made? Was it in person or on the phone?

A. It also a credit card authorized -- this one really not

indicate of -- prepaid, but no indicate of shipping.
Q. In the top left, it looks like it says out, 6/20/94?
A. Anything got ship date, out date, that's shipping, yes.
Q. So this is a --
A. That's a mail order.
Q. Thank you. Let's look at Government Exhibit 115-O, please. Do you recognize this invoice as well?
A. Yes.
Q. What was the date of the purchase?
A. In '96.
Q. Who was the customer?
A. Same -- Mr. Mann. Yes, same address.
Q. Same address? Up there where it says sold to and ship to, is that your handwriting?
A. No, sir.
Q. Just up above to the right of that, it says sales rep, TL. Who is that?
A. That would be me.
Q. And then down below, there's a what appears to be the items that were purchased. Do you recognize that handwriting?
A. Yeah, that's mine.
Q. Tell us what was purchased on this occasion.
A. First item is the sear ready pack, SEF. That mean a Heckler & Koch machine gun pack. SEF stand for safe, E for Einzelfeuer, single, and the F stands for auto. It's a machine

gun low receiver.

And the second line would be exchange for SP lower. It means he -- SP lower, it's the same mechanism of an SP89. What he did, he take the lower and he sent to us for, like, a trade-in, and we sent him a complete machine gun pack in the bottom to make the firearm function at four auto.

Q. So essentially he's converting a semiautomatic gun into a fully automatic gun?

A. Yes, that's what appear to be.

Q. And paying the difference.

A. Yes.

Q. What's the next item?

A. The next item is a Colt M-203 with serial No. 175521 that is a receiver of grenade launcher. It is complete.

Q. What does that mean?

A. It mean a functional destructive device.

Q. What about the next two items?

A. It's going to be a good deal because I'm throw in one can of practice round. To make it sweet, I guess. And a 40-millimeter bore brush to clean the barrel. And then he paid full in check, check No. 2860.

Q. Can you -- the M-203 that you sold that day, was that just the receiver?

A. It had to be a registered item to get a list serial number like that. Like I said, it's been 13 years, so it's very hard

to identify each single receipt, but the word complete on it means it's a functional device.

Q. And there's a can of practice grenades; is that correct?

A. That be the practice round, yes.

Q. Let me show you an item from Government Exhibit 106. Is that a practice grenade?

A. That is a practice, 40-millimeter practice grenade, yes. When you shoot it, when you strike the target, the tip broke down and give you an orange mark where the impact.

Q. Okay. And so that's the thing that you throw in here at no charge.

A. Yes.

Q. Some practice grenades.

A. Yes.

Q. Does that tell you anything when you look at this receipt in its entirety?

A. It mean, he pay a good price for it.

Q. Okay.

A. I don't know what else to --

Q. Okay. The bore brush, the 40-millimeter bore brush, is that unique to a 40-millimeter grenade launcher?

A. Yes. Because the barrel is so big, 40 millimeter, that diameter, nothing out there you can clean it with except that brush. You can see how big the round is, and it was designed brush with a rope so you can pull through the barrel until you

get all the residue out of it after you fire the gun.
Q. Okay. And so I guess common sense seems to say if you've got a bore brush and a can of practice grenades, is you've got a fully functional grenade launcher and you intend to use it?
A. Yes.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: Yes, you may.
BY MR. GORDON:
Q. Mr. Le, I'm going to show you what's been marked as Government Exhibit 109-A.
MR. GORDON: MaryAnne, please leave that up for me.
BY MR. GORDON:
Q. Can you see the serial number on that grenade launcher?
A. Yes. 175521, yes. It is a Colt manufacture, 40-millimeter grenade launcher.
Q. Is this the same grenade launcher listed in that invoice that we're looking at?
A. Yes, it is correct.
Q. Did you sell it attached to an M-16?
A. According to this, no.
Q. From looking at this receipt, can you tell that this purchase was made in person, on the phone, or what? Let me ask you this: It says paid in full, check number.
A. Yes. Paid in full, check number, but it got to be shipped out because in bottom part got a COD for $5, means we ship it to

him.
Q. Did you accept checks for phone-in orders?
A. Normally not.
Q. Okay.
A. But if the man send the check in, in the process to clear the check and then ship, it possible.
Q. Okay. The date of this is October 12 of '96. Correct?
A. Yes.
Q. When you would go to Knob Creek, would you sell stuff while you were there?
A. Yes.
Q. And when you went, would you bring your receipts with letterheads?
A. Yes.
Q. And what time of year was Knob Creek held? What were the two months?
A. April and October, sir.
Q. Is it possible this purchase was made person to person at Knob Creek?
A. Very possible.
Q. Let's look at Government Exhibit 114-H. Do you recognize this as one of your invoices as well?
A. Yes. A blank invoice.
Q. Okay. It's not dated; correct?
A. Yes. No. There's no date on it.

Q. Okay. And there's a note that says, "Please call to confirm the lower that we need to ship to you."

Whose handwriting is that?

A. That signature, it's Jay Riseling, one of my right-hand man.

Q. Do you have any idea what this note meant? Does that help refresh your memory at all? It's okay to say no.

A. I really can't.

Q. That's fair enough. Let's look at 115-P, please. Is this also one of your invoices?

A. Yes, that's one of the latest invoice because you can tell the computerized.

Q. What was the date of this invoice, please?

A. October '96.

Q. To the right it says rep, colon, JR. What does that mean?

A. Jay Riseling initial.

Q. And who was the customer?

A. The same Randy Mann of Germantown.

Q. And what was purchased on this occasion?

A. The first item, the MP 5 armorors manual. The armor manual is the -- it not like a user manual, it's more for assembly, disassembly, and occasion more for gunsmith than user.

The second item, a K grip, to install in the SP89, actually you cannot put it on by the law. To put that on become a machine gun. The front grip to make it a submachine gun, more

controllable, and then the four item, fifth item, shipping and COD costs.

Q. And can you tell, was this purchase made in the store or by phone?

A. It's got to be store because ship out. Also on the tax column, no tax, mean that it is not store sale. Across state line, we don't collect sales tax.

Q. So this was made in the store?

A. Phone order in the store, yes.

Q. Oh, phone order in the store.

A. Yeah.

Q. Okay. If someone bought -- did you sell manuals in your store?

A. Yes.

Q. If someone bought a grenade launcher from you, would they also get a grenade launcher manual?

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'll show you Government Exhibit 107. Do you recognize that?

A. That is original government-issue field manual for 40-millimeter grenade launcher and for 203 and both M-79.

Q. And, Mr. Le, I know it's been 13 years. It's okay to say you don't remember, but do you recall selling those in your

store?
A. Yes.
Q. Okay. And if someone bought a grenade launcher receiver for $1,800, would they get that as well?
A. Yes, most likely, for $1,800. I throw in the field thing, yeah.
Q. Okay. Most likely. You don't know for sure if you did or not in this case, though.
A. Yes. It be a long time.
Q. Fair enough.
MR. GORDON: Approach the witness again, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Let me show you Government Exhibit 108-B. Do you recognize that manual?
A. Yes.
Q. Do you know, did your store ever sell or have manuals like that?
A. Not on grenade.
Q. Not on grenades?
A. Yeah.
Q. Okay. Thank you. And, Mr. Le, I'd also like to show you a phone list that was found in Dr. Mann's house.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.

BY MR. GORDON:

Q. I guess I'm going to show you Government Exhibit 108-A, which is an envelope, and then inside is this list. On the first page here, is that your business name, your name, address, and phone number?

A. Yes, it is.

MR. GORDON: Your Honor, I would offer the contents of Government Exhibit 108-A.

THE COURT: Any objection?

MR. HENDRIX: Your Honor, I think this has been the subject of prior conversation.

THE COURT: Okay. Hold on just one second.

Okay. It's received over the objections of the defendant.

(Government's Exhibit 108-A received in evidence.)

BY MR. GORDON:

Q. Is that up on your screen, Mr. Le?

A. Yes.

Q. Okay. Is it -- here on the front page, there's some highlighted names and addresses, and yours is one of those, about halfway down?

A. That's my company name, my name, and the store address and my 800 number, yes.

Q. I'd like to show you another exhibit or another document found in Dr. Mann's house. You testified that you got your 40-millimeter grenades from Daniel Robinson?

A. Yes.
Q. I'm going to show you what's been marked as Government Exhibit 115-B. Is that a receipt from his gun shop? Mr. Le?
A. That is a receipt from Toni Surplus, credit card machine.
MR. GORDON: May I approach again, your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. Let me show you what's been marked as Government Exhibit 114-C. Does that also appear to be an envelope from Toni's Surplus?
A. Yes. That -- for certain, yes.
Q. Addressed to whom?
A. To Dr. Randy Mann, 2874 Waterleaf Drive, Germantown, Tennessee.
MR. GORDON: May I approach again, your Honor?
THE COURT: Yes.
BY MR. GORDON:
Q. I'm going to show you Government Exhibit 114-A. Is that also a receipt from Toni's Surplus?
A. Yes. Also a credit card run by Toni's Surplus credit card machine.
Q. I'm going to show you Government Exhibit 114-B. Is that also from Toni's Surplus?
A. Yes, it is.
Q. And there's a receipt paperclipped to an index card. Who

is that -- is there a -- that's a thank you card from whom?
A. From Daniel, Dan.
Q. Dan?
A. Yes.
MR. GORDON: Your Honor, I'd offer Government Exhibits 114-A, 114-C, 115-B, 114-B.
MR. HENDRIX: No objection to those.
THE COURT: They're received.
(Government's Exhibits 114-A, 114-B, 114-C, and 115-B received in evidence.)
BY MR. GORDON:
Q. Mr. Le, do you recall selling any 40-millimeter grenades to Randeep Mann?
A. I don't believe so, sir.
Q. Do you recall selling any MK3A2 grenades to Randy Mann?
A. I don't recall that.
MR. GORDON: Thank you, sir.
THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:
Q. Good morning, Mr. Le.
A. Good morning.
Q. I understand you are in the Witness Security Program; is that correct?
A. Yes.

Q. And I respect and honor that. If I ask you any question that you feel is going to put you in harm's way, stop me, Mr. Gordon, the prosecutor and I, will approach Judge Miller. Is that fair enough?
A. That's fair enough.
Q. Okay. And just so that the record is abundantly clear, the protection that you're receiving from the United States Government is in no way connected to the case that you're here on today; correct?
A. Yes, sir. That's correct.
Q. The reason that you're in the Witness Security Program involves a case from California; correct?
A. Yes.
Q. A case in which you testified in front of the grand jury in San Francisco?
A. Yes.
Q. Is that correct?
A. Yes.
Q. And it involves a man who I think you mentioned, Eric Contraras?
A. No, sir.
Q. It does not involve Eric Contraras?
A. That's not a defendant.
Q. Beg your pardon?
A. That's not a defendant name.

Q. I understand. Does it involve that person?
A. Yes.
Q. And a guy named Curtis Debord; right?
A. Yes.
THE COURT REPORTER: I'm sorry?
MR. HENDRIX: Curtis Debord. I believe it's D-e-b-o-r-d.
BY MR. HENDRIX:
Q. And Eric Contraras is a Mexican Federale; correct?
A. Yes.
Q. And that case involves supplying arms to a Mexican Federale; correct?
A. Yes.
Q. In exchange for drugs coming back to the United States; is that right?
A. Mostly cash.
Q. Mostly cash? Okay. And again just so we're all on the same page, the 40-millimeter grenades, I want to talk to you about them for a minute and MK3A2 hand grenades. The 40-millimeter grenades, you got a supply of those from Daniel Robinson; correct?
A. Yes.
Q. And your information is that Mr. Robinson got those from a Marine, who stole them from, I assume, a Marine camp in Virginia; is that right?

A. Yes. That's quote, unquote --
Q. Excuse me?
A. Like rumor, you know.
Q. That's what you --
A. I don't know for sure, yeah.
Q. Of the -- about how many can you estimate for us 40-millimeter -- and we're talking about 40-millimeter projectile grenades; right?
A. Yes.
Q. The fragmentation grenades; right?
A. Dual purpose, HEDP.
Q. HEDP?
A. HEDP, dual purpose high-explosive rounds.
Q. They're the ones with the gold tip; right?
A. Yes.
Q. How many do you think that you've got from Mr. Robinson?
A. Close to 200.
Q. A couple of hundred?
A. Yeah.
Q. Okay. And was that all the 40-millimeter rounds that you'd ever gotten were from Mr. Robinson?
A. Yes.
Q. Okay. You came here in I believe it was June of 2009 to testify in front of a grand jury; correct?
A. Yes.

Q. And in your grand jury testimony, you told that grand jury here in Little Rock that most of those 40-millimeter rounds that you ever got went to Eric Contraras, the Mexican Federale; right?
A. Yes.
Q. The rest went to Jay Riseling and Robert Lewis; right?
A. Yes. We shot up a lot of them.
Q. And Jay Riseling and Robert Lewis were your employees?
A. Yes.
Q. I believe you referred to them in your grand jury testimony as your right-hand men?
A. Yes.
Q. So the vast majority, as I understand, of these 40-millimeter rounds went to the Mexican Federales. The rest you and Mr. Riseling and Mr. Lewis essentially played with; is that right?
A. Yes.
Q. And that consumed all of those 40-millimeter rounds?
A. Yes. The rest would be in ATF. Yeah.
Q. Say that one more time. Oh, the rest went to ATF?
A. Yes.
Q. Meaning you were arrested on July 2 of 1997. ATF raided your house and your business; correct?
A. Yes.
Q. And they found in there 40-millimeter grenades; correct?

A. Right.
Q. And they seized those; is that right?
A. Correct.
Q. I understand also that some were thrown into a reservoir in Tulsa; is that right?
A. After I was in custody, yes, some were disposed of.
Q. Okay. So we can account for all the 40-millimeter grenades that you ever had by saying they either went to Contraras, the Mexican Federale, correct, to you, Riseling, or Lewis; correct?
A. I can't confirm that all of them because I really don't know how many they found in the reservoir water or what to do with it, you know.
Q. ATF seized some; correct?
A. Yes.
Q. And so when you say I don't recall selling any to Randeep Mann, are you saying I didn't sell any to Randeep Mann?
A. I don't believe so, yeah.
Q. Sure. The MK3A2 hand grenades, you got, I gather, a small number, smaller than -- a number smaller than the 40 millimeters from Knob Creek; is that right?
A. Yes.
Q. Was that your source, was that the sole source of the MK3A2s that you had?
A. Yes.
Q. And I understood that when you were arrested in July of

'97, I think you had four or five left?
A. I believe so, yes.
Q. Okay. So if you began with 30 or 40, did the remainder of those go for the fishing that you were talking about?
A. Yes.
Q. Okay. So that accounts for all the MK3A2 grenades you ever had, right?
A. Yes.
Q. And, again, when you said I don't recall selling any MK3A2s to Dr. Mann, you're saying I did not sell any to him; right?
A. Yes.
Q. Okay. Now, your business, Cadre Supply, in Tulsa, I gather you looked at some records for this Toni's Supply -- was it Toni's Supply, was that the name of Mr. Robinson's business?
A. Daniel Robinson, yes.
Q. And I gather both of you guys were gun shop owners; right?
A. Yes.
Q. And now it's apparent that you had a legal component to your business and an illegal component to your business; is that right?
A. Yes, one business. The other one is strictly collection, if you can call it, pleasure.
Q. Sure. And I gather you're saying that's the illegal component of your business?
A. Yes.

Q. Okay. And you said that if a transaction is documented, that's proof that it was a legal transaction; correct?
A. Yes.
Q. And if it's not documented, it's not?
A. Yes.
Q. And people that you would sell off book to, we would say, right, with no record, was an inner circle of people; is that right?
A. Yes.
Q. And this inner circle of people were people that were close to you and that you trusted; correct?
A. Yes.
Q. Because you were selling them dangerous and exotic weapons; right?
A. Yes.
Q. And I believe in your grand jury, you testified that this inner circle of people would be people who you trusted, who came recommended through a friend; correct?
A. Yes.
Q. That then you still wouldn't trust them enough. You would go shoot weaponry with these people; right?
A. Yes.
Q. And take a chance to feel them out; correct?
A. Yes.
Q. And that's the criteria for this inner circle; right?

A. Yes.
Q. And you said it was a very small circle of people; right?
A. Yes.
Q. And you said to the grand jury that, in fact, it was so small that you could count the inner circle on one hand; is that right?
A. Yes.
Q. And Dr. Randeep Mann was clearly not a part of that inner circle; is that right?
A. No.
Q. In fact, you don't even remember having ever met Dr. Mann; is that correct?
A. Yes.
Q. And before you were shown these receipts for what I gather are four business transactions with Dr. Mann, you didn't even recall who Randeep Mann was; right?
A. No, sir.
Q. And let's talk about those records. If I can get organized.
MR. HENDRIX: Mr. Gordon, I was looking for 115-C. Do I have it in my hand and I can't figure it out?
(Counsel conferring.)
MR. HENDRIX: May I approach, your Honor?
THE COURT: Yes.
MR. HENDRIX: Well, never mind. I can do this. Is

the ELMO on? I'll just do it from here.
BY MR. HENDRIX:
Q. The first transaction that you had a record of with Dr. Mann, this was the one dated January 13 of 1993; is that correct?
A. Yes.
Q. And, again, we know that this is a legal transaction because it's documented; correct?
A. Yes.
Q. What is the full amount of that transaction?
A. $221.52.
Q. The next one you testified to was June 20 of 1994. This is Government's 115-Q; is that right? Do you see that one?
A. Only top part.
Q. Okay. How much is that transaction worth?
A. Look like $200.
Q. $200?
The third transaction, 1150, it's dated October 12, 1996; right?
A. Yes.
Q. And this is the one where Dr. Mann purchased the s-e-a-r, the sear; correct?
A. The sear pack, yes.
Q. Explain to us what that is.
A. That is a lower trigger group of a Heckler & Koch machine

gun, complete.
Q. It's a little bit difficult to comprehend this, I guess. An s-e-a-r is actually a component of a weapon; correct?
A. It's a complete trigger group with machine gun mechanism inside to make the gun function full auto. And at the same time, it only have two markings, S and E, so single. Without that component, the firearm cannot function as a full auto mode.
Q. And I guess what I'm trying to say is, it is not a weapon in and of itself; right?
A. Define a weapon by a serial number, yes.
Q. That's what I think you're striking on is sort of the difficult part to explain. Under the National Firearms Act, it is considered a firearm by definition, but it's not a fully functional weapon itself; right?
A. No, it's not.
Q. Okay. Now, as opposed to the next item that was bought was the Colt M-203. That is a full weapon; right?
A. That is a complete --
Q. It's the complete.
A. I wrote it as complete destructive device.
Q. Right. And that purchase price of that was $1,800; right?
A. Yes.
Q. And, again, this is a fully legal transaction; right?
A. It is.
Q. Nothing wrong with it.

A. It was, yes.
Q. Conforms to all ATF laws and regulations; right?
A. Yes.
Q. And what was the full value of that transaction?
A. $2,025.
Q. Okay. The final one, 115-P, final transaction, was dated October 30 of 1996; correct?
A. Yes.
Q. And it looks like buying a manual, the K grip and so forth?
A. It's the armor manual and submachine gun front grip, yeah, K grip.
Q. And what's the value of that transaction?
A. $110.
Q. Okay. By my calculations then, you did four transactions with Dr. Mann. All in all, it's about $2,500. Does that sound right?
A. Yes.
Q. That wouldn't be an inner circle of trusted friends; right?
A. No.
Q. No. In fact, you had customers who weren't in the inner circle who I'm sure spent a lot more money than Dr. Mann did with you; correct?
A. Yes. You can say that, yes.
Q. And as part of those purchases, it's known in the industry in lawful transactions if I were to buy a weapon from you,

you're likely to throw in the manual; right?
A. If you purchase a complete weapon, yes.
Q. I mean, because they are -- I mean, we're talking about weapons that are sophisticated machines; right?
A. Yes.
Q. Well-engineered; right?
A. Yes.
Q. Expensive.
A. Yes.
Q. And the manual is important. It's like when you buy a lawnmower, a manual is going to come with it; right?
A. Most of the time I throw it in, yes.
Q. And in one of the transactions, that previous one, you threw in some of the practice rounds; right? The 40-millimeter practice rounds; right?
A. Yes.
Q. Now, you said you didn't remember whether you had that type of manual in your business or not. Do you remember whether you did or you -- or you are sure you didn't? A manual for a grenade.
A. Grenade manual?
Q. Yes.
A. No.
Q. You're sure you did not have those?
A. It's -- absolutely not. You know, if you sell that manual

and you collect grenades, you kind of make it tough to explain, so I didn't keep those things out, you know.

Q. I don't know if you've seen these, but there are manuals for grenades that tell you the design and so forth of both projectile grenades like the 40 millimeters; right?

A. Most the manual I sell, I sold in the store is, it's got to be gun related, sell out from it.

Q. If someone were to buy practice rounds, they would want to sort of know how to do the practice round; right?

A. That would be in the hand grenade manual, not on the gun itself.

Q. Okay. Now, again, you've had an opportunity to look around this courtroom and you're unable to identify Randeep Mann; is that correct?

A. Yes.

Q. And, again, this is a person now you can say I did not sell 40-millimeter grenades to or MK3A2 grenades to; is that right?

A. Yes.

MR. HENDRIX: May I have just a second, Judge.

BY MR. HENDRIX:

Q. I do have one final question for you, Mr. Le. The guys that worked for you, Jay or Jason Riseling and --

A. Jay Riseling.

Q. And Robert Lewis, these were the guys that worked for you until you got arrested; right?

A. They did not get arrested.
Q. When you got arrested.
A. Yes.
Q. And they didn't get arrested?
A. No.
Q. It's because they were informants for the government; is that correct?
A. They cooperate, yes.
Q. Yes. By the time you got arrested in July of 1997, they were working for the government; right?
A. Yes.

MR. HENDRIX: That's all I've got. Thank you, Mr. Le.

THE COURT: Any redirect?

MR. GORDON: Your Honor, can we approach real quick?

THE COURT: Yes.

[Bench conference reported as follows:]

MR. GORDON: I just want to excuse the jury before --

THE COURT: We'll let them go.

MR. GORDON: That's all I wanted to do.

[Continuing in open court:]

THE COURT: Ladies and gentlemen, we're going to take five minutes. We will come back, we'll be in recess until 10:15.

(Recess at 10:10 a.m., until 10:18 a.m., jury present.)

MR. GORDON: United States calls Lloyd Hahn.

THE COURT: Mr. Hahn, come down and let me swear you in.

LLOYD HAHN, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good morning, sir.

A. Good morning.

Q. Please state your name for the record.

A. Lloyd Hahn.

Q. How do you spell your last name?

A. H-a-h-n.

Q. And where do you live, Mr. Hahn?

A. St. Charles, Missouri.

Q. Are you retired?

A. Yes.

Q. How long have you been retired?

A. Approximately ten years.

Q. What did you do before you retired?

A. Worked for Anheuser-Busch for 28 years.

Q. What did you do for Anheuser-Busch?

A. I was a supervisor of maintenance and a machinist.

Q. By machinist, what did you do?

A. I fixed broken equipment, made parts for them if it was necessary.

Q. During the time that you worked for Anheuser-Busch, did you

also have another business?
A. Yes, I did.
Q. What kind of business?
A. Manufacturing, buying, and selling guns.
Q. What was the name of your business?
A. Lloyd Hahn Machine.
Q. What sort of guns were you manufacturing and buying?
A. Mostly machine guns.
Q. Did you have an FFL?
A. Yes, I had the proper credentials from the government to do that.
Q. Okay. And when did you have your FFL?
A. Well, I've had an FFL from 1964 off and on all the way up until '92, I got an automatic weapons license from the government, and I held that until '02, I believe.
Q. What kind of FFLs have you had?
A. Ones, twos, three, sevens.
Q. Tell us what that means.
A. Those are numbers of -- graduations of the license. There's only one license higher than a seven, and that's a Class 10 license, which is destructive devices and bombs and hand grenades and that sort of thing.
Q. What did the Title 1 authorize you to do?
A. Title 1 is pistols, rifles, and shotguns.
Q. Title 2?

A. Manufacturing of automatic weapons.
Q. Title 3?
A. Curio and relic, antiques, anything during Korean War and World War II.
Q. And Title VII?
A. It's the same thing as a two almost, except you're allowed to manufacture destructive devices. Grenade launchers, that sort of thing.
Q. Now, you manufactured machine guns as part of your business; correct?
A. That is correct.
Q. Tell the jury how you did that. What does that mean?
A. The type of manufacturing that I did, I would go in the open market and buy demilled weapons, which means the military had cut them up with a saw. I would buy them at Fort Leonard Wood. In the old days, they used to cut them in two with a saw, and I would take them to my shop and join the two pieces and weld them back together, remachine them, and make them into a functioning weapon.
Q. And then sell them?
A. Pardon me?
Q. And then sell them?
A. Yes, I sold them to people with the proper credentials and I sold them to law enforcement. I gave a lot of them to law enforcement.

Q. Mr. Hahn, do me a favor. Pull that microphone up to you a little bit closer.
A. Okay.
Q. Better. Thank you.
Where did you run your business out of?
A. My home. I had a two-and-a-half-car garage that I converted to a machine shop.
Q. Did you have any employees?
A. None at all.
Q. Why did you get out of the business?
A. Pardon me? I can't hear you.
Q. Why did you get out of the business?
A. I retired from Anheuser-Busch and want to do a lot of traveling, and you can't be answering the phone and traveling, too.
Q. And where did you get the skills and the knowledge to remanufacture machine guns?
A. My skills started with the U. S. Army. I had close to three years with those people and I had a lot of schools with the military, and I spent four years with General Motors Corporation in their ammunition and armament division.
Q. What did you do for the Army?
A. Worked in ordnance all the time I was there.
Q. The machine guns that you were rewelding back together, where did you get those from?

A. On the open market. I would buy them -- people advertised them all the time in the trade papers and I would buy them out of the trade papers.
Q. Did you advertise your business at all?
A. I advertised the saleable machine guns to individuals and the Class 1 merchandise. Yes, I did.
Q. Okay. How did you advertise?
A. In a magazine called *Machine Gun News* and then a newspaper called *Shotgun News* and then a newspaper called *The Gun List*.
Q. And during your time in the gun business, how many machine guns were you selling per year? Best guess.
A. It varied from year to year, but I probably -- the semiautomatic weapons and machine guns combined, probably anywhere from 250 to 750 guns a year.
Q. Did you attend gun shows as part of your business?
A. Pardon me? I didn't hear you.
Q. Did you attend gun shows as part of your business?
A. Yes, I did.
Q. Which ones?
A. Various gun shows around the United States, plus twice a year, I would attend a convention called Knob Creek, just a little bit south of Louisville.
Q. All right. Tell us about Knob Creek.
A. It's an open air gun show. It has probably 500 tables for 500 dealers, and you put your wares out and people come from all

over the country to buy what you offer for sale.
Q. Were you attending as a buyer or seller or both?
A. I was a seller all the time. I occasionally bought things there that were at a good price, but I went there to sell mostly.
Q. Did you have any tables there?
A. I had five tables every show.
Q. And was all the business that was done there legal?
A. Well, all of the business that I did over my tables, I tried to do quite legally. But there was a lot of illegal things going on also.
Q. Including some of the stuff you did?
A. Pardon me?
Q. Including some of the stuff you did?
A. Yes, that's correct.
Q. During the course of your business, did you ever meet a person named Randeep Mann?
A. Yes, I did. He had called me one time about an advertisement I had in a magazine about a Bren gun and some other items I had in the paper.
Q. Was that the first time you talked to Randeep Mann?
A. To my recollection, that's correct.
Q. Can you give us best guess about what time period that was?
A. In the '90s, either early or toward the mid '90s. I can't remember.

Q. And what do you recall about that first meeting?
A. That he was a very rich, brilliant man. That's the air that he left with me.
Q. During the first phone call, did you sell him a machine gun or anything?
A. Well, I tried to. He didn't want to -- everything that I ever sold him, he didn't want to pay what I was asking for it, and he, you know, tried knocking me down on almost everything. And we came -- always came to an agreement.
Q. Okay. And through the years of your business, did you do business with Randeep Mann?
A. Yes, I did.
Q. Did you sell him any machine guns?
A. Yes, I did.
Q. Any idea how many?
A. Machine guns and semiautomatic weapons, probably 25, a little bit more or less.

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

MR. GORDON: Actually, I don't need to.

BY MR. GORDON:
Q. Mr. Hahn, I'd like you to look at your screen up there, and let's look at I think Government Exhibit 129-A. It's already been admitted.

All right. Mr. Hahn, let's look at Government's Exhibit

129-A. Is that an ATF form for a firearm that you transferred to Randeep Mann?
A. It's a form for a restricted firearm, which means that, you know, once it's in someone's hands, it can't be resold unless it's resold to someone with the proper documentation.
Q. Okay. What type of firearm was this?
A. It's an RPD belt-fed machine gun.
Q. Okay. Let's look at the -- what was the date?
A. Pardon me?
Q. Looking at the exhibit, can you see the date?
A. Yes. July of '01.
Q. Okay. Let's look at 129-B. That one may be harder to read. But is that also a firearm that you transferred to Randeep Mann? Is that one that you transferred to Randeep Mann, Mr. Hahn?
A. Yes. It has my name on it.
Q. Okay. Let's go to 129-C, please. Is this one as well?
A. Yes. That's correct.
Q. What's the date?
A. '96.
Q. Let's go to 129-D, please.
Is this one of your firearms as well?
A. Uh-huh. '96.
Q. Let's look at the date all the way down at the bottom. Approved by ATF in '96?

A. Uh-huh.
Q. 129-E. Is this also for a machine gun that you transferred to Randeep Mann?
A. That's correct.
Q. What was the date?
A. '96. Or '95. I stand corrected.
Q. 129-F, please. Was this a machine gun that you also transferred to Randeep Mann?
A. Yes. That's correct.
Q. And the date was?
A. '01.
Q. 129-G. This one as well?
A. That's correct.
Q. What was the date?
A. '99.
Q. 129-H. This a machine gun, too?
A. Yes, that's correct.
Q. What was the date?
A. '99.
Q. '99 or '97?
A. '97. My eyes are getting bad.
Q. 129-I. Did you transfer this machine gun to Randeep Mann as well?
A. That's correct.
Q. And the date, please?

A. '99.
Q. 129-J. Is this transfer yours as well?
A. That's correct.
Q. What's the date, please?
A. '98.
Q. 129-K. Is this one yours as well?
A. That's correct.
Q. And the date on this one, please?
A. 1997.
Q. 129-L. Did you transfer this machine gun as well?
A. That's correct.
Q. And the date?
A. 1998.
Q. Last one, 129-M. And this one was a silencer?
A. Uh-huh.
Q. And did you transfer that to Randeep Mann?
A. That's correct.
Q. And the date, please?
A. 1999.
Q. Did you ever meet Randeep Mann in person?
A. Yes, many times.
Q. Had you ever been to his house?
A. Yes, in several different locations.
Q. Okay. Which locations?
A. Germantown, Tennessee, and the house that he has here in

Arkansas.
Q. In Russellville?
A. Russellville, Arkansas, yes.
Q. And what brought you to Dr. Mann's house? Why were you going to his house?
A. I can't -- I can't totally remember all the fine details, but mostly was to deliver guns that he had purchased.
Q. And how many --
A. And on one occasion, I went to his house to testify in a court -- one of the little hearings where the woman takes all the information on the little machine.
Q. All right. Go ahead and tell us about that. When was that?
A. I can't remember the exact date. It was somewhere in late '90s. We were -- he and I together were involved in trying to buy a gun collection in Colorado and the people in Colorado was backing out on the deal. And Randy got an attorney and approached the situation with, you know, a legal thing in mind.
Q. So were you deposed? Is that what it was?
A. Pardon me?
Q. Were you deposed? Do you know what that means? You sat in a room with some lawyers and they asked you questions and --
A. Yes. That's exactly -- they asked me a bunch of questions. They wrote everything down on a little machine, and that was the end of it.

Q. Was it a trial like this?
A. No, no. It was in a room with a couple of ladies like her taking the information down.
Q. Okay. How many times would you say you have been to Dr. Mann's house in Tennessee?
A. Approximately three or four.
Q. What about his house in Russellville?
A. Two or three.
Q. Did you ever meet Dr. Mann in person anywhere else?
A. Yes, yes. I seen him a number of times in Knob Creek. He would come to look and come to shop and come to visit.
Q. And when he -- how many shows would you say you saw him at?
A. Pardon me?
Q. How many shows would you say you saw him at at Knob Creek?
A. Well, I saw him at Knob Creek numerous times. I mean, I went to Knob Creek since 1988 and quit going in '02, and I can't tell you how many times I've seen him. I just -- but I've seen him an awful lot, and I've seen him at other shows also.
Q. At Knob Creek, was Dr. Mann by himself or with other people?
A. Well, sometimes he came by himself. Sometimes he came with his brother, and occasionally, when his father was in the country, he would come with his brother and his father.
Q. Okay. And how do you know the people that were with him were his father and/or his brother?

A. Well, he introduced them on various occasions.
Q. And when Dr. Mann was there, did you see him buying things?
A. I seen him doing a tremendous amount of shopping and carrying items from time to time. I assume that he, you know, bought what he went to buy.
Q. How long has it been since you've seen Dr. Mann?
A. Since the RPD transfer. That was about it. My license was running out and I was retired for a year already and I was anxious to start doing a lot of traveling, and I cut ties with everybody in the machine gun business.
Q. Okay. What I'm going to do, I'm going to ask you to look around the courtroom and see, do you see Randeep Mann anywhere in the courtroom?
A. Yes, at the table over there.
Q. And can you identify some clothing that he's wearing?
A. Nice-looking suit, spotted tie, white shirt.

MR. GORDON: Your Honor, may the record reflect he has identified the defendant.

THE COURT: The record will so reflect.

BY MR. GORDON:
Q. And did you know Dr. Mann's wife?
A. Sue Mann. Yes, I did know her.
Q. Do you see her present in the courtroom as well?
A. Yes. She's sitting next to Dr. Mann over there.

MR. GORDON: Your Honor, may the record reflect he has

identified the defendant.

THE COURT: It will.

MR. GORDON: Thank you.

BY MR. GORDON:

Q. Okay. You mentioned selling Dr. Mann some RPDs. Let's talk about that. First of all, what is an RPD?

A. It's a belt-fed Russian machine gun.

Q. And these RPDs that you sold him, were they ones that you had remanufactured?

A. Yes.

Q. How many RPDs did you sell Dr. Mann?

A. Two in the course of our trading.

Q. And I want you to tell the jury about this entire transaction with the RPDs.

A. Dr. Mann wanted a number of restricted weapons, and I knew a lot of people in the sheriff's department in a particular county in Missouri. And I got the authorization from the sheriff's department to sell him one of the weapons, the restricted weapon that he was looking for legally.

Well, I had manufactured three, and one of the three I sold him with paperwork, and one of the two remaining ones I sold him on a -- I just shipped it to him without any authorization or paperwork.

Q. Okay. How did Dr. Mann know that you had any RPDs?

A. We had talked about it on the telephone.

Q. All right. When you sold him the RPDs, was it at the same time or different times?
A. Different times. I had sold him one with paperwork, and he tried it out and it malfunctioned a couple of times. He sent it back and forth to me for repair. I'm guessing, but I'm pretty close to being accurate, probably four, five, or six times the gun came back to me for repair. And I repaired it and sent it back to him.
Q. Okay.
A. And during that period of time is when I shipped the second one to him.
Q. All right. And explain the second one to us.
A. Well, it was just a remanufactured RPD, and I put in a box and sent it to him. We had talked about it on the telephone.
Q. Okay. And did you explain to Dr. Mann that it was not on paper?
A. I explained to him in the very beginning that I was manufacturing some and, you know, at the moment I was talking to him, none of them were on paper.
Q. And did you tell that to Dr. Mann?
A. Yes.
Q. Did he want the guns anyways?
A. He wanted one with paper, and then the second one, he really didn't care one way or another.
Q. And so the second one you sent him was off paper?

A. That is correct.
Q. Illegal?
A. Yes, you could say that.
Q. I'm going to show you Government Exhibit 129-A. Should pop up on your screen again. So, Mr. Hahn, is Government Exhibit 129-A, is this the paperwork, the transfer form for the legal, the lawful RPD that you sold Dr. Mann?
A. That's correct.
Q. And you know that because this is the only legal RPD that you sold him?
A. That's correct.
Q. Okay. On this exhibit, there is a stamp that runs diagonal kind of in the middle. What does that indicate?
A. It's red when it originally comes from NFA in Washington, D. C., and it's -- very plainly says that it's a restricted firearm and you're supposed to use it according to public law 99-30B.
Q. Is that because this gun was a post dealer sample?
A. That's correct. That's what they call them.
Q. Okay. Explain to us what that means.
A. Post-dealer sample are guns that people like me made and put on a register for use for law enforcement or other people with a similar license that I had. That's the only -- the only transaction that can be had on a post weapon is between dealers or law enforcement.

Q. And because this gun was manufactured after 1986, the only way you could lawfully transfer it to Randeep Mann would be as a post-dealer sample?
A. Yes, and you need a police letter, either sheriff's department or police department, to be able to get it transferred to an individual.
Q. All right. Let's look at Government Exhibit 129-N. We'll look at the first page first. Do you recognize this letter?
A. Yes. That's the letter for the transfer from me to Randy Mann.
Q. On the RPD that we've been talking about?
A. That's correct.
Q. Apparently as well as two other guns?
A. That's correct.
Q. Tell the jury what you know about this letter.
A. I know the sheriff of that county, and I called the sheriff and asked him if he wouldn't mind doing me a favor in getting me a couple of letters for not only Randy Mann, but a couple of other people. He obliged and I wrote the letter and he put it on his letterhead.
Q. And was there any intention of doing a demonstration?
A. At the time that the sheriff and I discussed this letter, I offered to show him the weapons or give him a demonstration, and he said would it take much time, or something to that effect --
MR. LASSITER: Objection to --

A. -- and I told him, well, you really don't have to if you don't want to.

MR. LASSITER: Objection to the hearsay as far as what the sheriff said.

THE COURT: What's the response to that? It's sustained.

BY MR. GORDON:

Q. Was a demonstration ever done?

A. No, it was not.

Q. Did you communicate to Randeep Mann that a demonstration would not be done?

A. No, we didn't talk about it.

Q. Let's look at Government Exhibit 129 -- let's look at, I think it's the third page. What is this letter?

A. Uh-huh.

Q. Do you recognize it?

A. Yes, I do.

Q. Tell us about it.

A. It's a letter of intent to acquire the three weapons that are mentioned in the letter, and it's necessary for a copy of that to go to the NFA when you -- when you transfer weapons of this nature. I think my wife typed it up and I had Randy sign it.

Q. That's what I was going to ask you. How was this letter created? Go ahead and tell us.

A. On a computer.
Q. By?
A. My wife.
Q. How did you all get it to Randeep Mann?
A. I can't remember. Either I had taken it in person and he signed it or I mailed it to him. I really don't remember. It's been so long ago.
Q. And then this letter that we're looking at here plus the sheriff's letter was mailed in with the ATF form?
A. That's correct.
Q. For the RPD that --
A. Well, every time we did a post sample, a copy of it was mailed in. The RPD and the Galil both.
Q. Let's go back to Government Exhibit 129, please. I'm sorry. A.

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

A. I have a little addendum to that last thing that we were talking about. This was faxed to him, I believe, and he signed it and faxed it back.
Q. Okay.
A. I mean, I -- I'm not a hundred percent sure, but it will show on the top of the form if it's a fax form.
Q. Okay. Mr. Hahn, I'm going to give you Government Exhibit 111. Do you want to go ahead and extend the tripod on that.

Okay. Government Exhibit -- what did I just say? 111.
A. Yes.
Q. Is that the firearm covered by Government Exhibit 129-A that's up on your screen?
A. Like I told the investigators when I originally looked at this weapon --
MR. LASSITER: Judge, he's here to testify -- it's hearsay as to what he told the investigator whenever that interview occurred.
THE COURT: I'll overrule the objection. Answer the question. I'll overrule the objection.
A. No, it's not.
Q. It's not. Okay. Have you examined that gun before testifying?
A. Yes, I have.
Q. Okay. Once a couple days ago?
A. Well, a year ago, the authorities had me look at this gun, and they had it in a dismally dark room, and I couldn't see it real well. And I told them at that time that the gun -- all of these RPDs look alike, and I said it could be or could not be. I said I won't know until I've got a magnet in my hand. And one of the men said, "Well, what's a magnet going to do?"
And I said the last portion of this receiver I made out of stainless steel and it's not magnetic. And if a magnet does not stick on it, it belongs to me. And if it does, it doesn't

belong to me.
Q. Let's break that down a little bit. When you removed RPDs, how did you do it? What did you use?
A. The last third of the receiver is missing, and I used stainless steel plates to weld in position of where the old metal used to be, and then remachined it, to complete the receiver.
Q. Why stainless steel?
A. It's easier to weld than carbon steel is, much easier to weld than mild steel is, and it's easier to finish. And on a gun like this, it has a spray epoxy finish on the outside, and it covers up all of the stainless steel.
Q. Okay. And so why would you need a magnet to know if this was the one that you remanufactured?
A. The 303 stainless is nonmagnetic.
Q. Okay. And did you run a magnet on it?
A. I did at a later date. They -- six months later, they brought the weapon to my house, and I tried a magnet on it.
Q. And what were the results?
A. The magnet stuck to it.
Q. And that told you?
A. That someone else manufactured this.
Q. Do you have a magnet with you today?
A. Yeah.
Q. Did I ask you to bring one?

A. Yes, you did.
Q. Okay. Show the jury.
A. (Witness complies.)
Q. What about the other side?
A. (Witness complies.)
Q. Because it sticks, that is not stainless steel?
A. No. It's either mild steel or it's carbon steel, one of the two.
Q. So based on that, you can tell this jury you know for a fact that is not the RPD that you manufactured?
A. It's not made out of the material that I made my guns out of.
Q. When you manufactured your guns, did you mark them in a way so that you would know that it was your firearm?
A. Yes. I have a steel stamp about two inches long that I put on the left front rail of the weapons, and if it doesn't fit on the left front rail, I put it on the right front rail.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 235. Is that the --
A. That's my stamp.
MR. GORDON: Your Honor, I offer Government Exhibit 235.

THE COURT: It's received.

(Government's Exhibit 235 received in evidence.)

BY MR. GORDON:

Q. Mr. Hahn, is your stamp anywhere on Government Exhibit 111?

A. No, it's not.

Q. Does that also tell you that's not your firearm?

A. That's correct.

Q. If you would --

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Up here on this back block on Government Exhibit 111, can you see that?

A. Yes, I do.

Q. Mr. Hahn, I'm going to ask you to look at your screen again, please, and I'm going to put up Government Exhibit 111-B.

MR. GORDON: May I approach, your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Is that the number --

A. Yes.

Q. That's in the --

A. That's a picture of the number.

Q. And it says 1442. Is that how you marked your guns with a serial number?

A. No, not in this position, I don't mark them and I don't mark them with a -- you know, by hand anyway. The first year I tried marking my weapons by hand, the BATF called me on the phone and explained to me that I can't do things like that.
Q. Okay. How long ago was that?
A. '91 or '92.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Mr. Hahn, I'd like to show you some exhibits that were found in Randeep Mann's residence. I'm going to show you Government's Exhibits 114-E -- I'm just going to have you look at them for a second, and then I'll ask you questions in a moment. 114-F. 114-G. 114-I. Can you see all those?
A. Uh-huh.
Q. Do all those documents have something to do with you?
A. Yes, they do.
MR. GORDON: Your Honor, I'd like to offer Government's Exhibits 114-F, I, G, and E.
MR. LASSITER: No objection.
THE COURT: They're received.
(Government's Exhibits 114-E, F, G, and I received in evidence.)
BY MR. GORDON:
Q. Let's look at Government Exhibit 114-I, please. Is this an

ATF form again showing a transfer of a firearm from you to Randeep Mann?
A. Yes, it is. M-16 rifle.
Q. Let's look at 114-G. Is this also the same thing? Actually, no, this is a --
A. That form is for a post-sample Galil that was sent to me en route to Dr. Mann. It come through me first, and then I transferred it to him.
Q. 114-E. Is this the same letter that we saw earlier that was sent in with the post-dealer sample RPD?
A. That's correct.
Q. And this exhibit is signed?
A. Dr. Mann signed it, yes.
Q. Okay. And then up top, there's a note in the left corner. Is that your name, and do you recognize that fax number?
A. Yeah, that's my fax number.
Q. And let's look at 114-F. Is that the same letter only unsigned?
A. That's correct.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'll show you Government Exhibit 115-A, 115-C, 115-D, 115-E, 115-F, 115-G, 115-I -- I.
A. Uh-huh.

Q. 115-H. 115-J. 115-K. 115-L. 115-M. 115-N.
A. Uh-huh.
Q. These also were also found in Dr. Mann's house. Do all of these exhibits, again, pertain to you?
A. Yes. They're correspondence from me to him and vice versa.
MR. GORDON: Your Honor, I'd offer Government Exhibits -- I guess all the ones I just listed. I can go back through them here. 115-A, C, D, E, F, G, H, I, J, K, L, M, N.
THE COURT: Any objection?
MR. LASSITER: No, your Honor.
THE COURT: They're received.
(Government's Exhibits 115-A, 115-C, 115-D, 115-E, 115-F, 115-G, 115-H, 115-I, 115-J, 115-K, 115-L, 115-M, and 115-N received in evidence.)
BY MR. GORDON:
Q. Mr. Hahn, I'd like you to look at Government Exhibit 115-A. It should pop up on your screen. We are looking at the second page. What are we looking at here?
A. It's a receipt from the customer counter at UPS for a shipment of a package from me to Randy Mann.
Q. Did you and Dr. Mann send things back and forth through the mail?
A. The RPD came back five or six times through UPS. There's a number of other things I shipped him. I shipped him all of his machine guns by UPS unless I delivered them in person.

Q. Let's look at 115-C. Do you recognize that?
A. Yes. That's my shipping label.
Q. And then inside, it's a thing of pictures.
A. Uh-huh.
Q. Let's look inside. Let's just flip through these here. 115-C1, C2, C3, C4, C5, C6, C7, C8, C9, C10. What was the purpose of sending Dr. Mann these pictures?
A. All of those weapons were for sale at the time that I sent them to him.
Q. Let's look at 115-D, please. Do you recognize that envelope?
A. Yes, that's my handwriting.
Q. And your logo as well?
A. Yes, that's correct.
Q. Let's look at the letter inside. Can you read that for us?
A. "Enclosed two gate passes for you and Sue or whoever for a machine gun show and shoot at Lebanon, Missouri, east of Springfield, Missouri. Hope you can make it."
Q. Signed by you?
A. Yes, that's correct.
Q. Let's look at 115-E. Appears to be some priority mail from the post office.
A. Yes. That's my writing.
Q. Let's look at the pictures inside. There's E1, 115-E2, 115-E3, 115-E4, 115-E5.

A. Yes. That's an armored car that I had.
Q. An armored car what?
A. That's an armored car I had for sale.
Q. Where in the world did you get that thing?
A. I bought it from an armored car dealer.
Q. Okay. What was the purpose of sending Dr. Mann these pictures?
A. I wanted to sell it to somebody. I had an investment in it, and I wanted to make a profit on my investment.
Q. Okay. All right. Let's look at the back of Exhibit 115-E5. Is that your writing?
A. That's correct.
Q. What's that say?
A. "Will deliver for $14,250. The average retail on this is 21,000."
Q. Did Dr. Mann buy it from you?
A. No, he did not.
Q. Did you sell it to somebody?
A. Yes. I sold it to a company in Ohio for advertisement.
Q. What did you sell it to them for?
A. By the time they got done negotiating with me, 12,000.
Q. Let's look at 115-F. Is this a letter from Dr. Mann to you?
A. Yes, that's correct.
Q. Where he sent you a check for $5,400?

A. That's correct.
Q. And, actually, let's look on the back of this exhibit. Is that the check?
A. Yes, it is.
Q. What's the name on the check?
A. Lloyd Hahn. It's made out to me for $5,400.
Q. Okay. Who is -- what is the other name? Whose name is on the account?
A. S-a-n-d-i-p Mann.
Q. Do you know who that is?
A. His wife, maybe?
Q. You're guessing?
A. I'm guessing. I don't know.
Q. Do me a favor. Don't guess.
A. Okay.
Q. All right? It's okay to say, "I don't know."
A. Okay. I don't know.
Q. All right. Let's look at Government Exhibit 115-G. Is that a letter from you to Dr. Mann?
A. Yes, it is.
Q. Go ahead and read that for us, please.
A. "Enclosed check for $2,800 for 16. The MP5-SD you have can be refinished very nicely. The materials will cost you $100. The labor I will donate. Or if you wish, I can buy it back from you, whatever. The three units for your inspection are all on

their way. The price per each unit is on the stock. If not interested, please return to my inventory as soon as you can. Thanks."

Q. Let's look at Government Exhibit 115-H. Again, is this a letter from Randeep Mann to you?

A. Yes.

Q. Enclosing a check for $4,500?

A. The balance of $7,000 for the MP5-SD and the Bren Mark II.

Q. Let's look at 115-I. Another letter from Randy Mann to you?

A. That's correct.

Q. More money coming your way?

A. A check for 1,100 for an FNC .223.

Q. Okay. Let's look at 115-J. I think this is just -- well, actually, it's a little different. 115-J. A letter from Randeep Mann to you?

A. From Randy Mann to me. "I am enclosing a check for $4,500, the balance of $7,000," for the SD and the Bren Mark II.

MR. GORDON: Can you put up 115-H next to it.

BY MR. GORDON:

Q. Okay. 115-J and 115-H are pretty much the same letter, except J has the address added to it underneath his signature?

A. That's correct.

Q. Let's look at 115-G. Actually, we did that one. I'm sorry.

115-K is that a letter from Dr. Mann to you?
A. That's correct.
Q. Let's look at 115-L. A letter from you to Dr. Mann.
A. Yes, that's correct.
Q. 115-M. Is that a letter from Dr. Mann to you?
A. That's correct.
Q. As well as a check?
A. "As per our telephone conversation, enclosing a check for $6,500."
Q. And then 115-N. Another letter from Dr. Mann to you?
A. Yes, that's correct.
Q. And a check for how much?
A. $800. For an M-2 Iver Johnson carbine.

MR. GORDON: Approach the witness, your Honor?

THE COURT: Yes.

BY MR. GORDON:
Q. Mr. Hahn, I'm going to show you what's inside a phone list inside Government Exhibit 108-A. Actually, if you'll look at your screen, I'll do it up here. On the fifth page here, do you see your name?
A. Yes.
Q. Is that your phone number?
A. That's my phone number.
Q. On the sixth page, do you see your name highlighted?
A. Yes.

Q. And your phone number?
A. Yes.
Q. And I guess on the first page of this exhibit, the second one, do you see the phone number and address for Toni's Surplus & Loans?
A. Yes, I do.
Q. In Hopewell, Virginia?
A. Yes, I do.
Q. Mr. Hahn, did you ever sell Randeep Mann any ammunition?
A. On many occasions, I have.
Q. What kind and how often?
A. Oh, it varied from year to year. Sometimes rifle ammunition, sometimes .50 caliber ammunition, and sometimes 40-millimeter ammunition.
Q. Did you ever sell him any Rufus ammo?
A. On a couple of occasions.
Q. All right.
A. That's .50 caliber ammunition.
Q. Okay. Describe it for us, please. What does it look like?
A. Seven inches long, 500-grain bullet. It has various bands on the end of the bullet for -- it's a tracer, armor-piercing, incendiary, explosive type of round.
Q. Okay. And how round is it? Like, is it fat, skinny?
A. It's about three-quarters of an inch in diameter and about seven inches long.

Q. And what's the most of that that you ever sold Dr. Mann at one time?
A. It comes a hundred in a carrier, and I think I -- let me rephrase that. I quit thinking. On several different occasions, I sold him one can here and then at another time, another can. But I hadn't sold him no more than two cans, I'm sure.
Q. Do you remember him -- okay. What about .50 caliber ammunition?
A. I sold him at one time --
MR. LASSITER: Judge, I guess we could go on about the ammunition, but I question the relevance of that. This is related to firearms pertaining to --
THE COURT: What is the relevance of that?
MR. GORDON: I'm establishing all the ammunition, the things that Dr. Mann had that were not found in his house.
THE COURT: Come to the bench. Let's discuss that.
[Bench conference reported as follows:]
THE COURT: Okay. The objection is to the relevance. The response is that you're trying to show that he has bought a number of rounds over the years that were not found at his house. What will that go towards showing?
MR. GORDON: Well, our whole theory is, he cleared out all the stuff he knew he wasn't supposed to have out of his house because he knew when the bomb went off the ATF would be at

his door. There will be another witness coming later who will testify that he saw all this stuff at Mann's house before the bombing.

MR. LASSITER: I have several responses to that. One, if he's saying he wasn't supposed to have this ammunition, we weren't given any notice of that under 404(b). Secondly, he hasn't established any time period, under his theory, to make it probable that the ammunition would still be there, as far as we know. The sale probably occurred well before 2002 when he got out of the business. This search occurs in 2009, so it's way back there.

MR. GORDON: And I'm not saying that this ammunition was illegal. The point is, and we're not done yet, none of this stuff was found in his house, again, when ATF got there. But there's going to be another witness that will put it in Dr. Mann's house between the time that Mr. Hahn sold it to him and the bombing.

THE COURT: But none of this was illegal?

MR. GORDON: Not that I'm aware of. I mean, this stuff, I have no idea what any of this stuff is.

THE COURT: I'll let the prosecution put on its case. I'll overrule it, but you can get into that with him and establish it through the witness whether any of this stuff is -- what will be the purpose of taking it out if it's not illegal. But what is the purpose of it? I mean, why would he remove

stuff from his house that's not illegal? Or that is legal? I mean, as far as the times, I'm not worried so much as -- because the witness on cross can tell, well, I sold it to him back in 2002, 2001. That's subject to cross. But we've heard testimony from the last witness who says they would go out and shoot up this stuff, hundreds of rounds at a time. I don't -- I guess I don't understand how this advances the case from a prosecutor's point of view. Maybe that's not important to understand. What is the relevance of it? Generally that he was moving stuff out of the house and this guy caught him with all the stuff he had taken out?

MR. GORDON: Yes.

THE COURT: What's your response?

MR. LASSITER: My response is, there's no way he can make the connection between this ammunition back ten years ago and something that was taken out of the house two years ago. Even if he can show it wasn't in the house the week before.

THE COURT: I'll let you take that up with the witness as far as the time frame of when he sold the stuff until then. I'll overrule the objection. I will say, how much more do you have of this witness? Substantially more?

MR. GORDON: Yes.

THE COURT: Okay.

MR. GORDON: Okay.

MR. DUDLEY: Judge, I need a break whenever it's

convenient. Not urgent right now.

THE COURT: Give me the eye. Give me the eye and we'll take one.

MR. DUDLEY: Okay.

[Continuing in open court:]

THE COURT: Ladies and gentlemen, I think we have quite bit a more with this witness, so what we're going to do, we're going to take a ten-minute break. A little more than ten minutes. We'll come back at about 11:32, 33. We'll be in recess until then.

(Recess from 11:24 a.m., until 11:38 a.m.; jury present.)

THE COURT: You can continue.

MR. GORDON: Thank you, your Honor.

BY MR. GORDON:

Q. Mr. Hahn, did you ever sell Randeep Mann any grenade launchers?

A. Yes, at one time I sold him several.

Q. What kind --

A. Just the bare receiver, no barrel, nothing else.

Q. Okay. How many?

A. Two.

Q. Do you know about when that was?

A. Late '90s. I don't remember exactly.

Q. Okay. And since it was just the receiver, nothing -- it was nothing that had to be registered?

A. No. It was Title 1.
Q. And what kind of grenade launcher receiver?
A. They were 203s, which go underneath the barrel of an M-16.
Q. All right. And do you know what is fired from an M-203 grenade launcher?
A. 40-millimeter grenade.
Q. Are you familiar with those?
A. Very.
Q. What does one look like?
A. Three and a half inches long, about the size of a silver dollar.
Q. In diameter?
A. The diameter, yes.
Q. What about the markings? Colors?
A. Well, they're different colors for various 40 millimeter. The gold tip are the high explosive. The blue tips are the practice. The white tips are parachute flares. And purple and red and yellow for smoke. And they also make a shotgun, a buckshot round.
Q. Did Randeep Mann ever ask you for anything like that?
A. Yes.
Q. Tell the jury about it.
A. At one time I had sold Dr. Mann some practice grenades, and at that time, he asked me, "If you ever run across any of the real thing, keep me in mind."

Well, six months or nine months after that, an acquaintance of mine had bought a large amount of explosives off the Illinois National Guard, and I purchased a lot of high-explosive 40 millimeter. And I called Dr. Mann, and he -- the ammunition that I purchased, he purchased it off of me.

Q. Who did you get it from?

A. A friend of mine.

Q. What's his name?

A. Tom Owsley in St. Charles, Missouri.

Q. Did he have an FFL as well?

A. Yes. He done a lot of business for the government demilling high explosives.

Q. I guess, did he have an FEL?

A. Pardon me?

Q. Did he have an FEL, Federal Explosives License?

A. No, he did not. He had a Class 2 like I did.

Q. Okay. So you got a -- what type of grenade did you get from him?

A. 40 millimeter, high explosive.

Q. Then you contacted Dr. Mann about those?

A. I did.

Q. Was he interested in them?

A. He was interested. He bought them off of me.

Q. How did you get them from you to Dr. Mann?

A. I packed them up in a heavy duty shipping container and I

shipped them UPS to him.
Q. Is that safe?
A. 40 millimeter is one of the safest explosives you can play with. They absolutely will not go off. You can puncture the primer and the end will fall off at your feet without exploding. They're like a torpedo in a submarine. They've got to turn 15 times before they'll explode.
Q. Do you recall whether you sent them to him in Memphis or Russellville?
A. Can't remember.
Q. Do you recall how many you sent him?
A. Approximately a hundred, give or take.
Q. Let's look at Government Exhibit 98-G. Do you recognize what we're looking at here?
A. Yes, I do. The item on the left is high explosive. The one on the right is practice.
Q. Do those look like the ones you sold Dr. Mann?
A. Yes, both of them do.
Q. When you shipped them to Dr. Mann, I know you said you put them in a box, was it?
A. Heavy duty cardboard box.
Q. Okay. How were the grenades in there?
A. They're in bandoliers, just like they are here in this container.
Q. Were they shipped in an ammo tin like this in this picture?

A. No. They came to me in the original shipping container, cardboard box, and I shipped them to Dr. Mann in a different cardboard box. I've never seen this tin before.
Q. Before you shipped the grenades to Dr. Mann, did you do something to them?
A. Yes. In the event Dr. Mann was going to resell them, which I had no idea one way or another, each and every one of those grenades I took out of the pouch and wiped it clean, no fingerprints, and I took some carburetor cleaner and took the manufacturing date off of them.
Q. You took some, what, carburetor cleaner?
A. Uh-huh.
Q. Is that a yes?
A. Acetone.
Q. And wiped what off the grenades?
A. Manufacturing date. Every piece of armament has a manufacturing date on it.
Q. And describe for us where on the grenade that manufacturing date was located.
A. It's down near the bottom where the primer is, and there's a black line that has lot numbers, manufacturing date, the day of the month, the month.
Q. Let's look at Government Exhibit -- this will be Government Exhibit 120-E. Let's look at 120-C. Sorry. I'm guessing at this point. All right. Let's try 120-F.

Can you see in this picture, in 120-F, is that the black lettering on the bottom?
A. That's the black lettering on the bottom, and just at the end of this black lettering is the date of manufacture.
Q. Let's look at 120-D, please.
A. Yeah, that's it.
Q. Is that where that -- it says ACN-11-14-11?
A. And after that, it will say whatever the month and the year it was manufactured.
Q. And that's what you wiped off?
A. That's correct.
Q. Why?
A. I didn't want anybody looking at some outdated merchandise.
Q. All right. Other than practice grenades, did you ever sell any other kind of grenade to Randeep Mann?
A. Yes, I did.
Q. What kind of grenade?
A. Concussion grenades.
Q. Tell me what you mean by concussion grenade.
A. They're not shrapnel, they're not made to kill people, they're made to disable them. The law enforcement uses them when they enter a room where they don't know who or what is in the room. And they're strange devices also for the Navy SEALS.
Q. Do you remember what color?
A. They come in a black container and they have a black

covering on them.
Q. Let me show you what's been marked as Government Exhibit 69. Is it one of those?
A. That's it.
Q. Tell the jury what you recall about selling some of those concussion grenades to Randeep Mann.
A. I bought eight of them and I sold eight of them to Randy Mann. The exact date I delivered them, I can't remember, but there was only eight of them.
Q. Where did you get them from?
A. Bought them at Knob Creek.
Q. Okay. Tell us about that.
A. Well, the person that had the table two tables over from me had them and I bought them off of him.
Q. Whose table --
A. A company by the name of Toni's Surplus.
Q. And who runs that company?
A. Dan Robinson owns it, but John, one of the helpers, is the guy that I bought them off of.
Q. Okay. And when you bought them, were they assembled or disassembled?
A. The detonators were pulled out and laying next to the bodies. Yes. And all I had to do is screw the detonators in and they were complete. Like that.
Q. Do you know -- do you know when you sold those to Dr. Mann?

A. Late '90s.
Q. Before you gave up your license?
A. That's correct.
MR. GORDON: May I approach the witness, your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Mr. Hahn, I'm going to show you Government Exhibit 116. These are some articles that were found in a room in Dr. Mann's house. Do you recognize that, the note on the back?
A. Yes.
Q. Is that your writing?
A. That's my writing, yes.
MR. GORDON: Your Honor, I'd offer Government Exhibit 116.
MR. LASSITER: Your Honor, may we approach?
THE COURT: You may.
[Bench conference reported as follows:]
MR. LASSITER: Appears to be a letter from Hahn to Mr. Mann with a newspaper article attached. I question the relevance of the newspaper article, to start with.
MR. GORDON: Well, it's not really about the article. It's about the note on the back. So, I mean, I just -- it's one exhibit. That's how it was found. I'm offering --
THE COURT: This is the second time we've had this issue, and I think I held up on admitting it earlier because the

government said they were going to produce Lloyd Hahn. Do you need the article? Is that essential? Is that going to help establish a part of the case?

MR. GORDON: I can do it without the article.

THE COURT: Put a sticker on the last page.

MR. GORDON: Okay.

THE COURT: And I'll receive it.

MR. GORDON: Okay. Thank you.

[Continuing in open court:]

MR. GORDON: Your Honor, I offer Government Exhibit 16, just the note from Mr. Hahn.

THE COURT: It's received.

MR. GORDON: I'm sorry. 116.

(Government's Exhibit 116 received in evidence.)

BY MR. GORDON:

Q. Mr. Hahn, without referring to the news -- without referring to the articles, the news articles here, read us this note. Is that a note from you to Randeep Mann?

A. It's not on my screen.

Q. Oh, I'm sorry.

A. It's on their screen, but not mine.

Q. How about now?

A. Oh, yes.

Q. Okay. Was that a note from you to Randeep Mann?

A. That's correct.

Q. Okay. Read what you wrote there for us, please.
A. "Much dissent here, don't know who anyone is anymore. Can't do anything like I used to. Must be getting old. I have a mint 100 percent finish MG-15 with two drums. All ground fire equipment, all aircraft sites, 14,500, if you're interested."
Q. That first sentence, "Much dissent here, don't know who anyone is anymore. Can't do anything like I used to." What does that mean?
A. Well, that means that we used to, several years before this -- can I refer to an article that I attached to this?
Q. No.
A. It meant that I just can't trust people like I used to.
Q. Okay.
A. You don't know -- you don't know who you're dealing with, with regard to illegal firearms, if that's what you're looking for.
Q. Is that what you meant by this?
A. That's what I meant, exactly.
Q. Is that because you and Dr. Mann were doing stuff you --
MR. LASSITER: I object to the leading. The letter speaks for itself.
THE COURT: I'll sustain the objection as to the leading, but you can ask the question. Just don't lead him.
BY MR. GORDON:
Q. Were you and Dr. Mann doing stuff you weren't supposed to

be doing?
A. Definitely.
Q. Is that why you wrote this first sentence?
A. That is correct, with the other information that's attached to that letter.
Q. Okay. And you mentioned trust before. You mentioned trust.
A. Yes.
Q. Explain that. I mean, if I were to get your phone number and call you up when you had your gun business and say, hey, you know, do you have --
A. I wouldn't talk to you unless, you know, you were in the inner circle, unless we've known each other for 15 or 20 years.
Q. Okay. And that's something that develops over time?
A. That's correct.
Q. Does money help as well?
A. Pardon me?
Q. Does money help also?
A. Oh, yeah, especially money.
Q. Okay. And did you have a relationship like that with Randeep Mann?
A. Dr. Mann was a superb customer, excellent. Plenty of money, good station in society, and he was a member of the inner circle.
Q. Do you remember an ATF agent coming to your house in May of

2009?
A. No, but an ATF agent came to my house and I wouldn't let him in. We talked on the front porch.
Q. Okay. And was that ATF agent asking you questions about Randeep Mann?
A. That's correct.
Q. Were you honest, 100 percent truthful with that ATF agent?
A. At that particular time, absolutely not.
Q. Why not?
A. I didn't want to incriminate myself into anything I could be prosecuted for.
Q. Did ATF go away?
A. They went away, and a short time later, I ended up with a grand jury subpoena on my doorstep.
Q. And what fine fellow sent you that?
A. You.
Q. When you came down to Little Rock to testify in front of the grand jury, were you willing to tell them the truth?
A. No. I told you on the telephone before I even came here that I was going to stand on the Fifth Amendment when I got here. And you told me to come anyway, and I did, and I told you outside the grand jury room I was going to stand on the Fifth.
Q. Okay. And had I talked to your lawyer before?
A. Yes.
Q. Before you came to Little Rock?

A. Yes, I did.
Q. When you arrived here in Little Rock, did I have a letter waiting on you?
A. Yes, in front of the grand jury room, you had an immunity letter.
Q. Without that letter, were you going to talk to me and tell me the truth?
A. Absolutely not. I wasn't even going to talk to you.
Q. I'm going to show you --

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

BY MR. GORDON:
Q. I'm going to show you Government Exhibit 234. Do you recognize that?
A. That's the letter in question.
Q. Dated May 29 of 2009?
A. Uh-huh. That's correct.
Q. Signed by you?
A. My signature.
Q. And the U. S. Attorney Jane Duke?
A. Yes.

MR. GORDON: Your Honor, I'd offer Government Exhibit 234.

MR. LASSITER: No objection.

THE COURT: It's received.

(Government's Exhibit 234 received in evidence.)
BY MR. GORDON:
Q. So, Mr. Hahn, when you testified in front of the grand jury, you testified under that grant of immunity; is that correct?
A. That's correct.
Q. And it's your understanding that today you're also testifying under that grant of immunity.
A. That's correct.
Q. Just so the jury knows, paragraph five says that you have to submit to a polygraph if we request.
A. That's correct.
Q. Did you ever submit to a polygraph?
A. No.
Q. That grant of immunity that you've been given, has that affected your testimony in any way?
A. Just other than to tell it the way it is.
MR. GORDON: Thank you, sir. Pass the witness.
THE COURT: Let me ask defense counsel, do you want to take the cross after lunch or do you want to get started now?
MR. LASSITER: I'd prefer to do it after lunch, your Honor.
THE COURT: Okay. Let's do that. I figure that it might take some time. So let's take our lunch now.
Let's come back at 1:20. We'll be in recess until 1:20.

(Recess at 12:07 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: March 11, 2011

/s/ Christa R. Newburg, RDR, CRR, CCR
United States Court Reporter

(Proceedings continuing at 1:21 p.m., jury not present.)

THE COURTROOM DEPUTY: Are you ready, sir?

THE COURT: I think she went back to get them. I think so. You can bring them in, though, if she didn't.

(Jury enters the courtroom.)

THE COURT: Cross-examination?

MR. LASSITER: Thank you, Judge.

CROSS-EXAMINATION

BY MR. LASSITER

Q Good afternoon, Mr. Hahn.

A Good afternoon.

Q Can you hear me all right?

A So far so good.

Q All right. I will try to speak up. Let's pick up where we left off.

As I understood your testimony, an ATF agent showed up on your front porch one day, you had a conversation with him, and next thing you knew, you had a grand jury subpoena; is that correct?

A That's correct.

Q And you got your lawyer involved, and he had some, I guess, communications with the U.S. Attorney's office here concerning your testimony; is that right?

A That's correct.

Q So I understand it you made it clear to the agent or you

asked your lawyer to make it clear to the government that you were going to assert your Fifth Amendment privilege. You didn't want to testify, right?

A That's what I told Mr. Gordon, yes.

Q And at some point in time, you entered into an immunity agreement with the government, correct?

A When they forced me into the grand jury situation, at that particular time she told me I had to testify whether I wanted to or not, and they gave me the letter of immunity.

Q The -- because you were immunized, you had to testify, right?

A (Nodding head.)

Q And we looked at that before the lunch break, correct?

A Yes, that's correct.

Q And I think you identified the copy that the government showed you --

MR. LASSITER: May I approach?

THE COURT: Yes, sir.

BY MR. LASSITER

Q Let me show what you I have got marked as Defendants' 18. Does that appear to be the same letter?

A It is the same letter, yes.

MR. LASSITER: Move to introduce Defendants' 18.

MR. GORDON: No objection.

THE COURT: It's received.

(Defendants' Exhibit 18 received in evidence.)
BY MR. LASSITER
Q Now, you don't -- you don't anticipate being prosecuted for anything, do you?
A I surely hope not.
Q And you are not under indictment or under any kind of charges --
A No.
Q -- are you?
A No. I am not under indictment for anything, nor have I been.
Q Good. I place Defendants' 18 on the monitor. As part of the immunity letter, at paragraph 2, it indicates that you must supply complete and truthful information and data to the United States and to the Courts essentially; is that correct?
A That's correct.
Q Okay. And it's your understanding the only way you can mess up under this agreement is if the government thinks you haven't been truthful with them?
A That's correct.
Q Not whether I think you have been truthful or the Court or anybody else, just whether or not you think the government thinks you have been truthful?
A That's correct.
Q Mr. Hahn, would it surprise you if I told you you surprised

me on a few things this morning?
A No.
Q All right. You testified concerning Government's Exhibit 111. That is the machinegun with No. 1442 engraved on it. Do you remember testifying about that earlier?
A Yes. I testified about that earlier.
Q And when you testified before the grand jury last year, you didn't -- you didn't tell them anything about using a magnet to test the metal or any of that; is that correct?
A That's correct.
Q And I think during that grand jury testimony you just said that's not -- that's not the gun on the paper because the ATF agent told me that serial number was registered or something to that effect, right?
A I don't remember. The ATF people are who I had the conversation with about the magnet. As far as anyone else is concerned, no one else knew.
Q I want to make sure I understand what your testimony was earlier today because I had not heard that before or read it anywhere. So let me ask you some questions.
A Okay.
MR. LASSITER: Judge, may I approach?
THE COURT: You may.
THE WITNESS: Do you want me to help you?
BY MR. LASSITER

Q Sure.
A We are going to drop this here.
Q Let's not point it at the court reporter.
All right. First off, it's Government's Exhibit 111, which is a machinegun that you testified about earlier. Is that a reweld weapon?
A That is a reweld weapon. You can actually see part of the welds right in here if you look very closely.
Q It would be important for the record for us to try to describe that. And above the trigger of that weapon, there is a rectangular block, and is that the receiver?
A Those are the receiver rails.
Q The receiver rails, all right. And there is, on the right side of the gun, a mechanism that allows you to --
A Charging handle.
Q Charging handle, all right. And on the side of the receiver would you point where you can tell where it's been rewelded?
A Can you see that?
Q Yeah. Let's hold it up so the jury can see it too. Does that appear to be like small pock marks in the middle?
A Small pock marks. That's where it was welded and on the other side approximately in the same spot.
Q Now, I believe your testimony was that this was not one of your firearms because it's a different kind of metal used than

you use?
A It's a totally different workmanship also.
Q And what's the different workmanship?
A The little pock marks wouldn't be in there if it was mine.
Q And the first time you looked at that firearm was when?
A When they got me down here for the grand jury. Prior to, I was down here maybe four or five hours prior to, and they showed me that.
Q And is that when you testified you couldn't see it too well?
A I couldn't. At that time I couldn't see it too well, and the outward finish on the weapon was the same type of finish that I used on mine when they're totally done. It's an epoxy black paint more or less, and then in a dim light that did look quite a bit like one of the ones that I made.
Q And you looked at that and examined that with whom? Who did you look at that weapon with?
A Agent by the name of David Oliver and another agent that I can't even remember his name.
Q And did they tell you they wanted to take -- was it in the safe down here?
A Pardon me?
Q Where was it? Was it in the courthouse or over at the ATF office? Do you remember where it was?
A It was in ATF's office, yes. That's where it was.

Q They --
A And they had the gun there.
Q Did they take it out and place it on a table for you to look at?
A Yes, they did.
Q And did they tell you before they took you in there that they wanted to show you a firearm they believed was yours?
A Yes.
Q And you told them it was yours that date, right?
A Originally when I looked at it, I said yes. I said, "This looks like one of mine except I don't have a magnet to doublecheck it." And the guy looked at me like I was crazy and said, "What do you need a magnet for?" And then I told him.
Q And that's because the steel that you used --
A Is nonmagnetic.
Q And that's placed in the rear part of the receiver?
A Uh-huh.
Q So if -- and how many of these weapons do you think you manufactured during your career?
A Three.
Q And -- but you rebuilt other firearms, didn't you?
A Yes, I have.
Q And you rewelded other firearms?
A Yes, I have.
Q Like M14s?

A A lot of M14s, yes.
Q And did you use that same kind of steel in those firearms?
A No. Used carbon steel in those firearms.
Q Is there -- so I understand, is there a difference -- the reason you use carbon steel in those firearms rather than the steel you used in the machinegun?
A The difference is, in these guns, it's much easier to use stainless because it welds and it finishes up much better than carbon steel. When you use carbon steel or mild steel, you get little pock marks like you and I were just looking at in that. And that gun has carbon steel or mild steel in it, and the stainless does not.
Q So in your Machinegun No. 1442, which you are telling the jury that is not --
A No, it's not.
Q Right? You use that particular kind of steel, and you used it in two others?
A Yes, that's correct.
Q And were they manufactured about the same time as this firearm?
A I don't know when that one was made. I have no idea, but mine was made right around '01, July of '01 or a little earlier maybe.
Q How about the other two?
A About two weeks or a month later than that.

Q And did you sell them around the same time?
A Well, Dr. Mann had two of them, and I sold the other one at Knob Creek.
Q And those are the only two machine guns of that type?
A That's the only ones that I ever made, yes, in my shop.
Q Who did you sell the one at Knob Creek to?
A Colonel in the Army named Frank Matthews.
Q Did you generate the proper ATF form for that?
A No.
Q Sold it off paper?
A Totally.
Q Do you know where Mr. Matthews is?
A Pardon me?
Q Do you know where he is?
A Somewhere in Georgia. That's where he lives.
Q Do you know anything else about him?
A That he is a colonel in the Army.
Q Anything else?
A A gun collector.
Q And you are -- in your inner circle?
A Yes.
Q So who else in your inner circle might tell us where he was?
A Who else?
Q Tell me who your inner circle was at that time so, if I

want to find Mr. Matthews, I can make some phone calls and locate him.

A Frank Matthews lives in Georgia somewhere. I don't know exactly where. Dr. Mann, there is dozens of people in -- years ago that used to be in the inner circle of firearm collecting, off-of-the-book firearm collecting.

Q Continue. There are just two people in your inner circle? Dr. Mann and Mr. Matthews?

A And quite a few others.

Q Names.

A Daniel Robinson; Tony's Surplus; friend of his named Ti, who is a Vietnamese man; and John, the guy that used to work for Mr. Robinson at Tony's Surplus.

Q But you don't remember his last name, right?

A I don't remember any of them except Frank Matthews and Dan Robinson.

Q These were the people you trusted. These are the ones that you would do these things with that you testified about, and you are telling us now you don't even remember what their last names are?

A A lot of them, I do not; that's correct, sir.

Q Are you answering that truthfully?

A That's truthfully, sir.

Q We'll return to that in a moment. I want to ask some just general questions about how you operated in manufacturing

firearms and the kinds of records you kept. I believe you testified on direct that you were Title I, Title II, and Title III licensed?

A Yes. Everything except Class 10.

Q And when you manufactured a firearm, when you made one of these reweld weapons or manufactured some other automatic weapon, you had to file a form with the ATF --

A That's correct.

Q -- after you finished the gun; is that right?

A That's correct. Even a semiautomatic you have to file a form.

Q All right. And is that a Form 2?

A Pardon me?

Q What form number?

A It's either 2 or 5. I forget, but you are pretty close.

Q And you had to do that very quickly after you finished the weapon, right?

A Within 24 hours.

Q Right. And is that record maintained permanently by ATF to your knowledge?

A It was in the old days. I don't know what they have -- what bookkeeping changes they have made in the last ten years.

Q While you were active during that time span that ended in 2002, you had to file that, and your understanding was ATF kept it, right?

A Uh-huh.
Q Now, what records did you have to keep in your shop to be available if ATF showed up and said, "We want to audit your records"?
A Form 3s, 4s, and Form 2s.
Q And just so we all understand, tell the jury the difference between those three forms, please.
A Form 4 is a general transfer of a machinegun to an individual. A Form 3 is a transfer of a machinegun to someone like -- between Dr. Mann and myself or any other license holder. And a Form 1 --
Q Between --
A -- is if you want to register a machinegun as an individual, you put $200 with it, fill out the form, and send it to Washington. That's a Form 1. And a Form 5 is a temporary transfer.
Q Did you keep an acquisition and disposition book?
A I kept a disposition book, and when I retired I mailed all of my disposition books to the federal warehouse in Virginia.
Q So ATF has that?
A Right. And I had copies of a lot of the Form 4s and 3s over the years that I had completed. I put those in binders. They were copies for my records, and the federal prosecutor has got those copies right now.
Q You turned those over to either the government lawyers or

one of the agents?
A Well, I turned them over to ATF, and then they gave them to Mr. Gordon.
Q Do you think those records that you turned over to ATF, which in turn were given to Mr. Gordon, were complete?
A The ones that I turned over to Mr. Gordon are just Xeroxed copies that I kept for myself. The original Form 3s, 4s, and 2s, when you get those back in the mail, those go to the man that the gun goes to. I just made copies of them for my own benefit. So all of the other records out of all the dealings in these machine guns, the people that the guns have went to are the people that has all the paperwork. The only thing I kept was the little books whose name the gun comes from and that it went to. Those are the books that Washington has.
Q My question was, do you think your copies constitute a complete record? Do you think you have copies of all the 2s, 3s, and 4s?
A The copies that Mr. Gordon has, no, they're not complete. There is many of them missing out of those books.
Q I asked you a few moments ago about other firearms that you had manufactured, in addition to those three machine guns that we talked about, and I think I asked you about M14s that you had manufactured. What other kind of firearms have you manufactured?
A Two Stegton pistols, which are World War II pistols that

were chopped up that I had bought. I have done one MG34 and two MG42s. I have done some Sten guns, simple -- just simple rewelds.

Q How long does it take you to do one of those firearms?

A M14, it takes me two hours to clean the receiver heads up and another hour to weld it and four or five or six hours to machine it and another two or three hours to parkerize it and another two or three hours to assemble it.

Q And how many years did you do that?

A From probably about '88 until '02.

Q And for any of those firearms that you manufactured, did you put a serial number on it?

A Every one of the ones that I registered with the government -- all of the M14s, 100 and some odd M14s that I had bought from Fort Leonard Wood, every one of those has a serial number on it and every one of them is registered with the government. A lot of the machine guns that probably you're referring to are registered. The ones that I had sold to law enforcement and other license holders like myself, those are registered. Some of the ones that I built off of the books are not registered.

Q For some period of years, you etched a number on to the firearm, right?

A 1992, you're right.

Q And then at some point you received a communication from

ATF telling you that you had to use a stamp?
A That's correct.
Q And was that by a letter from Edward Owen, the chief of the firearms technology branch, telling you you had to permanently engrave the name, city, and state on the receiver?
A That's what he said.
Q And actually, that letter was in 1994, June 8, 1994, wasn't it?
A I am not sure. I know it happened. I can't tell you the -- exactly the date that it happened.
Q And before you started using the stamp when you were etching the numbers on to the firearm, did you sometimes put it at a place where it would be readily apparent if you just were looking at the gun?
A In the early going when I was etching them, every one of them was in plain sight, the -- my company name and the number both.
Q And was there a point in time where they weren't in plain sight?
A No.
Q So if we found an M14 that you did, say, in 1995 -- or let's say prior to 1994. 1992 or 1993, did -- all that information ought to be on the gun in plain sight?
A All of it unless the M14 was manufactured and sold to someone without being registered by the government. I sold a

few of those. Then you might find one that doesn't have my company name on it.

Q You never put the information underneath the wood on a stock or somewhere where it wouldn't be readily available?

A Yes. Underneath the wood line on some of the early ones, you're right.

Q The serial number we keep looking at here or talking about is 1442, and you frequently used a four -- four-numeral serial number on firearms, did you not?

A Quite a bit of the time. And they were random numbers, by the way.

Q Not in sequence?

A No, not in sequence. They were random.

Q Let me show you five transfer forms and see if they appear to be firearms transferred by you in, I think, 2000 and/or 2001.

A Yes, they are. Notice that model number, MG34, the numbers are quite similar, but it's a different model.

Q We'll talk about that in a minute.

MR. LASSITER: Move to introduce Defendants' 13 through 17.

MR. GORDON: No objection.

THE COURT: Okay. What numbers are those, Mr. Lassiter? Defendants' what?

MR. LASSITER: 13 through 17.

THE COURT: Okay. They're received.

(Defendants' Exhibits 13 through 17 received in evidence.)
BY MR. LASSITER
Q Let me show you Defendants' 13. And that is a transfer of firearm from you to Harlan Lieberman; is that correct?
A Yes, that's correct.
Q And who is Mr. Lieberman?
A He is a customer of mine.
Q Inner circle?
A No. He just wanted a short-barrel rifle.
Q That's not an automatic weapon, is it?
A He had an automatic weapon and he wanted to -- a short-barrel rifle to transfer the trigger group to. That's why he had me do it.
Q Okay. Is this an automatic weapon --
A Not what I -- not a short-barrel rifle, no.
Q And the serial number?
A 0047.
Q Again, four numerals. And the date that appears here?
A '01.
Q 1/25/01, is that correct?
A Uh-huh.
Q And is this an ATF Form 4?
A Yes, it is.
Q And that means it's a transfer to someone who is or is not an FFL?

A He has an FFL and this did go through Washington and he paid a $200 tax to do it.
Q Did he have an option as to how to do it?
A No, he did not. He had to pay $200 because he didn't have the proper licensing.
Q Let me put Defendants' 14 up here, and that's a transfer in July 2001; is that correct?
A Yes. That's a full sample weapon.
Q And you were shown as the manufacturer, correct?
A Uh-huh, that's correct.
Q And it's Serial No. 5476; is that correct?
A That's correct.
Q And what kind of firearm is that?
A That's a machinegun that was a semiautomatic rifle converted by me to a machinegun.
Q Was this a reweld or a conversion?
A No. It was just a conversion.
Q You didn't have to weld anything, just changed the trigger group or something?
A No. I had to drill a sere hole and put a sere in and put an automatic bolt in it, put a serial number on it, register it, and transfer it to Mr. Pippin.
Q And that's at Jim's Gunshop; is that correct?
A Hmm?
Q Jim's Gunshop?

A Jim's Gunshop. Mr. Pippin is the guy who owned it.
Q Do a lot of business with him?
A Not really, no. He heard about me and wanted a weapon done, and I did it.
Q And I will show you Defendants' 17, and that was a transfer of what kind of a firearm?
A It's a pol sample.
Q I'm sorry. A what?
A A pol sample that only -- you got to have a police letter to buy it.
Q What kind of a firearm is it?
A An RPD, just like the one sitting behind you.
Q And was it a reweld?
A Yes.
Q And the serial number is 1441; is that correct?
A That's correct.
Q And who was the transferee?
A I manufactured it and sold it to a Mr. Nick Groszowski.
Q Rose Investments in Muskegon, Michigan; is that correct?
A That's correct.
Q And if I put a magnet up to the receiver on that firearm, what would happen?
A It would stick.
Q And why is that?
A The stainless steel metal in the receiver rails.

Q And how do you know which kind of metal you used in this gun?
A Serial No. 1441 and 1442 are both in the series of the stainless steel plates I put in.
Q So the magnet should react in the same way that it would to 1442 that you made; is that what you are telling us?
A Yes. That's exactly what I am telling you.
Q All right. And when you manufactured that, that was a post-'86 dealer sample firearm?
A No. Pol sample firearm. This means you have to have a law enforcement letter to be able to buy it, and you can't resell it.
Q And did you supply that letter also?
A Yes.
Q And at -- so the jury understands, you send the paperwork to ATF for the transfer, correct?
A Yes.
Q So you send the form in asking to transfer. You're the one that sends the police letter in, I think you referred to earlier. Is that what you do? Right?
A Uh-huh.
Q Did you tell Mr. Grozsowski, for example, I have got the letter, I will take care of that, and that will go in the paperwork to the ATF?
A They're supposed to take care of their own letters, but a

lot of people do not. They have the seller do it.
Q And you did it?
A I did it. I procured the letter for everybody almost.
Q All right. You know when that firearm was manufactured?
A No. If you push it up a little bit, I can see.
Q Sure.
A 7/01. Very close to the other one.
Q Very close to 1442?
A Yes.
Q This is Defendants' 17. This is a copy of the 1442 form that we have looked at before. It has the same information in it here as you did on the previous form, correct, since it's the same kind of firearm?
A Uh-huh.
Q And then Defendants' Exhibit 16 is a transfer, again to Mr. Grozsowski; is that correct?
A Yes, that's correct.
Q Serial No. 1443?
A That's an MG34.
Q And that's a machinegun, right?
A Yes. But it's nowhere near an RPD.
Q Yeah. A different kind of machinegun than this one?
A Right.
Q And the date on 1443 is July 17 of '01?
A Uh-huh.

Q Is that the same date as on the previous two?
A Yes, it is. I wrote all of those forms up the same day. That doesn't necessarily mean the guns were finished that day just because I wrote the forms up.
Q Do you know anything about Mr. Grozsowski having some problems with those firearms that you sent to him?
A Huh-uh.
Q We reviewed some of your transfer forms, and I want to take a moment to go over a list of customers with you. I want to know if you can tell me where they reside. The John Matthews, which you sold a couple of firearms to back in 2000, is that a different Matthews than the one you testified about a moment ago?
MR. GORDON: I am going object to relevance.
THE COURT: What's the relevance of the names of these people?
MR. LASSITER: May we approach?
THE COURT: You may.
(Bench conference reported as follows:)
MR. LASSITER: I am asking who, where, and whether or not he did reweld firearms for them and if did he a lot of business with them.
MR. GORDON: I don't see the relevance. That is like we're doing discovery in front of the jury.
THE COURT: Essentially -- have you talked to this

witness before today?

MR. LASSITER: Ms. Couch did.

THE COURT: Have you talked to him?

MS. CASSINELLI COUCH: Uh-huh.

THE COURT: About this issue?

MS. CASSINELLI COUCH: I would say that most everything he said was not the same as what he is saying, so no.

THE COURT: Okay.

MR. LASSITER: I don't tell you that.

THE COURT: I will overrule the objection. I take it that it is discovery, but if he is not -- if he is saying the opposite of what he has told you before -- I will let him ask the question. Now, I don't believe he is going to answer because everything he said he has said before, but you can ask the question. Overruled.

(Return to open court.)

BY MR. LASSITER

Q I will try to go through this quickly. What I want to know is if you did a lot of business with this person and, two, if you ever sold him a reweld firearm. Fair enough? I want to know two things about these people: If you did a lot of business with them and, two, if you ever sold them a reweld firearm.

A Uh-huh.

Q John Matthews.

A What's the address?
Q I don't know.
A I don't know the name.
Q All right. These are individuals that you transferred firearms to in 2000 or 2001.
A I transferred thousands of firearms. I don't know the name.
Q I am just telling you that I am going to ask you questions about people in this period. All right? James Sceensman?
A How do you spell it?
Q S-C-E-E-N-S-M-A-N.
A Doesn't ring a bell.
Q Chris Fergus?
A Yes. That name rings a bell.
Q You sold several firearms to him, right?
A I did, but I don't remember what I sold him.
Q Do you know where he lives?
A No.
Q Did you sell a reweld firearm to him?
A I do not remember.
Q How about United Transfer?
A Yeah. I sold quite a few firearms to them.
Q Did you ever sell a reweld to them?
A I don't remember.
Q How about Kurt's Gunshop?

A I don't know the name.
Q Michael Levine?
A I know the name. I sold him quite a few transferable firearms, but no rewelds that I am aware of.
Q D and D Guns?
A I don't know who they are.
Q Tim's Guns, Timothy Edward?
A I don't know who that is.
Q D and D guns, I think it was George Dinkins?
A Yeah. I vaguely know who you are talking about. They live back east somewhere.
Q Did you sell a lot of weapons to him?
A Not a lot, no. Maybe half a dozen at the very most.
Q Sell him a reweld?
A Not to my knowledge.
Q Shannon Barclay?
A Who?
Q Shannon Barclay?
A No. I sold him some semiautomatics, but no rewelds.
Q How about S and S Firearms?
A The name doesn't strike a bell.
Q Earnest Rim?
A I don't know the name.
Q I think you have testified on direct that you did a lot of business with Dr. Mann and talked about that for some time, and

tell me again the number of machine guns that you -- you went through a series of transfer forms with the government lawyer. Were there about a dozen of those?

A Repeat that.

Q You went through a series of transfer forms with the government attorney, Form 4s, I guess on machine guns transferred to Dr. Mann. Were there, what, about a dozen of those that we looked at this morning?

A Well, there were -- to my recollection, there was probably 15 or 20 maybe, somewhere in that area, of machine guns and then there were a lot more semi --

Q I just asked you how many you looked at this morning on those forms, Mr. Hahn.

A About 15 roughly, give or take.

Q I know you are cooperating with the government, but if you just answer my questions, we will --

A I sure will.

Q Now, sometimes during the course of all these years that you did this, did you have problems with firearms with your customers? They got them and weren't pleased with them or the weld didn't work right or shot a few rounds and the weld cracked and they called you up and said, "This isn't working out. I need to send a firearm back." Did that ever happen to you?

A Only with Dr. Mann.

Q Only with Dr. Mann out of all these customers?

A Out of all those customers, he is the only one.
Q Let's talk about that a little bit. You sold him some expensive firearms, didn't you?
A Yes.
Q Some of these firearms cost $10,000?
A That's correct.
Q Did you ever sell him one that cost more than that?
A No.
Q So tell me, during the course of the sale of the firearm how that would -- how that would progress. He might call you up and ask if you have got anything new that you acquired or perhaps you got something and you call him up and say, "Would you be interested in this?"
A Well, I have done that, but he normally just called me about once a week and said, "Lloyd, have you got anything new?"
Q And if you had something new, I assume you would give him a description of it. I have such and such a machinegun.
A Uh-huh.
Q And when -- when dealers are talking to each other --
A We send pictures to each other too.
Q Send pictures. And you use descriptive words, don't you?
A Try to.
Q Okay. Well, give me an example of those. I mean, coin collectors say -- it's been since a kid since I did that, but there is terms like "circulated" and "good" and "fair" and

"poor" and that sort of thing. How would you describe to a customer of yours or another dealer that you are possibly going to enter a transaction with, how would you describe that firearm that you had? What words would you use to tell him the condition of the firearm?

A Well, if I had an MP5, I would call him up and say, "I have got an MP5 in good shape, good bore," and that's it.

Q What other terms would you use?

A I don't -- I don't understand what you are driving at.

Q Good, very good, excellent?

A No. I would just say it's in good shape and it has a good bore; that's all I would say.

Q And then you would send a photograph?

A Some people I would, and some people I would just give them a verbal description on the telephone. A lot of people call from advertisements in newspaper and want a accurate verbal description on what you got advertised in the paper.

Q Dr. Mann would call you frequently, and you would discuss these firearms, right?

A Yes.

Q And he would ask you questions. He was a curious fellow, right?

A Sure what?

Q He was curious. He would ask you about these firearms and their condition, and he would probe you for information about

the weapon particularly if it was going to cost $10,000; is that fair?
A That is pretty fair.
Q And you would reply?
A Yes.
Q And for someone who is about to make that kind of investment, common sense would tell that you it would only be prudent to try to get an accurate description of the firearm before starting the process and investing that much money into that purchase.
A Uh-huh.
Q Fair?
A Yes.
Q And also, you are going to start a process that's going to probably take months to reach fruition because there are some forms that have to be sent off to ATF to approve the transfer. So there were several occasions when Dr. Mann got the weapon that he called you up and expressed his displeasure with the weapon or the way it functioned. That would be a fair statement?
A Once or twice, that would be fair.
Q Do you remember a Bren, I think it's MK2?
A I sold him a Mark 2, yes, that's correct.
Q Mark 2. Let me get the terminology right. If I see MK, that means Mark?

A Mark 2.
Q All right. For $10,000?
A No, that's not correct. About $3500 would be more correct.
Q Do you remember a Bren Mark 2 that had a damaged receiver?
A No, I do not. The one that I sent him, when it left my house, it didn't have a damaged receiver. Fact is he came to my house and looked at it.
Q The Bren Mark 2 that you took back because he complained of the damaged receiver, are you telling me that didn't happen?
A Not to my knowledge, it did not, if we're talking about the same weapon.
Q 7.7, was it .303-caliber?
A No. .303 British is a Mark 2 caliber.
Q Is that the gun we're talking about that --
A We're talking about two different guns here.
Q All right. 303-caliber Mark 2 that had a damaged receiver.
A The one I sent him didn't have a damaged receiver.
Q Let's globally talk about all the Mark 2s that you have ever sent him. Did you ever send him one that had a damaged receiver that you took back?
A Repeat that.
Q Of all the Mark 2s you have ever sent him, was there ever one with a damaged receiver that he complained of and you took back?
A I only sent him one, and I never did get it back. No, he

has still got it.
Q Did you sell him a 9-millimeter Suppress HMPS?
A I sold Dr. Mann one, yeah.
Q And was there a problem with that firearm?
A The finish on it was -- lacked a little bit to be desired. It could have stood refinishing, and Dr. Mann had it refinished.
Q And did he call you and essentially say, "This isn't what was represented to me?"
A Basically, that's what he said, but he also said, "I'll keep it, and I will have it refinished."
Q He said, "This is really not" -- did you send him a photograph of that firearm?
A I did not. I just gave him a verbal description over the telephone.
Q And was there a British Infield .223 caliber that would not fire automatically that you sold him?
A That's correct. He had to get that fixed also.
Q Did you promise to send him the parts?
A I promised to and then I -- I never could buy the parts. I looked and looked and looked and couldn't find them, and I ended up calling him a long time afterward and told him I couldn't find the parts for it.
Q Do you remember what he paid you for that gun?
A I do not remember, no.
Q And you are telling us you never had any problem with any

of your other customers like this?
A I never had any problem with anyone like I had with Dr. Mann. He was very, very picky.
Q But you had problems with some customers?
A No. I didn't have -- I didn't have problems with a lot of other customers. I might have had one here and one there with one problem, but with Dr. Mann, it was multiple problems.
Q So you had customers, at least here and there, that you had problems with other than Dr. Mann. I believe that's what you just said, wasn't it?
A Well, to give you an example of what I am trying to tell you. If I sold to someone --
Q That's a simple question, and I think you can answer yes or no.
A Yes.
Q And were there other firearms you sent him that you spent a lot of money for that didn't work like you represented they will work?
A That's correct.
Q When you testified about the M40 grenades earlier today --
A Uh-huh.
Q -- you testified that you took some acetone and rubbed -- took some acetone and rubbed some numbers off of them?
A Yeah. I took the manufacturing date off of them, and at the same time I wiped any fingerprints that may be on them off

of them before I shipped them.
Q And did I understand you to say you did that so whoever looked at them wouldn't know they were out of date?
A Right. They were 25 years old or older.
Q And you got out of the business in 2002, I believe you testified. Am I correct about that?
A Pardon me. What was that first statement?
Q You got out of the business in 2002?
A Yes. That's when my machinegun license expired.
Q And had you been contacted about some issues by the ATF around that time?
A Was contacted about what?
Q By the ATF around that time? Did you have some issues with the ATF?
A No. I never had any issues with the ATF. I had a few bad words with them, but I didn't have any issues with them.
Q Do you know whether -- do you know whether any of your transferees had issues with ATF over firearms you manufactured?
A I have had people call me and say that they have had receivers confiscated that I manufactured, but ATF never contacted me once on any of them.
Q Did some of these people contact you in 2000 or 2001 to tell you that they had had their receivers confiscated by ATF?
A I have had a number of people over the years, not just in 2000 or 2001, but all the way back into the mid '90s, that they

would go to a gun show or be out in public somewhere and have one confiscated.

Q Be out in public with their machinegun?

A Not a machinegun. All the M14s that they were confiscating were semiautomatic weapons, hunting rifles.

Q I want to ask you some questions about the 40-millimeter grenades that you testified about.

A Uh-huh.

Q There were two kinds of grenades that we were talking about earlier or you were talking to Mr. Gordon about earlier, right? We had a 40-millimeter grenade and then the other grenade, and I think you described the other grenade that you -- your testimony was that you provided six or eight of those to Dr. Mann.

A I believe there was eight concussion grenades.

Q Concussion grenade is in a cylinder?

A Yeah. It's in a black cylinder quite similar to that thing sitting on the table right there.

Q And that was a grenade that I said -- I believe you testified that law enforcement uses to stun people with?

A Right. They're used for entrances in buildings where they don't know what's inside, and they're used for training also.

Q The idea of that grenade is not to kill anybody?

A That's true.

Q It's just to stun, right?

A It's just to push you in the chest and get you off your

feet.
Q Disorient you. And are those sometimes called flash bangs?
A I have heard the term.
Q Okay. The wonders of modern nature, we get on the internet and find a photograph at noon. Does that look like -- absent the lettering on there, does that look like the grenade that we have been talking about?
A If you take the lettering off, that looks like the grenade we're talking about.
Q All right.
A Amazing.
MR. LASSITER: Your Honor, I will move to introduce Defendants' 19. I can see it's not by him an accurate representation, but if we took the letters off, he says it would be.
MR. GORDON: Can I see it?
MR. LASSITER: Sure.
MR. GORDON: Your Honor, my problem is we don't know the actual size of this thing, how big or tall or fat or round. I mean, it's a picture that -- I mean, it can be -- it's not helpful.
THE COURT: What is the objection, that the proper foundation has not been made, because I will sustain the objection as of now.
Mr. Lassiter, lay the proper foundation for it.

MR. LASSITER: Yes, Your Honor.

BY MR. LASSITER

Q Well, the six or eight grenades you were talking about were black and cylinder and they had a pin at the top and a lever and they were made to be thrown in, correct, or tossed?

A Tossed.

Q Tossed, right? And the cylinder, the body of that grenade, was it cardboard?

A Black fiber.

Q Yeah.

A Just exactly like that one sitting on the table there.

Q Did you tell the grand jury it was cardboard?

A Fiber.

Q Let's see.

A They are in a cardboard cylinder.

Q I'm sorry, sir?

A The grenade itself is in a cardboard cylinder for safety reasons, but the grenade shell that the explosives are in is hard fiber.

Q But not meant to -- that fiber -- look at page 21, and I put your grand jury testimony -- look at the top of page 21.

A Page 21.

Q I think you told them fiber/paper or fiber, paper?

A Uh-huh. That's correct.

Q But not meant to fragment again?

A That's correct; they're not meant to fragment.
Q And not meant to kill?
A They're just meant to push you off your feet.
Q Returning to the 40-millimeter grenades, you, I believe, testified that you got those from a Mr. Tom Ausley?
A Ausley, A-U-S-L-E-Y.
Q A-U-S, all right.
A St. Charles, Missouri. River Bend Ordnance is the name of his company.
Q Is it still open?
A His wife is running it now. He is dead. Died of cancer not long ago.
Q And did he bring those grenades to your house?
A In the back of a pickup truck.
Q Did he live in St. Charles at that time too?
A Uh-huh, that's correct.
Q If I remember what I read correctly, he brought them to your house in the back of a pickup truck in a flimsy cardboard box; is that right?
A That's correct.
Q And tell the ladies and gentlemen of the jury what else was in the back of that pickup truck.
A Tell them what?
Q Tell them what else was in the back of that pickup truck.
A Well, there was ammunition and lot of other stuff.

Q A lot of other stuff like a Claymore mine?
A Yeah.
Q And what you thought were other grenades?
A Yes, that's correct.
Q And --
A There were a lot of ordnance in there that I was not interested in.
Q That Claymore mine is an antipersonnel device; is that right?
A That's correct.
Q It's meant to kill people, right?
A That -- well, maim them or kill them, you are absolutely correct.
Q And would you tell them what it looks like and how it works?
A It's about that high and about that wide and it's curved and it has two little feet on it and it has several wires going to it for a detonation wire that you can take 15 or 20 feet away. And it also has an option of a trip wire underneath it to -- that you can pull out and set. And once you take the safety off, it's ready to blow up.
Q And he was driving around with the back -- with that thing in the back of his truck?
A Well, I suppose that is no more worse doing than driving around with all those 40-millimeter grenades.

Q Well, you guys in St. Charles at that time, did you drive around with mines in the back of your pickup trucks?
A No. I never do drive around with even ammunition in my pickup truck.
Q Did you drive around with Mr. Ausley some? Is he a friend of yours?
A He is an ordnance specialist. He knows what he was doing, or he did.
Q Did you go to Knob Creek with him?
A He used to go, but not with me.
Q And if I recall your testimony, you got the grenades and looked at the rest of the stuff in the back of his pickup truck, and at some point you tell us you repackaged these grenades in a heavier cardboard box?
A After I had talked to Dr. Mann and made a sale on them, that's when I -- they were in bandoleers when I got them, and I took each one out of the pocket of the bandoleers and wiped them clean and wiped the date off of them.
Q I understand what your testimony is. And then you put them in a heavier cardboard box?
A Heavy cardboard, yes.
Q And you shipped them out UPS?
A Yes.
Q Did you insure them?
A Heavens no.

Q Did you tell the man in the brown truck what the package was that he was picking up?
A No. They -- I was listed with UPS as a machinegun shipper and receiver, and they never did really look at anything I ever shipped.
Q You don't think they would care that they were hauling a bunch of grenades in the back of their trucks?
A I bet they would care. If I was hauling them, I would care.
Q You certainly didn't tell them that --
A There was absolutely no chance in the world -- maybe a fire only, but you would never get an explosion out of that box of grenades.
Q Do you think they would like to have known that?
A Pardon me?
Q Do you think they would like to have known that?
A Well, I would have.
Q Do you think you were violating some federal law by shipping grenades in a UPS truck?
A I probably violated several laws.
Q But you are not going to get prosecuted for that or anything else, are you?
A Yeah. That's correct, but they still wouldn't have blown up.
Q You hope.

MR. LASSITER: Your Honor, may I have a moment?

THE COURT: You may.

BY MR. LASSITER

Q Let me make sure I am doing some math correctly.

A Pardon me?

Q I want to make sure I am doing some math correctly. Ms. Couch reminded me of this. I may be confused, but didn't you testify earlier that you had three RPDs on hand in this time period?

A To the best of my recollection. If there was one more -- there couldn't have been any less. There might have been one more.

Q But you said earlier three, right?

A Right, that's what I said. I could have been mistaken one, you know, one on the upper side.

Q One went to Mr. Matthews?

A Yes.

Q One went to --

A That's exactly my line of thinking.

Q One went to Mr. Grozsowski?

A Uh-huh.

Q One went to Dr. Mann?

A Two went to Dr. Mann.

Q That makes four, not three.

A Well, I made a mistake on how many I made.

MR. LASSITER: I pass the witness.

THE COURT: Mr. Dudley?

MR. DUDLEY: Thank you, Your Honor.

BY MR. DUDLEY

Q Your involvement in this case began with a lie, right?

A What?

Q I said your involvement in this case began with a lie, didn't it?

A That it did.

Q When the ATF agent showed up at your door, first thing you did was lie to them.

A I didn't lie to them. They asked me if I knew this man, and I said, "Yeah, I knew him." And they asked me if I knew anything about it, and other than the guns, I said, no, I didn't know anything about it. In that regard, yes, I did lie.

Q Okay. First thing you did was lie to the ATF, right? And you lied to them because you thought it was in your best interest to lie to them, right?

A That's for sure.

Q Okay. So we have established that when you think it's in your best interest to lie, you will tell a lie, right?

A Only if you give me a letter of immunity.

Q You mean if I give you a letter of immunity, you will tell a lie I want you to tell?

A No. I will tell you the same thing I am telling you right

now.
Q All right. Who was that ATF agent that showed up at your door?
A I have got his card, but I don't remember his name.
Q Was it David Oliver?
A No. He is in Little Rock.
Q Okay.
A This was a St. Louis agent.
Q Whoever that ATF agent was that showed up at your door, did that agent tell you you might get prosecuted?
A He didn't say -- he just asked me if I knew about the situation, and I said no.
Q And that was the end of the conversation?
A And, well, small talk and that was the end of the conversation.
Q Okay. And then you got a subpoena and you came to Little Rock?
A Right. A different ATF agent came out with the subpoena.
Q And you came to Little Rock to testify before the grand jury?
A Yes.
Q And that was June 3, 2009?
A I don't remember exact day, but it was somewhere where -- in your area.
Q Okay. And when you came down here to testify before the

grand jury, you were shown Government Exhibit 111, right?
A Yes.
Q And let me ask you, has the government ever showed you any other gun other than Government Exhibit 111?
A No.
Q That's the only gun you have seen?
A Yes.
Q All right. And you got to examine that before you testified to the grand jury?
A Yes.
Q You did that at the ATF office?
A Yes.
Q Was it in a lighted room?
A Dimly lighted room.
Q Dimly lighted room. Did the ATF not have an office that had lights in it where you could look at the gun?
A Maybe at the time they had them turned off. I don't know.
Q So the ATF wants you to examine this gun in a room that had no lights on in it; is that right?
A That's correct.
Q And you didn't tell them, Look, I need a flashlight or take this gun somewhere to a room where I can see it properly?
A Well, I moved it over underneath the one light they had in the room.
Q Oh, they had one light in there, and you got to put it

under that light?
A Yes.
Q Now, you told this jury this gun isn't the one you manufactured because of the magnet, right?
A Uh-huh.
Q And you also told them that you can tell it wasn't a gun you manufactured because of the weld on it is different?
A That's correct.
Q And you also told them you can tell it's not yours because you can tell that 1442 etched on there wasn't put there by you?
A It doesn't have my name on the side of it.
Q Now, when you put that gun under a light in the ATF office, could you see the weld on this gun?
A Couldn't see it very well, and I couldn't see the 1442. I didn't see the 1442 until later.
Q What was it that prevented you from seeing the 1442 on the gun?
A The light, the shadows.
Q Okay. So you couldn't see that gun well enough to tell whether you manufactured it or not, right?
A That's correct.
Q And when you got in the grand jury room, were you shown photographs of that gun?
A Shown what?
Q Photographs.

A No.
Q You didn't see any photographs of that gun when you were in the --
A Not that I can remember.
Q Okay. Did you tell the grand jury, Mr. Hahn, after you had a chance to look at that gun -- by the way, the ATF only give you five or ten seconds to look at it?
A Well, they gave me some minutes.
Q Okay. They didn't rush you. Did they let you open the top of it there if you wanted to?
A Well, I did it on my own. I opened it.
Q You did it on your own, and you had this gun under a lamp, right?
A Yes.
Q Is that right?
A Yes.
Q And this gun has the weld on it, right?
A That's correct.
Q And you had the gun under the lamp where you could look at the weld, right?
A That's correct.
Q And today you're saying you can tell the weld is not yours, correct?
A That's correct.
Q And today you see the 1442, but when you looked at it

before the grand jury, you didn't see the 1442?
A I did not.
Q And when you got in the grand jury, the government actually showed you three photographs of that gun, didn't they?
A I don't remember.
Q Okay. Well, let's refresh your memory.
MR. DUDLEY: May I approach, Your Honor?
BY MR. DUDLEY
Q Do you have your grand jury testimony in front of you?
A Uh-huh.
Q Let's turn to page -- if you would, turn to page 18. I am going to read beginning at line 3. You just read with me and make sure I read it correctly, all right?
A Uh-huh.
Q The question to you was, "I am going to show you Exhibit 75, 76, and 77. Do you recognize those?" You said, "Yes. It's a illegal RPD that I sold him," right?
A That's what it says.
Q Okay. And 75, 76, and 77 were photographs of the gun, were they not?
A I do not remember.
Q Okay. And the next question is, "And you know that because, before you testified this morning, we took you to a gun vault and actually pulled that out and showed it to you." And you said, "Yes. I recognize my machine work on it." And

that -- wasn't that your answer?
A Yes.
Q Wasn't that your answer?
A Yes.
Q Now, your machine work is where you welded it, right?
A The gun that -- right behind you is not mine.
Q That's not what I asked you. Your machine work is your welding, right?
A That's correct.
Q And so you told the grand jury, Not only did I have a chance to look at the weld on that gun, I looked at it and know that I did it because "I recognize my machine work." Isn't that what you told the grand jury?
A I do not remember.
Q Well, I am just reading it to you. Isn't that what you told the grand jury? Yes, I recognize my machine work on it.
A I can recognize my work, yes.
Q That's what you told the grand jury, right?
A Let me read it.
Q Read it.
A Yes. But that's inaccurate.
Q Let's read the next one. And you actually examined the gun and -- and you said, right, you could see the weld marks on it where "I've welded it back together," right?
A Yes.

Q Is that a lie?
A It's inaccurate.
Q Okay. Is there a difference between being inaccurate and lying, sir?
A The problem was I didn't have a magnet with me at the time that I looked at that gun originally.
Q Okay. You told the grand jury under oath, the same oath you're under today, that you recognized your machine work on the gun, right?
A Yes.
Q And you recognized your weld on the gun, right?
A Yes.
Q Now, read to the grand jury where you said, "but I didn't have a magnet to check." Can you read that to the grand jury, sir?
A What line is it?
Q It's not in there, but I am going to give you a chance to find it if you think it is. You didn't tell the grand jury, Oh, I can't tell whether this gun is mine because I didn't have a magnet to examine the gun with, did you?
A I didn't look at that gun and really investigate --
Q That wasn't my question.
A Okay.
Q Did you tell the grand jury, I can't tell if this is mine because I didn't have a magnet to check?

A No. I told the ATF; I did not tell the grand jury.
Q What you told the grand jury is, That's my gun because I recognize my machine work and it's got my weld on it, right?
A That's what it says.
Q Now, after you testified to the grand jury, did you meet with the ATF again?
A After I testified, they brought the gun to my home, and I looked at it a little closer.
Q Okay. So you met with the ATF how many times after you testified?
A Two or three times.
Q Two or three times. Did you meet with the U.S. Attorney after you testified?
A Just -- the U.S. Attorney, just the one time.
Q So you met with the ATF two or three times and you met with the U.S. Attorney one time and now you are coming in here and telling this jury something entirely different than you swore under oath to the grand jury, right?
A You're correct.
Q Let's talk about the grenades, the 40-millimeter, high-explosive grenades.
A Uh-huh.
Q You told this jury, I think, that you sold Dr. Mann approximately 100 of them.
A Approximately. Give or take a few.

Q Okay. And has something happened from the time you testified to the grand jury until today to make you change the number you say you sold to Dr. Mann?
A No. I am -- before I thought it was like 90 or 93 or '4 or something. And I thought about it on the way over here today, and it's probably closer to 100 because they came 100 in a container.
Q Well, let's talk about that. When you testified before the grand jury, did you know that grenades had been found on property close to Dr. Mann's house?
A I did not. At that time, I didn't know.
Q Okay. And you didn't know how many grenades had been found there, right?
A No, I didn't.
Q And you told the grand jury you sold Dr. Mann 90 to 92 grenades, right?
A I think that's what I told them. I can't remember.
Q Well, we can pull it out and look at it. I don't want the jury to have to guess at what you said. Go to page 11 of your grand jury testimony.
A Yeah. 90 or 91. It's on the first line.
Q 90 or 91 or '2, right?
A Yes.
Q That's what you testified to the grand jury, right?
A Yes.

Q And at that time you didn't know that grenades had been found on property close to Dr. Mann?
A Right.
Q So you didn't know how many grenades had been found on property close to Dr. Mann, correct?
A That's correct.
Q You learned that after your grand jury testimony, didn't you?
A That's correct.
Q And you learned how many grenades were found after your grand jury testimony, right?
A That's correct.
Q So today you say 100 instead of 90 to 92, correct?
A That's correct.
Q Because if it was only 90 to 92, it wouldn't quite match up with the 98 that were found close to Dr. Mann's property, would it?
A I didn't know there was 98.
Q Well, you knew it before you testified today, though, right?
A Yes, I did.
Q And you told the grand jury that you shipped these grenades to Dr. Mann, right?
A In a Crown box.
Q I thought you said today when you were testifying that you

shipped the grenades to Dr. Mann in the box that you received them in.

A No, I did not say that.

Q You did not say that?

A No.

Q All right. You told the jury today that you pulled each one of these grenades out and wiped them down, right?

A The 40-millimeter, that's correct.

Q Okay. And you also took the date of manufacture off of each one of them?

A That's correct.

Q Okay. How were the grenades packaged?

A In bandoleers, cloth bandoleers, one in a pocket.

Q One in each pocket?

A Yes. And I don't -- I can't remember how many pockets were in a bandoleer, but -- I don't know. Maybe eight or ten. I can't remember.

Q Okay. But the bandoleers are these things you sling over your shoulder, around your neck, however you want to carry them, right?

A That's correct.

Q And these bandoleers have one pocket for each grenade, correct?

A Uh-huh.

Q Was there anything else in the pocket of the bandoleers

other than the grenade?
A I don't think so.
Q They were just a cloth. These --
A It had a little pocket with a round in it and a little flap that you could pull out that keeps it from bouncing out when you are walking.
Q But the bandoleer itself is cloth?
A Cloth. Olive drab color.
Q And these grenades are this size?
A Yes.
Q Okay. And you are saying these bandoleers had individual pockets for each grenade?
A Yes.
MR. DUDLEY: Your Honor, I would like to see Government's Exhibit 97-A1.
MS. WHATLEY: Actually, it's 99-A1.
MR. DUDLEY: I'm sorry. I never get my numbers right.
BY MR. DUDLEY
Q These are bandoleers that they were packaged in?
A Turn it around so I can see it.
MR. DUDLEY: May I approach, Your Honor?
THE WITNESS: No. They're not the bandoleers they were packed in.
BY MR. DUDLEY
Q Okay. So these then are not the bandoleers that you

shipped grenades to Dr. Mann in, right?
A That's correct.
Q I tell you what, before I leave that, you know that, No. 1, because these don't have individual pockets, do they, sir?
MR. DUDLEY: May I approach, Your Honor?
THE COURT: You may.
THE WITNESS: They are more heavily made than the ones they ship 40-millimeter in.
BY MR. DUDLEY
Q Okay. And this one also had plastic cups in the bottom that the grenade fit into, right?
A That particular bandoleer does. The bandoleers I had didn't.
Q Okay. But you shipped the grenades you shipped to Dr. Mann in the bandoleers that you described, correct?
A Yes.
Q And it wasn't these?
A It wasn't those.
MR. DUDLEY: That's all I have, Your Honor.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY THE COURT
Q Mr. Hahn, do you have your grand jury testimony up there with you?
A Pardon me?

Q Do you have your grand jury testimony still?
A Uh-huh.
Q Let's turn to page 10.
A Okay.
Q Down at the bottom, line 23, you were asked the question, "Tell us quantity-wise, how much did you get from Mr." -- how do you say the name, Ausley?
A Ausley.
Q And what was your answer?
A I paid Mr. Ausley $14 each for them.
Q Keep reading to the next page.
A And there were approximately -- I can't remember. I don't know. Maybe 90, 91, 92 in a box, I can't remember. And I sold them to Dr. Mann for $55 each.
Q Okay. And you testified in front of the grand jury back on June 3, 2009; is that correct?
A Yes, that's correct.
Q We didn't let you review this before you testified, did we?
A No.
Q So are you just trying to remember things the best that you can?
A That's exactly right. Trying to -- a lot of things I can't remember. I am 71 years old.
Q And you specifically remember the bandoleers that you sent the --

A I remember they were flimsy cloth bandoleers, and those are very expensive bandoleers.

MR. GORDON: May I approach, Your Honor?

THE COURT: You may.

BY MR. GORDON

Q I am going to hand you 99-A.

A You have a picture of the bandoleers in that picture you showed me earlier today.

Q Okay. Well, here, do you think -- are those flimsy to you or are those high quality?

A They are higher quality than the ones that they came in.

Q All right. I think the picture I showed you before was 9 -- 98-B. Let's look at that. That's a guess.

A You have a picture of a canister with the rounds in it, and you could see the bandoleers in the bottom of the canisters. That's the type of bandoleers that they were packaged in.

MR. GORDON: I need G. Let's look at that.

BY MR. GORDON

Q So that's what they looked like?

A The ones that are folded over that you can see the tips is what they looked like, but these are practice grenades. And these -- and the HEs were packed in individual little pocket bandoleers like the one you can't see the top of in the upper right-hand corner of that container.

Q And tell us again approximately when you sold the

40-millimeter grenades to Dr. Mann.

A To the best of my knowledge, '90s, late '90s.

THE COURT: Anything else for Mr. Hahn?

MR. DUDLEY: No, Your Honor.

THE COURT: We have been going about an hour and 20. Do you want to take a break now or do you want to keep pushing on? How many witnesses do we have in the back?

MR. GORDON: At least two. There may be three.

THE COURT: Do you want to push on?

Jury, do you-all need a break or do you want to keep pushing?

JUROR 12: Push.

THE COURT: Let's keep pushing. You know that doesn't mean we're going to get out early today. It's like when you drive fast or drive slowly and you still get there at the same time. It doesn't matter.

MR. GORDON: Your Honor, I have got two exhibits I would like to offer at this time. Government Exhibit 192 --

MS. CASSINELLI COUCH: Your Honor, we just want to make clear for the record that the photograph that Mr. Lassiter was using was Defendants' 19. It was not admitted. Identified, but not admitted.

THE COURT: Now, I think I -- I sustained the objection as to admitting it, but I said lay a proper foundation. Are you still -- are you going to move it into evidence at some point or

are you just going to hold it right now?

MS. CASSINELLI COUCH: Right now we just want the record to be clear it's been identified, but not admitted.

THE COURT: Okay.

MR. GORDON: Your Honor, at this time I would like to offer into evidence Government Exhibit 191 and Government Exhibit 192.

MR. HENDRIX: No objection, Your Honor.

MR. GORDON: For the record, Government Exhibit 191 --

MR. DUDLEY: What are they?

MR. GORDON: Oh, I'm sorry.

MR. DUDLEY: No objection, Your Honor.

THE COURT: They're received.

(Government's Exhibits 191 and 192 received in evidence.)

MR. GORDON: For the record, Government Exhibit 191, these are the federal explosives license records for Thomas Ausley, doing business as River Valley Ordnance. And then Government Exhibit 192 is Mr. Ausley's death certificate.

THE COURT: Okay. And that's the gentleman who died of cancer? Is that what the testimony was?

MR. GORDON: Yes, Your Honor.

THE COURT: I just wanted to make sure.

MR. GORDON: Can we approach on something?

(Bench conference reported as follows:)

MR. GORDON: I know previously we had asked the Court

if we could bring in the live grenades and we were told no and we asked about instructing the jury. We would ask for them to be instructed at this time because when we bring them in to show the numbers that have been wiped off the grenades --

THE COURT: Let me re-think that. I, for safety purposes, excluded the live grenades, but all the evidence I have heard so far is that you actually have to shoot them, they have to turn 15 times. I think there has even been testimony this morning by Mr. Lee that they're the safest thing going -- or maybe that was Hahn. I think I'm mixing them all up -- and that it would take so much for those to go off that, you know --

MR. CRABTREE: When those come in, can I go to the restroom?

MS. CASSINELLI COUCH: I don't trust Mr. Hahn.

THE COURT: Well, considering he testified that he goes fishing with them.

MR. GORDON: Those are the other grenades.

THE COURT: Everybody still feel the same or anybody -- are you still --

MR. DUDLEY: I was in the Army and I was around them and if they're going to do it, I would suggest one, not the whole 98. Surely you can show one examplar.

MS. CASSINELLI COUCH: I think we have seen photographs that show --

THE COURT: I think the photographs show what has been

wiped off. I don't know that we need to have any, but --

MS. CASSINELLI COUCH: Have any of us seen the grenades? I know I haven't.

MR. GORDON: I have no idea if you did or not.

MS. WHATLEY: We volunteered for you to see them, but I don't know if you ever asked to see them.

MR. DUDLEY: You didn't volunteer for me to see them. I would have come look at them.

THE COURT: Since I have heard the testimony, I feel fairly comfortable.

MR. DUDLEY: Can I make a suggestion? Can you just ask the jury whether they would be okay with that?

THE COURT: Do you-all have a problem with me asking them whether they're -- I mean, I will just ask them and say, "Hey, I excluded them from the trial for safety purposes, but based on the evidence I have heard so far about them having to be launched with -- do you feel comfortable having them come in?" If anybody feels uncomfortable --

MS. WHATLEY: It's up to you.

THE COURT: -- we will deal with the pictures and not the actual grenades.

MS. WHATLEY: And just also for the record, Judge, so it's clear, it wasn't just lay witnesses that testified they weren't dangerous. It was also an expert.

MS. CASSINELLI COUCH: I would rely on the expert, not

on the lay witness.

MS. WHATLEY: I am just putting that out there.

THE COURT: But I think the evidence that has come in is that for those type of things to explode, they have to turn 15 times and be shot out of a launcher and, therefore, the likelihood --

MS. CASSINELLI COUCH: Except for a defective one that falls on the floor.

MR. DUDLEY: When I was a soldier I carried them on my shoulder and ran with them.

THE COURT: What if we do not bring them?

MR. GORDON: If you don't want to see them, we're not bringing them in.

THE COURT: But say that we have -- you have seen pictures of them. It's just -- well, I will ask them.

MS. CASSINELLI COUCH: If they, if you decide to bring them in, may --

THE COURT: We will bring one. We don't need all of them. I know it doesn't have the same effect.

MR. GORDON: I guess we don't need all of them.

THE COURT: Just bring in an example and then you have a can of them, or do you want to -- I don't know if I want to have a can of ordnance in here.

MS. WHATLEY: I am just thinking if the marshals are listening to this, they are freaking out.

I have held them.

THE COURT: Where are they now?

MR. GORDON: Camp Robinson.

THE COURT: The marshals are going to have a fit if I let those things come in because they raised holy heck about bringing them over here. They really did.

MS. WHATLEY: Tell them to read the testimony then.

THE COURT: Let me talk to the jury. And where -- when would we bring them in? We wouldn't bring them today.

MR. GORDON: We would have to go get them and bring them.

(Return to open court.)

THE COURT: Ladies and gentlemen of the jury, this is where your participation becomes important. Normally you don't get to participate until the trial is concluded and we give the case to you and you decide it. Well, we have an issue here.

Now would be the time in the case normally -- or would be the case in this case where the parties would bring in the actual grenades so that you can see them and some of the markings made on them that you saw in pictures. Before the trial began, I entered an order essentially excluding the grenades from the courtroom, the live grenades, and the reason -- not the hand grenades, but the 40-millimeter that you shoot from the rocket launcher and -- or from the grenade launcher. I excluded that because -- out of safety. For one

thing, I didn't want to bring those into the courthouse because something could go wrong and bad things could happen to all of us.

I think the way the testimony has come in -- I am not going to comment on the testimony, but I think all of the people who testified so far -- has been that you actually have to shoot those from a grenade launcher for them to actually explode. And I think we have heard testimony about that, and I will let you recall the testimony.

Question being -- question being: How do you feel about it? Do you want to see -- and I will just throw it out there. Do you want to see the actual grenade or do you feel comfortable looking at the pictures and ultimately making a determination based on the picture you see? Everybody who would be opposed to an actual grenade coming in that's live, coming into the courtroom, raise your hand. Okay. I have two. I have three. We have some tepid responses over here. We have 3 out of 14 who have an objection to it, and those who have no objection to it, raise your hand.

(Show of hands.)

THE COURT: Well, we are not going to do this by -- we're not going to do this by democratic vote. What I am going to do -- if it had been unanimous to bring the grenades in, then I would have gone and worked it out with the U.S. Marshals to do it, but in that we have people who are somewhat concerned by it,

we will just proceed as we have been. And I understand that -- understand that the decision not to bring them in is my decision. Okay?

All right. We will proceed. Call your next.

MS. WHATLEY: Ed Starr.

EDWIN STARR, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY

Q Good afternoon.

A Good afternoon.

Q Please state your name.

A My name is Edwin Starr.

Q And what do you do for a living?

A I am a special agent with the bureau of alcohol, tobacco, firearms, and explosives.

Q And how long have you been an ATF agent?

A Since June of 1999.

Q Do you have any military experience?

A I do.

Q What's your military experience? Okay. Briefly, what's your military experience?

A I graduated from the United States Military Academy in 1988. I was assigned to the first cavalry division. I served with the first cavalry division at Fort Hood, Texas, in the first Gulf War. I left active duty and served in the Texas

National Guard full time. I was the commanding officer of their counter drug task force in Dallas until I was hired by ATF in 1999.

Q And are you actually still in the guard?

A Yes. I am in the Arkansas National Guard.

Q As part of your duties with ATF -- are you -- let me ask this question: Are you a part of ATF Little Rock?

A Yes, I am.

Q And how long have you been in Little Rock?

A My entire career, since June of 1999.

Q And as part of your duties with ATF, are you tasked with maintaining any explosives that the Little Rock office has?

A Yes. I am the custodian of the explosive evidence bunker at Camp Robinson.

Q And in connection with this case, does ATF have any explosives in its possession?

A Yes, we do.

Q And what type of explosives do you have?

A 40-millimeter HE grenades.

Q How many do you have?

A 98 and one training round.

Q Let me show you Exhibit 118-D. D as in dog. Are these the grenades that you were talking about?

A Yes, they are.

Q In preparation for trial, were you asked to go out to the

bunker and pull those grenades?
A Yes, I was.
Q Are there any markings or numbers on the grenades?
A Yes, there are.
Q And what type?
A There are ammunition lot numbers, and there is a separate lot number that describes the cartridge base of the 40-millimeter round.
Q Can you pull that mike up just a little closer? I am having trouble hearing you.
MS. WHATLEY: I want to look at Government Exhibit 120-E.
BY MS. WHATLEY
Q Is this one of the lot numbers you were talking about?
A Yes.
Q And what lot number is this?
A That is the ammunition lot number describing the entire round.
Q So that goes with --
A Unit of ammunition.
Q So the entire thing, top to bottom, this is its lot number?
A Yes.
Q Then is there a separate lot number also on these grenades?
A Yes, there is.
Q And what does this lot number go to?

A It refers to the cartridge which is the metal, I believe, base which launches the grenade projectile.
Q And if you can, touch the metallic base on the screen.
A (Complies.)
MS. WHATLEY: Now let's go to Government Exhibit 120-F.
BY MS. WHATLEY
Q Is this part of the markings that are on the cartridge?
A Yes. Those are the markings that I am referring to.
MS. WHATLEY: And going to 120-D as in dog.
BY MS. WHATLEY
Q What is that?
A That's the photograph of the 40-millimeter cartridge base.
Q And is this the actual lot number for the cartridge itself?
A Yes, it is.
Q And when you talk about the lot number, can you kind of draw a line under it? I think there is a pen up there you can use.
Have you looked at all 98 of the grenades in this case?
A Yes. I looked at every one.
Q And is this number on all of them?
A Well, parts of those numbers are on all of them.
Q What do you mean parts of the numbers?
A I mean that, as you can see, the M118 ACN-11. And then there is a 14 and another 11. And in some of the photographs you can see where there are additional digits that have been

removed.
Q And how can you tell they have been removed?
A If you look at the cartridges carefully, you can see the remains of the ink that was printed on the cartridge. These numbers are printed on in ink. They're not stamped or engraved into the metal. So if you look at them carefully, you can see where there is the remains of additional digits.
Q And how carefully do you have to look at it?
A Well, if your near vision is pretty good and you hold it in your hand, you can see it.
Q And in some instances you kind of have to turn it toward the light just so?
A You do.
Q And what's the other number that's after the 11 that you can see if you hold it just so?
A In some cases you can see the last two digits are 74.
Q Did you assist with having photographs taken of those grenades?
A Yes, I did.
Q And were some of those photographs taken with a high-powered camera?
A Yes, they were.
Q And what was the purpose for taking the photographs with a high-powered camera?
A So that you could have a picture with enough resolution to

see the remains of the missing digits.
Q Was it always just the 74 that was missing from the canister?
A No. There is some variation. Some of them have the middle pair of digits there, the 14, has been removed and all you can see clearly remaining is the ACN-11. And in some cases, all you can see remaining is 11-14. The vast majority of them have ACN-11-14 and 11.
Q And these photographs that we talked about, did you kind of take a representative sample of all 98 grenades?
A We took representative sample photographs.
Q So we don't have a photograph for each of the 98 grenades?
A We don't. I took notes of the markings on each grenade.
Q Okay.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY
Q I just handed you what has been marked for identification as Government Exhibit 193-A through 193-F. What are these?
A These are the photographs I had taken of the 40-millimeter grenades.
Q And are these the ones that were taken with the high-powered camera?
A Yes, they are.
Q And do they fairly and accurately depict what the grenades

looked like through the high-powered lens?
A Yes, they do.
MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibit 193-A through 193-F.
MR. HENDRIX: No objection.
THE COURT: They're received.
(Government's Exhibit 193-A through 193-F received in evidence.)
MS. WHATLEY: If we can look at 193-A, please.
BY MS. WHATLEY
Q What numbers are missing off of the grenade pictured in 193-A?
A If you look closely at the black ink printed numbers at the bottom of this example, you can see -- clearly see the ACN and the 11-14 and then a dash and then the majority of the second pair of 11 has been removed and you can barely, faintly see the remains of the 74.
Q Can you circle that, please?
And that's the 74 that you are circling?
A Yes.
Q Mr. Gordon doesn't like your circle. Please, can you redo it and make it a little bit bigger?
MS. WHATLEY: Are you happy, Mr. Gordon?
MR. GORDON: No objection.
BY MS. WHATLEY

Q Okay. And each grenade -- well, on this grenade, it has a 25 on it. Is each separately numbered 1 through 98; do you recall?
A I don't recall.
MS. WHATLEY: Okay. Can we go to 193-B?
BY MS. WHATLEY
Q This appears to be a grenade with the No. 8 on it, and what is missing off of this one?
A Again, you can see the -- clearly see the pair of digits, 11-14, and you can see the top part of the second 11 has been removed and the dash 74 has been almost completely removed, but you can faintly see the remains of the digits 74.
Q Circle that for us, please, with a big circle.
MS. WHATLEY: Go to 193-C.
BY MS. WHATLEY
Q This appears to be a Grenade No. 13. What's missing off of this one?
A This is an example of one that has had nearly all the digits removed following the ACN. Only the faint remains of 11-14-11 is visible and the 74 is hardly visible at all, even through this high definition photograph.
Q And just so that we're clear, each one of these pictures was taken with a high-powered lens?
A Yes.
Q It's not just a regular camera taking the picture?

A It's a specialty camera to show a lot of detail.

MS. WHATLEY: We can go to the next picture, 193-D.

BY MS. WHATLEY

Q It appears to have a 27 on the grenade. What is the number -- what number is missing from this one?

A In this photograph you can see the 11- -- I'm sorry -- the 14-11 and then you can barely see the remains of a dash and then there is hardly anything left of the 74. And even on this photograph, you have to look very closely to see anything where the 74 was initially printed.

Q Will you circle where the 74 should have been?

MS. WHATLEY: Let's go to 193-E, is what I think we're up to.

BY MS. WHATLEY

Q Grenade No. 28. What's missing from this one?

A Here you can see the first 11 and the part of the 4 in 14 and you can barely see the remains of the second 11 and hardly see any of the 74.

MS. WHATLEY: Let's go to 193-F.

BY MS. WHATLEY

Q Is it actually better on the picture you have in front of you?

A It's much better on the picture I have.

MS. WHATLEY: May I approach, Your Honor?

THE COURT: You may.

BY MS. WHATLEY

Q Can you flip for me? What numbers are missing from this one?

A In this photograph you can see the second pair of 11 digits have been very lightened, and the 74 is still slightly visible.

Q And is this a fair representative sampling of the grenades that are out in the bunker at Camp Robinson?

A Yes, it is. On every grenade the 74 has been removed, and on several of them the other digits have been removed to a varying degree.

Q If we had those pictures blown up on a very big cardboard or piece of poster board, does it help see it even better?

A It does.

Q Did you do that or cause it to be done for me?

A I did.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY

Q I am showing you what has been marked for identification purposes as Government Exhibit 194. Is this a really big picture of Grenade No. 25?

A Yes, it is.

MS. WHATLEY: Your Honor, at this time we move for admission of Government Exhibit 194.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 194 received in evidence.)

BY MS. WHATLEY

Q If you can speak into that mike I am handing you. It's on already. Come over on the other side of this.

Show the jury exactly what you were looking at on Government Exhibit 194. Be as specific as possible so that the record is clear.

A Again, I am referring to the digits which are printed at the base of the cartridge in ink, and you can see here ACN-11-14. And if you look closely, you can see there are additional digits that were printed here, and they were 11 and a 74.

Q And this picture as well was also taken with a high-powered camera?

A Yes, it was.

MS. WHATLEY: Mr. Williams, I am going to need you to flip that back if you don't mind.

May I continue, Mr. Gordon?

MR. GORDON: Yes.

BY MS. WHATLEY

Q I am going to show you Government Exhibit 125. It's going to be on the screen in front of you. We can go to the component section of this card. It's not the greatest copy in the world, but do you see under Components where it begins the listing of

the components?
A Yes.
Q Do you see where it says Cartridge on Line 1?
A I do.
Q What is the model number?
A M-118.
Q And what is the lot number?
A ACN-11-14.
Q And what is the date of manufacture?
A 11-74.
Q And what is the date -- what is the number that is missing from each of the 98 grenades?
A 74.
Q And, Special Agent Starr, just so the record is clear, you have looked at all 98 grenades?
A I looked at each of the 98 grenades.
Q And at least the last number was removed from every one of those grenades?
A That's correct.
MS. WHATLEY: Anything else, Mr. Gordon?
No further questions.
CROSS-EXAMINATION
BY MR. HENDRIX
Q Agent, was there -- were these submitted for any chemical analysis to determine whether any cleaning solvents such as

acetone had been used on them?

A No. Not to my knowledge.

Q Thank you.

THE COURT: You can stand down. Let's take a -- we have been going an hour and 55 minutes. Let's take 15 minutes, and we will come back at 3:30. We will be in recess until then.

(Recess at 3:14 p.m., until 3:29 p.m., jury not present.)

THE COURT: I wanted to ask the lawyers about scheduling so that we can kind of see where we are headed. I believe that the government said that they will probably rest on Tuesday or Wednesday. I think that's what we were told a couple of days ago.

MR. GORDON: I would say that's accurate.

THE COURT: Okay. Now, I know that it's very hard to assess from a defense perspective how much time you are going to need and whether you are going to have to make decisions about who to put on and what to put on, but do you have any ballpark figure to know about how long you will need to put on the case? I know that's hard to --

MR. HENDRIX: I have -- I could be just as accurate as I can. I think where we are is, over the weekend, we are going to be assessing where we are and what we need to do. I can tell you probably better Tuesday morning.

THE COURT: Here is what I would say. I think when we got started I told you I have the Eighth Circuit judicial

conference starting on -- it starts on the 9th. My flight is for the 10th. So the 10th of August -- I mean, if I need to cancel it, let me know early. If we have to push it back, I think I told the jury, because we had some people who, when we were putting together our jury, who were telling me that they were headed out of town or doing something on the 10th. So I just want to put that out there. Don't make any decisions. Don't even say anything about it right now, but just -- unless, Mr. Dudley, you just wanted to.

MR. DUDLEY: Judge, I will tell you with a fair amount of certainty, two days max.

THE COURT: Okay. And I just want to make sure -- and now, I don't know if I even asked you for -- to start thinking about your jury instructions. I know normally it takes hearing what the whole case is before we start doing that, but start thinking about it and what I normally do is I will get the proposed instructions from the government, proposed instructions from the defense, go through them, those that we can agree on, we agree on. And those that we can't, we just have to make a determination about it.

MR. HENDRIX: We have already done ours, and we may modify here. And that's another thing we can do over the weekend. We can e-mail them to Mr. Williams by Tuesday.

THE COURT: Just start thinking about it. Anything else we can --

MR. GORDON: I was talking to Mr. Dudley when you came in. We have got -- Mr. Kimbrough is next, and then we are re-calling David Oliver after him. And I was just trying to figure out if the parties wanted to break before David.

MR. HENDRIX: Break before Oliver and do Oliver Tuesday morning?

MR. GORDON: Start with Oliver on Tuesday.

MR. DUDLEY: May I ask, is this his last time up?

MR. GORDON: You can ask.

MR. DUDLEY: I don't intend to cross him until they put him on the last time.

MR. GORDON: Well, choose wisely.

MR. DUDLEY: Okay. Then, Judge, I will tell you I anticipate my cross of Mr. Oliver will probably be an hour long and I don't know how long -- they go before I do. So --

THE COURT: Well, let's do this. I mean, we can do it either way. We can either have him testify second today, do his direct and then do his cross on Tuesday, but then we leave him over a three-day weekend and that can work one of two ways. For defense sometimes that's left on the jury's mind, and sometimes for -- from the government, the idea is, well, by the time we get back here on Tuesday, they have forgotten what he said then. And so the defense is now crossing him and that's all they will remain. So I defer to the parties, whatever you want to do. I mean, we can break after this next witness.

MR. DUDLEY: It doesn't make any difference Judge.

MR. GORDON: Break after Kimbrough?

MS. CASSINELLI COUCH: Yes.

MR. GORDON: That's fine with me. Break after Mr. Kimbrough.

THE COURT: We can do that.

MR. LASSITER: One other matter, Your Honor. Mr. Hahn, we didn't mention on the way out. We request that he be subject to re-call. I don't know if he is still in the courthouse, but --

MS. WHATLEY: He is probably gone.

MR. LASSITER: I can subpoena him in our case if we deem that's necessary.

MR. HENDRIX: If we can get hold of him right now, we just forgot to ask one thing, if he is still here.

MS. CASSINELLI COUCH: I bet he will speed right back here if --

MR. HENDRIX: And he still happens to be here and if he can get back --

THE COURT: Are we ready to bring the jury back in?

MR. LASSITER: One question.

MR. DUDLEY: Don't say one, Jack.

THE COURT: Let's go on and bring the jury back in, and we can do this next witness. And if you want to tell your second witness, Oliver, if he is here that he can leave and come

back on Tuesday.

MS. WHATLEY: He is downstairs.

THE COURT: Okay. Who is the next witness?

MR. GORDON: Jeff Kimbrough.

THE COURT: What's the name again?

MR. GORDON: Jeff Kimbrough.

(Jury enters the courtroom.)

MR. GORDON: The United States calls Jeff Kimbrough.

THE COURT: Mr. Kimbrough, come forward and let me get you sworn in.

JEFF KIMBROUGH, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. GORDON

Q Good afternoon, sir. Please state your name for the record.

A Jeff Kimbrough.

Q Spell your last name for us, please.

A K-I-M-B-R-O-U-G-H.

Q And what do you do for a living, sir?

A I have an alarm system company.

Q What's the name of it?

A River Valley Alarm Systems.

Q And how long have you had that company?

A Around 18 years.

Q Are you the owner and the manager?

A Yes, sir.
Q How many employees do you have?
A Five to seven.
Q And what sort of services does your company provide?
A Burglary alarms, surveillance systems, fire alarms, proximity detectors.
Q Does your company also provide satellite TV?
A Yes, sir.
Q And where do you live around here?
A I live in Russellville.
Q Do you know Randeep and Sangeeta or Sue Mann?
A Yes, sir.
Q How do you know them?
A They are customers.
Q And what names do you know them by?
A I know them by both names.
Q Okay. And how long have you known them?
A Since around 2001.
Q And do you provide services for both their home and their clinic?
A Yes. We have both places.
Q Do you see Mr. and Mrs. Mann in the courtroom here today?
A Yes, I do.
Q If you would, please, point to Mr. Mann, Dr. Mann, and identify some clothing.

A Dr. Mann has the suit on, the tie, like a blue coat, with glasses.

MR. GORDON: May the record reflect he has identified the defendant?

THE COURT: It will so reflect.

BY MR. GORDON

Q How about Mrs. Mann?

A She has a brown top, glasses, some type of files.

MR. GORDON: May the record reflect he has identified the defendant?

THE COURT: It will.

MR. GORDON: Thank you.

BY MR. HENDRIX

Q Mr. Kimbrough, you provided services for the Manns' residence?

A Yes, sir.

Q Do you recall their address?

A 313 Milky Way in London.

MR. GORDON: Let's look at Government Exhibit 100-A.

BY MR. GORDON

Q It should pop up on your screen there.

Do you recognize that place?

A Yes, sir. That's their residence.

Q Can you tell us the first time you worked at the Manns' residence? The first time --

A The date?
Q Yes, sir.
A October 25th, 2001.
Q And what sort of work did you perform then?
A Worked on their satellite and their alarm system.
Q What kind of work?
A Service call. Some minor problems we repaired.
Q Okay. Did you work on their alarm system again in 2003?
A Yes, sir.
Q What kind of work then?
A Service calls. We had to add an addition to the residence. We had upgraded the alarm system and added some more devices.
Q And during the work on their home, were you personally involved?
A Yes, sir. I personally was involved.
Q And do you recall a residential wing being added to the Manns' home and a garage in 2004?
A Between 2003 and 2004, there was some additions added.
Q Okay. Let's look at Picture 100-A. Again, when you first worked on the Manns' home back in 2001, was all of this house present at that time?
A No, sir.
Q Which part was present?
A The middle part. The two-story on the end of that residence was added first, and then they come back and added the

garage on the left or the south side towards the lake.
Q Okay. And if you would, if you will touch the screen there, slowly draw a circle around the part of the house that existed in 2001.
And for the record, you have circled the center part of that house, the double garage door on the left facing the camera is excluded, and then the part of the house on the right that is set back was also excluded.
So in 2003-2004 is when the garage on the left and the residential wing on the right was added?
A I believe late 2003 or into 2004 is when we did all the work on the garage area.
Q What kind of work did you do at that time?
A Extended the alarm system, upgraded it. Put in new detectors, new contacts, new sensors.
Q Which parts of the house?
A The new parts and some of the old part.
Q Did you redo the satellite system?
A The satellite had been changed. The alarm system, we changed a lot of it that year.
Q And when you were working on the house in '03 and '04, with the expansion of the house, were you personally involved in that?
A Yes, sir.
Q And how long did that take to do?

A We were at that house probably three to four days, maybe five days.
Q And when the garage was added, what did you-all do to the garage?
A We put in fire alarms, sensors, door sensors.
Q On which doors?
A There is a door in the breezeway looking west towards the back of the lake. There is a door that goes into the garage right -- there is a door right here we added. And then inside where the -- there is two contained rooms. Inside that, we added sensors also in there, and we added motions. And where they stored their cars, there is also two big rooms in the back.
Q Let's look at 100-M. Does that show the garage that was added in '03 and '04?
A Yes, sir.
Q Okay. And on that back wall there, there is two doorways?
A Correct.
Q Are those the two rooms you were talking about?
A Yes, that is.
Q And what did you do to those two rooms?
A We put sensors in this door and this door.
Q What do you mean by "sensors"?
A There are storage compartments behind those doors. The one on the right had items and the one on the left. That way if someone, someone come into the house or someone tried to break

into it, it's going to set off the alarm. We tied that into the main house alarm system. That's -- as well as some other things in there.

Q What about the windows on the garage?

A There is not a sensor on the window, but there is a motion sensor that picks up that field.

Q Okay. How long did the work on the garage take?

A I think it was three to five days because we were tying things into the old house and into the new garage. Three to five days.

Q And since those additions were made to the house, have you been back to the Manns' residence?

A I went back on one service call on the garage area. There was a problem with one of the circuits and then we have been back for a couple of miscellaneous service calls until we turned -- took the system out.

Q Okay. Is it fair to say that, with all the work you have done in this residence, that you have been through the entire house?

A Yes, sir.

Q Been in every room?

A Yes, sir.

Q Been in the attic?

A Yes.

Q In the crawl space?

A Yes, sir.
Q Throughout the garage?
A Yes, sir.
Q When you were working on the house, did you see any guns in the house?
A Yes, sir.
Q Originally, where did you first see them?
A At the very first in the gun storage safe room.
Q Where was that?
A In the first floor of the original house on the northeast corner.
MR. GORDON: All right. Let's look at picture 100-M, please.
All right. That's not what I wanted. How about MM?
BY MR. GORDON
Q Okay. Do you recognize that room there, Mr. Kimbrough?
A Yes, sir.
Q Can you see the room where the guns were kept originally?
A (Indicating.)
Q Behind that back wall?
A The east wall of the weight room was where the gun safes were.
Q All right. Was it -- were they in their own separate room?
A There was a -- they are in a contained room, yes.
MR. GORDON: Okay. Let's look at 100-NN. PP.

BY MR. GORDON
Q Did the room look like that?
A Yes, sir.
Q Okay. Was there more stuff than what you see in that picture there?
A There could have been at the first. There were several guns in it.
Q Was there also stuff on the floor?
A Yes.
MR. GORDON: Let's look at 100-RR.
BY MR. GORDON
Q Did it look like that?
A Yeah. Somewhat like that.
Q More or less?
A Sometimes more.
Q Were there a lot of guns?
A Yes.
Q Were you concerned?
A I just always would tell my guys, you know, not to touch anything. I didn't want them to knock it over. I didn't know what state they were in.
Q And did you see ammunition in the house when you first started working there?
A Yes.
Q Where?

A Some in the gun safe, and then there was some under the crawl space.
Q All right. The crawl space.
MR. GORDON: Let's go back to 100-MM.
BY MR. GORDON
Q Do you see an entry to the crawl space in this picture?
A There is a little door that goes in that where we have to lock our circuits, and that goes up under the house.
Q For the record, it's on the right wall just after the third flag?
A Yes. The south wall of the weight room, yes, there is a little door.
Q And tell us what you saw in the crawl space.
A Just some boxes and things with type of shells and something in them.
Q Okay. And was there also ammunition in the gun room?
A There has been.
Q How much?
A I have seen -- we have seen a lot, several boxes.
Q Did you have a hard time going into the room?
A I have been in there to work because we have a sensor in there, but it's not a place -- you wouldn't want to be there a lot.
Q When the garage was added, do you recall there being anything in the storage rooms in the garage?

A Yeah. One of them was automotive supplies on the left, and then there was like a little armory on the right.
Q A little armory?
A It's how we labeled the alarm system door. We have a door we call the armory.
Q And what did you see in there?
A Shells, boxes, cases of ammunition.
Q Any guns in there?
A Never saw any guns, but I did see lots of ammunition in it.
MR. GORDON: Let's look at 100-R.
BY MR. GORDON
Q Is that the room we're talking about?
A Yes. That's inside the room.
Q Was there more or less than what was in this picture?
A Seemed like there was more, but I think it changed, you know, sometimes.
Q Did you ever see anything in the house other than guns and ammunition that concerned you?
A I have seen things that I told my guys not to touch.
Q Like what?
A To me it looked like a type of grenade or something, shells, a lot of big shells. I told them not to ever touch any of the stuff.
Q Okay. Did you see a grenade launcher?
A I have seen a grenade launcher.

Q Okay. What do you recall about the grenade launcher?
A The one I have seen, the first time, was just sitting and the gun -- it was on the floor, kind of laying against the wall.
Q Was it by itself or attached to a firearm?
A It looked to me like what I would think of as an M-16 with, like, a shotgun barrel under it.
Q Okay. Let's look at -- I will show you Government's Exhibit 109-A. Does it look like that?
A Similar to that, yes.
Q Did you ever see any machine guns on a tripod?
A Yes, sir.
Q Where?
A I have seen it in the old gun safe room, and I have seen it up in the living room, in the kitchen area.
Q Okay. And you talked about some shells. Where did you see the shells?
A Seen some shells in the gun safe room, and then up in the new garage, I have seen them there.
Q Okay. Describe these shells for us.
A Large. Just like a large bullet to me, what I would -- I don't know what they're called technically. They're as large as anything I have ever seen in a regular rifle. It looked like a real fat bullet.
Q Let me show you Government Exhibit 122.
MR. GORDON: May I approach?

THE COURT: You may.

BY MR. GORDON

Q Did it look like that?

A Similar to that, yes. Some were colored.

Q Okay. Similar how?

A They -- I don't think they were as polished looking. They were maybe tarnished.

Q Okay. Were they that size?

A Somewhat like that, yes.

Q That shape?

A They looked like a big shell to me, yes.

Q You said a fat bullet a few minutes ago.

A That's kind of what I remember them looking like.

Q Not like any bullet you have ever seen?

A No, sir.

Q Do you recall any other shells?

A Lots of large -- I don't know if it was to a machine gun, but there was lots of large shells there. Taller than that and skinnier.

Q Okay. What else did you see? Okay. Hang on. Taller than that and skinnier, what do you mean?

A Just longer. Several inches longer, but not as big around. But a lot taller.

Q Okay. What color?

A Like a -- I would say type of a dark brass, maybe black.

Q Okay. Show us with your hands about how tall these things were.
A Probably about something like that.
Q Okay. And give us -- how tall do you think that is?
A I would say 6 to 8 to 10 inches.
Q Okay. And about how round?
A I would say about 3/4 of an inch.
Q What else do you remember seeing?
A The only other thing I ever told my guys I had seen looked like some kind of hand grenades in some of the boxes and little strap canisters in the new garage storage, and I just told them make sure -- because we had some problems in the circuits -- just to not to touch it. We didn't know if it was real or if it was dummy. We didn't know what it was. I told my guys not to touch any of the stuff that was in there.
Q Okay. Describe what this hand grenade looked like.
A It wasn't like an old timey round one. It was kind of like a small can, smaller than like a can of something you get at the store. It had some type of clips on it.
Q What color was it?
A It seemed like they were dark, kind of a -- I don't know if they were black. Maybe something similar, something kind of like a dark color.
Q Let me show you Government Exhibit 69. Did it look like that?

A Something similar to that, yes.
Q When you say something similar, what's similar about that?
A Well, it had a little pin like that, and it was small enough that you could put it in your hand.
Q Do you remember it being a cylinder like that?
A Yeah, it was round.
Q Okay. You mean round like a ball or round like that cylinder?
A No. Round like vertical, tall. There were several of them.
Q And when you say you remember the pin, what -- on here, what are you talking about?
A The little ring.
Q This part?
A Whatever the ring would be.
Q Do you remember there being a large spoon like that?
A There was something on the sides of them.
Q Do you know what it was?
A No, sir, did not. It was just in a storage room. We had to move stuff around in there to get in there and work, and we had equipment in there. I just made sure they didn't hit anything.
Q Do you remember one time when you were -- when you came out to the Mann residence to fix a sensor in the garage and you ran into Dr. Mann's dad in the garage?

MS. CASSINELLI COUCH: Your Honor, objection. Leading.

THE COURT: Overruled. He can ask him if he remembers seeing Dr. Mann's dad out there.

BY MR. GORDON

Q Do you remember that?

A Dr. Mann's dad being in the new garage?

Q Yes, sir.

A Yes, sir, I do.

Q Is there a particular incident that sticks out in your mind when you were fixing the sensor in the garage and his dad was in there?

A Yes.

Q Tell the jury about it.

A I walked in to the door on the side of the new garage and he had a -- I believe it was two sawhorses with a piece of plywood and he had hundreds and hundreds of big shells and he was -- I think he was cleaning them, taking like steel wool or something and re-sorting them, but there were hundreds and hundreds of them on the plywood.

Q And you said "big shells." What do you mean?

A Large -- I guess to a machine gun or to a large rifle. Very big shells.

Q Any that looked like Government Exhibit 122?

A There were some like that, but there were some longer and taller, not as big around.

MR. GORDON: Let's look at Government Exhibit 98-A, please. 98-B, C, D. Let's try E.

BY MR. GORDON

Q Looking at 98-E here, Mr. Kimbrough, do you remember ever seeing anything like that?

A That's the kind of thing that I saw that I told my guys not to get around. It was in that storage room, yes. I didn't know what it was, but I have seen that type of stuff.

Q And just so we're clear, are you talking about the can or what's in the can?

A No. What's -- the stuff that's inside here.

Q 98-F, 98-G. Did you see any of that?

A I seen something similar to that, yes.

Q Which one?

A I have seen the colored -- I have seen this type, this orange tip looking stuff here. We have seen it, and then the darker stuff, I have seen it.

Q For the record, the one with the gold tip is the one that you have indicated that you have seen, the one on the left?

A And then I have seen this darker looking sides.

Q Mr. Kimbrough, the Manns have been your customers for how long?

A Since 2001.

Q When did their service end?

A Back in September of 2009.

Q Have they been good customers?
A Yes, they're good customers.
Q Do you have anything against them?
A I have nothing against them.
Q Do your kids know their kids?
A Yes.
Q Did you want to be here today?
A Not particularly.

MR. GORDON: No further questions.

THE COURT: Cross-examination?

MS. CASSINELLI COUCH: Your Honor, may I have just a moment?

THE COURT: Yes.

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH

Q Hi, Mr. Kimbrough. Hi there. I believe it was your testimony or I guess I took from your testimony that you are not a gun enthusiast. Not familiar about all these more complicated firearms?
A No, ma'am.
Q And I think you said you weren't sure what you saw. You are still not sure, are you? I mean, you couldn't tell us -- if Mr. Gordon held up a picture and said, Tell me what this is, you couldn't say because you don't know, right?
A The name or what I saw?

Q The name. What it is.
A I can tell you what I saw. The name of it, no, I do not know the name.
Q You can describe it, but you didn't know when you saw it whether it was a practice or fake or real, I think you said?
A Yes.
Q Is that right? Let's go back. I think you said that you do alarm systems and satellite stuff; is that right?
A I own a company that does satellite, yes. I do alarm systems myself. I own a satellite company.
Q So you have two separate companies?
A Yes.
Q And you work in the alarm side, but you own the satellite side too?
A Yes.
Q And do you have employees that work for you at the alarm company?
A What?
Q Do you have employees that work for you?
A Yes, ma'am.
Q At the alarm company?
A Yes.
Q How many?
A From five to eight. Just depends on what time of the year.
Q Okay. And you provided alarm service for the Manns' house

as well as the medical clinic; is that right?
A One of their clinics, yes.
Q And that service began in 2003?
A The house.
Q The house?
A Yes, ma'am. I believe the residence did.
Q And you installed that yourself; is that right?
A Me and my guys did. I programmed it. Because I have got the license, I have to be the one who programs it.
Q Okay. Tell us how you -- well, the Manns' house had an alarm system prior to the one you put in, right?
A Yes.
Q And then you came and put in a system. Maybe I should ask you, what all types of devices do you use when you put in a system in somebody's house?
A Depends on what they want, what they need.
Q Well, what are their options?
A Depends on what their -- you can detect anything that, any type of system -- whatever you are trying to protect, we can detect whatever would be in that presence.
Q Okay. Let me ask it. You use motion detectors?
A Basic motion, but motion -- there is lots of different ways to -- lots of different types of motion detectors.
Q Are most of them like a device that you put on a ceiling or wall that detects somebody moving in that area?

A Pretty much, yes.
Q And what kind of space does a motion detector cover. How many would you need in this room?
A It depends on -- you can program it different ways. You can go with two, three, four.
Q So maybe up to four, but maybe you could do it with two?
A You can make a motion do whatever area you want. You can take parts of it out. You can put alleyways in them where you can walk through it.
Q So if you wanted to split up your room, you can --
A Yes.
Q You put in fire, some kind of smoke detector or fire detector?
A Yes, ma'am.
Q Door -- put devices on the doors so if somebody opens the door, it goes off?
A Contacts.
Q And are those primarily the things that you used at the Mann's house?
A They had smoke, heat detectors. We had detectors under the house for fire, smoke, contacts on the doors, motion detectors, yes.
Q Okay.
MS. CASSINELLI COUCH: May I approach, Your Honor?
THE COURT: You may.

BY MS. CASSINELLI COUCH
Q Do you recognize this?
A Yes, ma'am.
Q What is it?
A That's the alarm monitoring agreement.
Q And you provided this to the government when they requested it; is that right?
A Yes. That's what they requested.
Q And was there a third page that went with this?
A Just -- it's just the agreement that we do for the state.
Q Okay. So it's what you need for -- okay. When you first went to the Manns' house -- okay. This is the picture of the Manns' house, right?
A Yes, ma'am.
Q And I think when you went there, you said just the middle part was there.
A Correct.
Q The garage hadn't been added on and the part to the right hadn't been added on looking at the picture?
A Yes.
Q Okay. Were you around, coming to the house every now and then when they were building those -- the end of the house and the garage?
A We came throughout, yes.
Q So you were kind of in and out during that time? And those

things were built separately, right?
A Yes, ma'am.
Q You said when you first installed the system, I think you testified on direct it took you three to five days?
A When we took it over.
Q Is that right?
A Two to three to five days that we worked on all the system, yes.
Q And at that point you only had to put -- I'm going to say detectors just including everything, in the middle part of the house, right?
A Well, we worked on the old system they had problems with. We fixed it. And they had problems with two or three of the devices, and we changed those out and put new ones in. And then we expanded and added the other parts.
Q Okay. On the -- when was the -- when did you go back and add stuff to the garage that they built?
A The new garage?
Q Uh-huh.
A In 2004.
Q And I think you testified on direct there were two kinds of storage areas off that garage, right?
A Yes, ma'am.
Q One of them had tire -- I mean, car parts and things?
A We called it the automotive storage room, is what we called

it.
Q Dr. Mann had a lot of cars, right?
A Yes.
Q And he had lots of car parts?
A Yes.
Q And the other room you testified you saw a lot of ammunition in?
A Yes.
Q Is that right? And on those rooms, did you -- what kind of sensors or --
A We have sensors on the doors. They're inside the doors. You can't see them.
Q Where does that go on a door?
A Depends on where we can put it.
Q Well, where did you put it?
A I think those are on the top.
Q What does the top of the door mean, like over the --
A Like the header of the door, up inside the door.
Q Okay. So on the -- on top of the --
A Top of the door. There is a header. They're recessed. You don't see it. And it's up inside it, inside the wall, and that ties back into the alarm system.
Q So it's actually in the doorway?
A It's in the doorway and in the door.
Q Okay. So you didn't have to -- you didn't have to install

anything up in the corners of that room, of those little storage rooms or anything?
A Yeah. We were all over those rooms. We have got cables all over it.
Q You have to run a cable around it?
A We ran cables to it, tied to the old part down into that house.
Q So it runs down the wall too. Did you have the main system down in the basement, crawl space?
A Well, it's underneath the house. To get to the house, you have to go into the crawl space and underneath the house and back up where we have the control.
Q Those storage rooms are on the outer wall, right?
A They're on the west wall.
Q Right. So if you had a door, I guess I just can't really picture that.
A The door is inside the garage.
Q Right.
A They are not exterior. They are internal doors.
Q Right.
A There is no way out of those rooms except through those doors in the garage.
Q And so your wiring would have run from the door down into the basement?
A No. The wires from the door going to the main plume. The

main plume goes over to the main house through other conduits.
Q Okay. And you put those in both rooms, correct?
A Yes, ma'am.
Q While you were over there, and I don't know when, but you were aware that Dr. Mann was a gun collector, right?
A Yes.
Q He told you it was his hobby?
A (Nodding head.)
Q You testified on direct, I think in response to Mr. Gordon's question, that you saw some things that caused you concern. Was that your testimony?
A Things I don't want my guys touching. We work in a lot of places like that where you go in there and you need to put your stuff in and you watch where you are, watch your surroundings.
Q And that's what you tell all your employees wherever they go, right?
A Right.
Q Don't touch people's stuff if you don't have to?
A Right.
Q And you testified that you saw several different firearms; is that right?
A Yes, ma'am.
Q Primarily in a room, in a gun room?
A Yes.
Q And tell me again where that gun room was?

A In the old part of the house on the northeast corner, downstairs on the east wall.
Q Okay. And what -- did you say there were safes in there?
A Yes.
Q How many?
A Four or five, I would say. Just guessing.
Q Are you sure there were safes in there?
A Gun safes, that's what they appeared to be. Sometimes they would be open.
Q Did they look identical to the safes that Mr. Gordon showed you?
A Identical? I don't remember them. I never took a picture of them. I just knew they were in there because we had a sensor in that room.
Q And those safes were just open sometimes?
A Sometimes.
Q Just like they were left that way?
A I guess. I didn't open them.
Q Dr. Mann was with you when you were at his house installing these things, was he not?
A The alarm system?
Q Uh-huh.
A Maybe once or twice, he was there.
Q So he let you come in his house without him being there and into his gun room with the safes open?

A Sue would be there sometimes or his dad. Sometimes his dad would be there or his mom or dad would be there.
Q Can you remember the times when his dad was there? I think you -- do you have a list of all the times you have been to the Manns' residence?
A I just pulled the service call times, yes.
Q Can you tell me when you saw Dr. Mann's dad there?
A I think the November 23rd-24th of 2004 and then the December 20 of 2004 his dad was there when we were working.
Q Is that the only time?
A No. He had been there before.
Q Okay. What other times?
A Probably the 6 -- May 16th of '06 and June 12. His mom and dad were there several times.
Q And so you're telling me Dr. Mann wasn't with you every time and sometimes you would go and his gun room would be open and his safes would be open and you would be there and he would not be?
A There would be family at the house. We have never been in the house without --
Q Listen to my question. Was he there? Was Dr. Mann there?
A Dr. Mann was there sometimes.
Q Was Dr. Mann there every time when his gunroom was unlocked and his safes were wide open?
A No.

Q I believe you said that you have seen ammunition only in the room off the garage; is that right?
A Ammunition, I seen ammunition in the gun room and under the house, and I have seen it up in the new garage.
Q Okay. So your testimony is you have seen it in all three places?
A Yes.
Q On direct -- I think Mr. Gordon asked you on direct examination and you said, "No, I didn't see it in the gunroom. I saw it in the ammo room and off the garage."
A I think I said -- I have seen it all three places, through the different times of the years.
Q Was it in the safes in the gunroom?
A I can't recall if it was in the safes or in the floor. Those green boxes, I have seen them in there.
Q They were stacked up in the gun room?
A Some were.
Q And I think you said you saw some ammunition that looked like large bullets?
A Yes.
Q Right? And you are familiar, I take it, with what -- I think you mentioned a rifle, like what typical shells look like?
A Standard shells.
Q And they just looked a little bigger than that or a lot bigger than that?

A A lot bigger.
Q Do you know about -- you testified that you saw -- Mr. Gordon showed you this, and you testified that you saw something similar to this; is that right?
A Yes.
Q But not like -- not exactly like this?
A I remember them being dark and colors -- and colors on them.
Q Some colors?
A Something similar to that.
Q You also testified that you saw something dark in color that was round but tall and I believe Mr. Gordon showed you this, which is Government's 69, and you said this looked similar to what you saw?
A Similar, yes.
Q Do you have any idea -- how tall was what you saw, in your estimation? What size?
A 6 inches.
Q About 6 inches?
A 7 inches.
MS. CASSINELLI COUCH: May I approach?
THE COURT: You may.
BY MS. CASSINELLI COUCH
Q Did what you see look similar to this?
A I can't tell how big it is. It was dark.

Q If it was the same size, would it look similar to that?
A It could have looked like that, yes.
Q Or that?
A I think it was -- the one I remember, they were darker. They seemed to be darker.
Q Darker in color?
A Yes.
Q This one is almost black, assuming that writing is not on there.
A That's what I remember.
Q Same size and shape --
A Similar.
Q -- if you can tell?
A Something that you could probably grab.
Q Is it the same shape as this?
A Seemed to be, yes.

MS. CASSINELLI COUCH: I am going to mark what I just showed Mr. Kimbrough as Defendants' 20, and I also showed Mr. Kimbrough Defendants' 19.

BY MS. CASSINELLI COUCH

Q And, again, all you can do for us is describe what you saw, right?
A Yes, ma'am.
Q Size, shape. You can't identify it as exactly like that or exactly like what I just showed you?

A I cannot.
Q You testified before the grand jury that you saw something that looked like a baseball or softball, but what you are telling us now is that it was tall, not round, right?
A I remember at the very start we seen something that looked round, and I don't know if I have seen the tips of things or maybe it was the whole part.
Q You don't know if you saw the tip or --
A I did not know if it was the end or not. I did not touch it.
Q Okay. Let me ask you this then. On all the things that we are asking you about, did you see them in a box or stacked up somewhere?
A They were in the boxes in these rooms, yes.
Q So you didn't -- you didn't pick it up or anything. I think you already testified that's off limits?
A I didn't touch them, no.
Q So you really only saw the tops of these things?
A I have seen them laying there together. They would just be laying.
Q In a box?
A Boxes or cases.
Q Do you remember seeing anything with blue on it? Anything the shape of any of these things we have shown you with bluish --

A Some of the things we saw in the ammo box looking things, there were some blue colors and orange colors.

MS. CASSINELLI COUCH: May I approach?

THE COURT: You may.

BY MS. CASSINELLI COUCH

Q I am showing you Government Exhibit 100-JJ. Did you see these?

A I don't know if they looked like that. I have seen something that had blue on it.

Q You don't know if it was these or not?

A I don't know if it was those.

Q But did it look like these?

A It had blue. Something had blue on them.

Q And to be clear, I think you testified you saw a grenade launcher, and you didn't know what any of that was, right? You had to go ask somebody; is that right?

A Well, two of my guys have been in the service. I mean, one of the things they said was it was a mortar launcher, and I asked them, "There is stuff in there. Watch what you are around." They told me what it was, but it was his stuff.

Q So --

A I just didn't want them touching it and knocking it over.

Q So is it your testimony that somebody was with you at the time that you saw these and they told you it was a mortar launcher?

A Two of my guys that worked for me had been in the military.
Q So were they with you? That's what I am asking.
A No. Only one had ever been at the house. One worked for me and he was not there and I told him what I saw and he told me what it probably was.
Q Is that the friend that you mentioned that you asked about it? Is that who you were referring to? I believe you told the grand jury that you had asked a friend. Is that who you were talking about?
A I asked him what it was, yes.
Q I believe you testified at some point that you asked one of your law enforcement friends what some of this was; is that right?
A Right.
Q Who would that have been?
A The one I asked about it was Mike Avery.
Q Is he a law enforcement officer?
A Yes.
Q Where?
A He used to work in Pope County. He does not work there now. He works in Oklahoma.
Q And you testified that you saw Mann's -- Dr. Mann's father there one time, and he was cleaning and organizing things, I think?
A One of the last times I went in there to work on the new

addition, we had a short in there. He was in the garage on the north side working.

Q And you said there were hundreds of items, right?

A Yes.

Q And those items that he was cleaning, were they -- I think you said they were large bullets of some sort; is that right?

A That's what they looked like to me, yes.

Q What color were they?

A Seemed like they were brass. Some of them were dark.

Q Do you remember telling the grand jury about this? Do you remember testifying before the grand jury?

A Yes, ma'am.

Q Do you remember telling them about seeing Dr. Mann's dad cleaning items?

A Yes, I do.

Q And you told them it was very large-caliber type brass casings. Is that accurate?

A That's what I saw.

Q Well, I mean, now it's kind of expanded a little bit, so I want to be clear. You saw him cleaning what I think you estimated to be --

A Some were just regular 3 or 4-inch shells. Some were real big.

Q And I don't know if you and I are -- "real big" is the saying.

MS. CASSINELLI COUCH: But may I approach?

THE COURT: You may.

BY MS. CASSINELLI COUCH

Q I am showing you Government's 100-W. Did they look kind of like that, maybe larger?

A Is that true to scale? I don't know. I mean, if they were laying there, I could tell you kind of what I saw.

Q Well, I mean, it's just a photograph. Does it look like the size and shape or how about the shape and color?

A Maybe the shape and color. There were some smaller. Some were big. There were a bunch of them.

Q I guess I should -- just so everybody knows what we're looking at, they were this color and shape, but some bigger and some smaller; is that right?

A Yes.

THE COURT: Ms. Couch, I don't know if the jury saw that.

MS. CASSINELLI COUCH: Oh, I'm sorry.

BY MS. CASSINELLI COUCH

Q Mr. Kimbrough, we mentioned that you went out to the house several times to work on the alarm system; is that right?

A (Nodding head.)

Q Did you also take the calls when the alarm system was tripped? If it went off, did you take the call or how did that work?

A Our monitoring service does.
Q And then do they contact you or does it go straight to the police or --
A In their case it goes to the customer.
Q I'm sorry?
A In their case it went to the customer and, if they didn't answer, then it would go to the police.
Q Do you have records indicating when the alarm was set off between February 18 of '09 and March 1 of '09?
A Yes, ma'am.
Q And in those records, does it indicate that the Pope County sheriff's office was called, was dispatched to respond to an alarm on February 10?
A Do you want to know the whole month or just that date?
Q Well, I can go through the whole month. I believe there were a couple before that that were canceled; is that right?
A Yes, ma'am.
Q But on the 10th, it looks like the Pope County sheriff's office was dispatched and went to the house.
A That's correct.
Q Is there any other time on there that you can see that officers were dispatched to the house?
A On that date?
Q I'm sorry?
A On that date?

Q On any date between February 1 and March 1?
A On February 2, they were.
Q They were dispatched?
A No, they were not dispatched. Sue canceled it. They got ahold of Sue, and she canceled it.
Q Right. But on the 10th, they were dispatched; is that correct?
A That's correct.
Q I am just making sure I am reading your paperwork correctly.
I think you testified that when you saw whatever you saw at the house, that you initially thought it might have been some kind of practice ammunition?
A I didn't know.
Q I mean, your first instinct wasn't, "That's a grenade," right?
A I figured it was probably some type of fake or a dummy or something.
Q And you still don't know if it is or isn't, right?
A I never touched it.
MS. CASSINELLI COUCH: May I have a moment?
THE COURT: Yes.
BY MS. CASSINELLI COUCH
Q Are you aware that the area -- what I would call the basement area, was that -- did it always have workout equipment

in it when you were there?
A When we first started working at the house, it had workout equipment in it, yes.
Q And did it look like it looks in the photographs that we have shown you when you first went to the house?
A As far as the equipment?
Q Well, the workout equipment and the room. I would say you're better with the directions, but I think on the east side, was everything, was the -- did it look like that and was the gunroom located where it is in this photograph when you first started going over to the Manns' house?
A The gunroom was right there, yes, ma'am, in the end.
Q Yes. And the equipment was there?
A Yes.
MS. CASSINELLI COUCH: I think that's all I have, Your Honor.
THE COURT: Okay.
MS. CASSINELLI COUCH: It might take me a moment to gather my things.
THE COURT: Mr. Dudley?
BY MR. DUDLEY
Q Mr. Kimbrough, when you were out at the Manns' house, did you ever see a sword?
A I believe in the gunroom, yes.
Q More than one?

A There might have been, yes.
Q And can you tell the jury what these swords looked like that you saw?
A There were short ones and big ones, I guess longer ones.
Q Okay. So you saw a number of swords there?
A Yes.
Q Okay. Did they look like military swords?
A I don't know what military uses them.
Q Okay. Did they look like samurai Japanese swords? Can you give us any better description than you just saw some swords in there?
A Maybe Japanese. I don't know if they would be military swords. I mean, I have seen them in his room.
Q Okay. But in any event, while you were at the Mann's house, you saw a number of swords?
A Yes, sir.
Q And in what room of the house did you see the swords?
A In the gunroom.
Q And when you say -- I think you have already said you don't have a military background.
A No, sir.
Q Can you tell the jury whether you saw an MK3A2 grenade out there?
A Would you say that again?
Q Yeah. Can you tell the jury whether you saw an M3KA2 -- or

maybe it's -- what's the number? MK3A2 grenade.
A No, sir. I don't know that -- what that would be.
Q Did you see a smoke grenade out there?
A I don't know.
Q Did you see a fragmentation grenade?
A I do not know what I saw.
Q Can't tell whether the concussion grenade or a practice grenade or --
A I did not touch them.
Q . Okay. The one thing that you saw that you thought might be a grenade, did that look -- whoops -- did it look similar to this? It's Friday afternoon. Whatever you saw that you thought looked like this, okay?
A Similar to that, yes.
Q You thought that when you saw -- you never touched it, right?
A No, sir.
Q But what you saw, you took to be metal, correct?
A It looked like metal.
Q You testified before the grand jury on May 6th, 2009, correct?
A Last year sometime.
Q Okay. And I am not trying to trick you on the date. I have got it here in front of me, and that's what it says. Does that sound right to you?

A Probably.
Q Before you testified to the grand jury, had you talked with ATF?
A Before the grand jury?
Q Before you testified to the grand jury, had you talked to ATF agents?
A I think the day of the testimony.
Q Okay. And the day -- or before you testified to the grand jury, had you talked to anybody from the U.S. Attorney's office?
A The day of?
Q At any time before you testified to the grand jury?
A No. I had got the subpoena for the alarm monitoring.
Q But you hadn't talked to anybody from the U.S. Attorney's office?
A No, sir.
Q So when you went in and testified, the day you testified to the grand jury, you talked to an ATF agent that day?
A Yes, sir.
Q Before you testified?
A Yes.
Q And did he kind of go over what your testimony would be?
A No. They went with -- they just asked things about -- they asked if I knew where the house was. They showed me a picture of the house and asked me if I could identify it.
Q Okay. And when you, when you testified before the grand

jury, you actually hadn't talked to anyone about what your testimony might be or what you have seen?
A No, sir.
Q And when you testified to the grand jury, you just told the truth like it was, right?
A Yes, sir.
Q You need to say it outloud so she can get it down.
A Yes, sir.
Q Since you testified to the grand jury, have you talked to the ATF?
A Since the grand jury testimony?
Q Yes, sir.
A I have talked to the U.S. Attorney's office.
Q Okay. And when did you talk with the U.S. Attorney?
A I don't have the dates in front of me. I don't know.
Q Would it have been in the last week or two?
A The last two months.
Q Okay. And Mr. Gordon --
MR. DUDLEY: Can we put up whatever exhibit Ms. Whatley said that showed the canister with the grenades?
BY MR. DUDLEY
Q Can you see that, Mr. Kimbrough?
A Yes, sir.
Q And that was up when Mr. Gordon was questioning you, right?
A Yes.

Q And Mr. Gordon asked you if you had seen things in the house that looked like that?
A Yes.
Q Right?
A Yes.
Q And did you tell him you had?
A Something similar to that, I have seen.
Q And you -- did you tell him you had seen a gold, a grenade with a gold colored tip?
A I don't know if -- I have seen something with orange or with gold.
Q Did you tell him you had seen something with a blue tip on it like shown in 98-G?
A I have seen something with blue there, yes.
Q Okay. When you testified before the grand jury, you were shown that same picture, were you not, sir?
A I don't remember.
Q Okay. You -- do you remember Mr. Gordon -- let me check and make sure it was Mr. Gordon. Do you remember Mr. Gordon showing you a picture and asking you -- do you have your grand jury testimony in front of you?
A No, sir.
MR. DUDLEY: May I approach, Your Honor?
THE COURT: You may.
BY MR. DUDLEY

Q I don't want you to think that I am trying to pull something on you, so --
A I wouldn't think that.
Q I bet you would. This is you, and it says you testified on the 6th day of May 2009, correct?
A Yes.
Q So you know I am not fooling you, the examination was conducted by Mr. Gordon, correct?
A Correct.
Q At least that's what this says.
A If y'all made it up --
Q Let's go to page 13 of the grand jury testimony. Mr. Gordon asked you -- I'm on line 11, and in this picture, there is something with a gold tip and something with a blue tip, okay? Gold tip, blue tip. Same thing we're looking at here, correct? Do you agree with that?
A Yes, sir.
Q And he showed you a picture, correct?
A Yes.
Q Okay. And then he asked you, "Do you recognize either of those," right? That was his question, right?
A Yes, it was. I don't remember.
Q I understand. Just read with me and make sure I am reading it right. And the answer, according to the typewritten transcript of your testimony was, "The only thing I remember,

the metal seemed to be darker. If there was any coloration or anything it would be orange looking," correct?
A Yes.
Q And that was your testimony before the grand jury, correct?
A Yes, sir.
Q Okay. You didn't tell Mr. Gordon or the grand jury when you testified you had ever seen a gold-tipped grenade in there, did you?
A I didn't -- I wouldn't know if it's a grenade. I don't know if that is a grenade.
Q Okay. But when he showed you this picture and said: Have you seen that? What you said is: If I saw anything like that, it would be orange. Right?
A The parts that I had seen, they were orange color.
Q They were orange, okay. Thank you.
THE COURT: Redirect?
MR. GORDON: Thank you.

REDIRECT EXAMINATION

BY MR. GORDON
Q Mr. Kimbrough, we are looking at Government Exhibit 118-D. Did you see anything like that, look similar to that?
A What I saw would have been similar to that color, what I have seen before.
Q Okay. Is that a gold or orange tip?
A To me, it is what it seemed like. Whether that's orange or

not, that's what it looked like to me.
Q Exhibit 194?
A That's what it looks like to me, some type of orange.
Q Ms. Couch asked you from your grand jury testimony about what you saw when Dr. Mann's father was in the garage and she asked you, "Didn't you tell the grand jury it was a very large-caliber type brass casing?" Do you remember that?
A Yes.
MR. GORDON: May I approach, Your Honor?
THE COURT: You may.
BY MR. GORDON
Q I am going to hand you your grand jury testimony. That's you?
A Yes.
Q Page 15. See the question she asked you? If you would, read your entire answer as it goes on to the next page.
A "It was very large-caliber type brass casing, large machine gun or large type of something I would think you would see on, like, an Army tank."
Q Hang on. Slow down a little bit so we can understand you, okay? Very large --
A "Very large machine gun or large type of something I would think you would probably see on something like an Army tank."
Q Keep reading.
A "It wasn't something a human probably would hold in their

hand. This was big stuff, you know, that would be capable of probably -- you could shoot a -- I mean, a vehicle or something. You wouldn't be shooting someone with it. And there were -- there were lots of those out there, and he was working on that, you know, when I walked in on him."

Q And "he" was Dr. Mann's father?

A Yes, sir.

Q Thank you.

And Mr. Dudley, I don't want him to feel left out, asked you if you thought what looked like this was plastic or metal. Do you remember that question?

A Yes, sir.

MR. GORDON: May I approach, Your Honor?

THE COURT: You may.

BY MR. GORDON

Q Again, let's go back to your grand jury testimony. On page 8, I will ask the question and, if you would, give your answer. "And I believe you mentioned something about grenades. You saw some grenades."

A "There were, seemed like, a box that had, looked like grenades in the box."

Q "Describe these grenades."

A "What I can remember, they looked to be black, a blackish color with a tip, the little pull on the end, and at the time I thought they might have been some type of practice. I did not

ask."
Q And then I showed you a picture and asked, "Do you recognize that?" What was your answer?
A "Seemed to be something that looks similar to that in those boxes, yes. I cannot read the writing. There was some writing on it."
Q And then I asked, "But do you remember it being some sort of grenade with a black base with lettering on it and some sort of pull pin?"
A "Yes, sir."
Q And I asked, "Do you know, was it something that looks like it was made out of plastic or metal?"
A "I did not touch the -- what I saw in this room. It looked to me like it was some type of metal."
Q Keep reading.
A "It did not look to me to be plastic. Some of them I think were. Some of the ones I saw were kind of a round, looked like a baseball or softball type with little pins on them. I did not touch these either."
Q Okay. And so we're all clear, you saw a lot of stuff in the house, right?
A Yes, sir.
Q And we're not talking about one item.
A No. Many, many items.
Q You have been describing many different things that you saw

in that house, correct?
A Yes.
Q And it's not fair to -- for us to ask you the name of the objects, right?
A I don't know what they're called.
Q All you could do was come in here and describe them?
A Yes.
Q And that's what you have done?
A Yes, sir.
Q Thank you.

RECROSS-EXAMINATION

BY MS. CASSINELLI COUCH

Q Mr. Kimbrough, I take it from your testimony in general that you are not familiar with large-caliber ammunition, 50-caliber casings and things like that?
A Right.
Q I think at one point you gave us like a 10 inches, something that looked like it was big like that, right?
A Yes.
Q Which that is not, right?
A Well, there is different types. I have seen different types.
Q And you already identified a picture for us of shell that you said you saw the same color and shape, but different lengths?

A Yes.
Q We talked a lot about your grand jury testimony and the things that -- the descriptions that you gave and the photographs that you looked like. And let me ask you this. Did Mr. Gordon show you any pictures other than the pictures that he has shown you today?
A No, ma'am.
Q He didn't show you any other possibilities of what you saw, did he?
A No, ma'am.
Q He just showed you what he wanted you to identify. You wouldn't know that. He just showed you what he has shown you today, right? And the --
A I -- I described what I saw, and he would put the picture up after I described something.
Q Right. And when I showed --
A Not before.
Q And when I showed you pictures, you said that it looked similar to those too, right?
A Similar.
Q And I think that even when he showed you pictures, you said yes, what I saw looked similar to those, right?
A I think I said that.
Q And I think we have said this a million times because all you can say is, "Yeah, it looks similar" because you don't know.

My point is, he didn't show you any other pictures than what he has shown you today. He didn't give you any other options when you testified before the grand jury, did he?

A After I described something, no, I haven't seen any other pictures.

Q Thanks.

THE COURT: Anything else?

MR. GORDON: Actually, I do, Your Honor, and I am sorry I missed this. I left this out on my first redirect.

FURTHER REDIRECT EXAMINATION

BY MR. GORDON

Q Mr. Kimbrough, you were asked about some alarms that went off in February of '09. Do you have that information in front of you?

A I printed out everything that we received in February.

Q Okay. Let's walk through each -- everything that happened so we precisely know every fact that you can give us. What happened on -- well, what's the first alarm in February?

A On February 2, 11:36 a.m., in the morning, we received a burglary alarm. A motion detector going off.

Q The living room motion detector?

A Yes, sir.

Q And what happened on -- how was that call resolved?

A Tried to call Dr. Mann first; no answer. Called the sheriff's office. They finally got ahold of Mrs. Mann, and she

said to cancel it. So she canceled the alarm with her code.
Q Okay. When was the next one?
A On the 10th of February at 2:44 in the afternoon.
Q What was the problem on that date?
A The living room motion detector had went off.
Q Same one?
A Same zone, yes.
Q Okay. And how was that resolved?
A We called -- we auto dialed Dr. Mann; did not get an answer. Then we called Sue. We did not get an answer at Sue's, at her number. So we called the Pope County sheriff's office, and they dispatched a Officer Corbett to the Mann house.
Q Okay. Do you know what was going on?
A I do not know what happened, no. Ms. Mann said she would meet them up there and Dr. Mann would be there and driving a black Supra and he was on his way to the house.
Q Did they ever call and say, "Our house has been broken into" or anything like that?
A They never called us and told us that there was a technical problem with the alarm or that they had had a burglary, no.
Q Did they have dogs?
A Not that I know of.
Q Can a dog set off a motion detector?
A If it was over 25 pounds. It would have to be -- we have them set where something below that wouldn't set them off.

Q Okay. But this was in the living room, correct?
A Yes. Both -- both of the February alarms were in the living room.
Q Not in the garage?
A Not in the garage.
Q And the living room is upstairs?
A Yes, sir.
Q It's not near the gunroom?
A No. It's up in the first floor on the ground level.
Q And if one motion detector goes off and someone comes in, does just one go off and the rest shut down or would it trigger --
A No. It's not a series. They're independent.
Q Okay.
A They're not a series. They're all independent.
Q All right. So let me ask you this. If this was not a malfunction and if someone was actually breaking in and say they came in the living room and then went into the bedroom, would it, would the motion detector in the bedroom also be detected or triggered?
A The house -- the way their house is wired, the doors have to trip first. All the perimeter doors, anything beyond that is an automatic burglar alarm. So this was an automatic burglar alarm.
Q You know their house and the records better than anybody

and how their system was set up. What do you think this was?
A It's either vibration, something went on in the living room, someone was in the living room, in the house already. They did not come through the doors because the doors would go off first. This is a secondary alarm.
Q Okay.
A So somebody was in the house.
Q Let me ask you this. Did you have issues like that -- do you recall having issues like that that you responded on?
A Daytime burglary alarms?
Q Yes.
A Yes. We had several there.
Q At their house?
A Yes, sir.
Q That you responded to?
A Yes.
Q And what was the problem?
A We were never really told. We were just told that they would take care of it. We don't know if it was someone in the house, if it was someone there that didn't know how to disarm it. We really don't know. They never told us, and we weren't ever called to fix that. So we don't know what it was.
Q Okay. Do you remember telling me there were problems where her parents or his parents didn't know how to operate the alarm and they would set it off and you would get called?

A Yeah. And that's what we thought some of this might be where they weren't able to disarm it because they would already be in the house.

Q Thank you. No further questions.

THE COURT: Is that it?

MS. CASSINELLI COUCH: Nothing further.

MR. DUDLEY: Nothing.

THE COURT: All right. You may stand down, Mr. Kimbrough.

We are going to recess now, and we will come back on Tuesday at -- and first I said 10:00 o'clock. I think we need to come on back in at 9:00. We are already going to miss out on two days next week, and we need to get moving on.

Believe me, we have had that conversation, Mr. Bxxxx.

Mr. Bxxxx is doing this to me. He is the juror I was telling you about who, like me, has some previous engagements coming up in a couple of weeks.

So keep the admonitions I have told you about before. Keep on doing what you are doing, don't talk to anybody about the case, don't read anything about the case, don't watch television about it, don't listen about it, don't have people come tell you that they know what's going on up here because they don't. You know more than anybody else could know about this case.

Also, keep doing what you are doing. Don't talk to the lawyers, don't talk to the witnesses, don't talk to the parties.

We want the process to not only be fair, but to appear to be fair.

So have a good weekend, and we will see you on Tuesday at 9:00.

(Weekend recess at 4:59 p.m.)

C E R T I F I C A T E

I, Cheryl Nelson Kellar, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Cheryl N. Kellar, RPR, CRR, CCR Date: March 7, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and
SANGEETA MANN, a/k/a SUE MANN (2),

July 27, 2010
Little Rock, Arkansas
8:56 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 11
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE

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[Continued]

APPEARANCES CONTINUED:

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Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

Eugenie M. Power, RMR, CRR, CCR
United States Court Reporter

I N D E X - VOLUME 11 (July 27, 2010)

WITNESSES FOR THE GOVERNMENT:	Direct	Cross	Redirect	Recross
MARK TANAKA	2106	2113	2117	
PHILLIP BARTHELME	2119	2138	2155 2165	2161
DAVID OLIVER	2174	2234	2331	2337

EXHIBITS: **RECEIVED**

Government's Exhibits 183-A through 183-E..... 2176
Government's Exhibit 184-B..... 2189
Government's Exhibits 180-A through 180-C, 181, 182-A through 182-O..... 2193
Government's Exhibits 187-A through 187-C..... 2203

Government's Exhibits 185-A through 185-OOOO..... 2205
(Exception of 185-O, 185-P, 185-BBB, 185-CCC, 185-DDD, 185-LLLL, 185-FFFF, 185-GGGG)

Government's Exhibits 186-A, 186-B..... 2206
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Government's Exhibit 190..... 2227

Defendants' Exhibits 21 through 32..... 2346

(Jury not present.)

THE COURT: Let's call in the three witnesses who are here and get them sworn in and we'll bring the jury in.

MARK TANAK and PHILLIP BARTHELME, GOVERNMENT'S WITNESSES, SWORN

THE COURT: You can have a seat outside and we'll call you when we need you. We can bring the jury in.

(Whereupon the jury entered the courtroom and proceedings continued in open court as follows:)

THE COURT: You can be seated. Call your next witness, please.

MS. WHATLEY: Mark Tanaka.

MARK TANAKA, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good morning.

A. Good morning.

Q. Please state your name.

A. Mark Tanaka.

Q. You're going to have to speak up.

A. Mark Tanaka.

Q. Spell your last name for us.

A. T-a-n-a-k-a.

Q. Mr. Tanaka, where are you employed?

A. Nissan North America.

Q. And how long have you been employed with Nissan?

A. Twenty-five years.
Q. What is your position with Nissan?
A. I'm an engineer in the products safety department.
Q. And have you been classified as an engineer in that area?
A. Yes, I have.
Q. For how long?
A. Approximately 12 years.
Q. And what does the products safety department at Nissan do?
A. We look at crashed vehicles to see how our safety systems are operating in the field.
Q. And do you also kind of field inquiries from various law enforcement agencies, if they come?
A. Yes, we do.
Q. Do you recall receiving an inquiry in February of 2009 from ATF?
A. Yes.
Q. Did you also receive a grand jury subpoena to provide ATF with certain information?
A. Yes.
Q. And did you work on that?
A. Yes, I did.
Q. And what were you tasked to do?
A. To determine -- try to determine what vehicle the spare tire, this particular wheel was off of.
Q. And in order to do that, were you sent anything?

A. I was sent pictures of the wheel, tire.
Q. And this was the wheel or tire that was utilized in the bombing. Is that correct?
A. I believe so.
Q. We can look at Government's Exhibit 68-ZZ, please. Is this the tire you were sent a picture of?
A. Yes, it is.
Q. And is that same tire what is here as Government's Exhibit 14 (indicating)?
A. Yes.
Q. Let's look at Government's Exhibit 68-AAA. Is this another picture that you were sent?
A. Yes, it is.
Q. And what does this tell you?
A. This gives -- this has the build date of the wheel.
Q. What do you mean by the date of the wheel?
A. The date the wheel was manufactured.
Q. And what is the date the wheel was manufactured?
A. April 29 of 2002.
Q. And if you can touch on your screen what numbers denote that date.
A. The 4 right here (pointing) denotes the month. The 29 over here is the day. And the 02 is the year.
Q. And where is that located on Government's Exhibit 14?
A. Right near the valve stem.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. If you can point to the jury and describe what you're pointing to, please.

A. It's located -- it's located right in here (pointing), the month and the year, the year and the month, and the date on the other side of the valve stem.

Q. I'm just going to leave this with you. How about that? We can look at Government's Exhibit 68-BBB, please. What does this denote?

A. That is a Nissan wheel.

Q. And is that located on the wheel itself?

A. Yes, it is.

Q. Can you -- probably should leave the wheel up. And point to the jury where that is.

A. Right here (pointing).

Q. That's on the bottom side. I'm going to 68-CCC. What does the M402 stand for?

A. That is the month and the year.

Q. And 68-DDD, other markings that are on the wheel?

A. That is on the wheel, yes.

Q. And going to 68-EEE, what is this?

A. That is the size of the wheel, 16-inch wheel, 4 inches wide.

Q. And 68-FFF?
A. That is the part of a part number.
Q. So it's a partial part number?
A. Correct.
Q. If we can just show the jury where each one of these numbers are located on Government's Exhibit 14.
A. Right here is the part number, partial part number.
Q. That's on the left side of the wheel as it's facing you now?
A. This right here is the month and year (pointing).
Q. On the right side of the wheel.
A. Right here (pointing) is the size of the wheel.
Q. On the top left.
A. Right here's the 15 with the C underneath.
Q. Based on all of those numbers, what were you able to determine?
A. The partial part number is -- corresponds with a 2002 through 2006 Nissan Altima.
Q. And what was the date of the manufacture of this wheel?
A. It was April 29 of 2002.
Q. Other than just determining the part number and the date of manufacture, did you narrow down what kind of vehicle this was, based on other factors that the wheel possessed?
A. I first started looking at the wheel, I looked to see how many lug nuts hold the wheel on, and there are five holes, and

the few vehicles that we made in this time frame with five lug nuts were like the Maxima, the Quest, the 350-Z, the Infiniti Q45, the Infiniti A30, A35. But all of their part numbers are different than these. They also provided me with the size of the tire, and the Altima is the only vehicle that used this particular size spare tire.

Q. And what was the size spare tire that was used?

A. This is a T-135, 70-16-D.

Q. Are those numbers actually on the tire itself?

A. Yes, they are.

Q. And in 2002, did Nissan use Firestone tires on their spare rims?

A. Yes, we did.

Q. So taking all of that information together, date of manufacture, the partial part number, the number of lug nuts, and the type of tire that was used on the rim, what vehicle -- what type vehicle did you determine this came off of?

A. More than likely, it was an Altima in the 2002 time frame.

Q. Now, is there any number that's on this rim that would tell us exactly where this spare tire went?

A. Not that I'm aware.

Q. In preparation for trial, did I also ask you to look up a VIN number?

A. Yes, you did.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I'm handing you what's been marked for identification as Government's Exhibit 188-F.

A. Yes.

Q. Do you see the VIN number on that document?

A. Yes, I do.

Q. Can you read that VIN number to us?

A. 1N4AL11 --

Q. Actually --

A. It's kind of blurry right there.

Q. Look on the second page. It may even be better. I'm sorry.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

A. 1N4AL11D52C280900.

Q. And were you able to determine when that vehicle was manufactured?

A. Our system said it was -- states it was manufactured June of 2002.

Q. And is that vehicle a 2002 Nissan Altima?

A. Yes, it is.

Q. So it was manufactured after the date that the spare tire was manufactured?

A. Correct.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: Yes.

(Ms. Whatley confers with Mr. Gordon.)

MS. WHATLEY: No further questions, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Good morning, Mr. Tanaka.

A. Good morning.

Q. How are you, sir?

A. Fine, thank you.

Q. Just a couple of areas for you. In your direct testimony I understood you to say that this tire came from, more likely, I wrote down it was more than likely from an Altima that was manufactured -- a 2002 Altima.

A. Yes.

Q. Is that right?

A. Yes.

Q. And I have to define some terms with you. What do you mean when you say "more than likely"?

A. More than likely on a different type of vehicle.

Q. More than likely compared to a Cadillac or a Hummer --

A. Another Nissan vehicle.

Q. To another Nissan like a Maxima?

A. Correct.

Q. Infinitis are Nissans. Is that correct?
A. Correct.
Q. So I'm gathering it's possible that it could belong to another car. Is that correct?
A. Not with that size tire.
Q. Okay. Well, again, when you say "more than likely," I'm just curious because you're not positive about it, and what creates the sort of lack of assuredness?
A. I guess when I said "more than likely," I meant that it actually is the spare tire that would be on the 2002 series Altima.
Q. Right. And that's what I thought. I just found it curious that you qualified it to a certain degree. That is the type of tire that would be manufactured and would fit as the spare on an Altima vehicle. Correct?
A. The front wheel and tire that would be equipped with a 2002 Altima.
Q. And that's the second area of inquiry that I had for you. You also said at one point in your direct testimony, indicated a 2002, and in another part of your direct testimony you said around 2002, and in another part of your direct testimony you kind of gave a window of 2002 to 2006. Why is that?
A. I did because that wheel could be used on a newer Altima, but due to the production date of the wheel and tire, the wheel was more likely on a 2002.

Q. Gotcha. So I believe your direct testimony was we know that that specific tire was manufactured on, I believe, April 29 of 2002. Correct?
A. Yes.
Q. So any Altima that was manufactured around that time or after, it would fit. Correct?
A. Could you restate that, please?
Q. Yeah. This tire was manufactured in April of '02. Correct?
A. Yes.
Q. So it wasn't going to match a car manufactured in 2001.
A. Yes.
Q. Right? But it could a 2002. Correct?
A. Yes.
Q. Could it a 2003?
A. Probably -- not probably. We would have probably put it on in that month, within two months.
Q. Say that one more time.
A. We probably would have installed it in a vehicle within two months of its manufacture.
Q. I understand. But it could go to -- it would fit a 2003, could be used on a 2003?
A. Yes.
Q. Could be used on a 2004?
A. Yes.

Q. An '05?
A. Yes.
Q. '06?
A. Yes.
Q. Could it be used on an '07?
A. No.
Q. I gather the spare tire type for the '07 Altimas changed?
A. We used different size tires.
Q. Understood. Where is the tire manufactured?
A. I am not sure. It's manufactured by Firestone.
Q. Firestone manufactures it. Do you know -- but you don't know where Firestone manufactured this specific tire?
A. No. The DOT number is damaged.
Q. Where were the 2002 Altimas manufactured?
A. 2002 Altimas were manufactured in Smyrna, Tennessee.
Q. In Smyrna, Tennessee. So if this tire -- we just don't know where the spare tire was manufactured. I guess what I'm trying to get at is, if it was manufactured in April of '02, if a 2002 Altima was manufactured in Smyrna, Tennessee, in June, how do we know that that spare tire would have gotten to the manufacturing plant to be installed in the 2002 Altima in Smyrna, Tennessee?
A. The wheel was manufactured in the United States.
Q. The wheel was manufactured in the United States?
A. Yes.

Q. And do all Firestone tires go to the Smyrna plant?
A. All Firestone tires? What do you mean by "all"?
Q. Manufactured as a spare tire for the Altima.
A. Yes, I believe -- well, now we are manufacturing them in Canton also.
Q. Say that one more time.
A. We manufacture Altimas in Canton, Mississippi, also.
Q. In Canton, Mississippi?
A. Yes.
Q. So there's two possible places that the spare tire could have --
A. In 2002, we were only manufacturing in Smyrna.
Q. Okay, in Smyrna. So it had to go to Smyrna?
A. Correct.
Q. And were you able to do any research to backtrack and determine whether Firestone sent that specific tire to the Smyrna plant prior to June of 2002?
A. No.
Q. That's all I've got, Mr. Tanaka. Thank you.

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Let me ask a question, just so we're not confused. There's actually two parts to this (indicating). Correct?
A. Yes.
Q. A tire and a wheel?

A. Correct.
Q. The wheel was manufactured by Nissan?
A. Correct.
Q. And where was the wheel manufactured?
A. The wheel itself was manufactured in the United States.
Q. And then the tire is put on it at the manufacturing plant?
A. It comes to us as an assembly.
Q. What do you mean "it comes to us as an assembly"?
A. It is put on by the -- I think it is put on at the manufacturer of the wheel.
Q. And are there markings on the wheel itself that state that it's made in the United States?
A. Yes, there is.
Q. Are those markings actually back here where the tire is damaged?
A. Yes.
Q. Right in here (pointing)?
A. Yes.
Q. You looked at that last night and verified that?
A. Yes, I did.
Q. And just to make sure I understood your testimony, in 2002, the only place that Nissan Altimas were manufactured were in Smyrna, Tennessee?
A. Yes.
Q. So any wheel that would go on a Nissan Altima would have

been sent to Smyrna, Tennessee?
A. That's correct.
Q. Did you also state that the wheels are normally put on the vehicle within two months of manufacture?
A. Yes.
MS. WHATLEY: No further questions.
MR. HENDRIX: Nothing further.
THE COURT: Okay. You can stand down.
Call your next.
MS. WHATLEY: Your Honor, I believe 68-ZZ through 68-FFF are already in evidence, but if they're not --
THE COURT: Hold on just a second. I think they're already in. I think they came in through Erwin.
MS. WHATLEY: Thank you, Your Honor.
MR. GORDON: United States calls Phillip Barthelme.

PHILLIP BARTHELME, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON:
Q. Good morning, sir.
A. Good morning, sir.
Q. Please state your name for the record.
A. Phil Barthelme.
Q. Spell your last name for us.
A. B, as in A -- wait a minute. Excuse me. B, as in boy, a-r-t-h-e-l-m, as in man, e.

Q. Thank you. And where do you live, sir?
A. 555 Meimerstorf Lane, Russellville, Arkansas. Sorry about that. I got the jitters right here.
Q. How long have you lived in Russellville?
A. Oh, about, I'm going to say, 16 years.
Q. Are you married?
A. Yes, sir.
Q. What's your wife's name?
A. Rita Sue Barthelme.
Q. What do you do for a living?
A. I work for realtors.
Q. What do you do for realtors?
A. Housing, the housing industry.
Q. What kind of work do you do?
A. Basically, a handyman. Stuff like that. Anything I can get my hands on almost.
Q. Do you have any kids?
A. Got four kids.
Q. Do you know Dr. Randeep Mann and Sue Mann?
A. Yes, sir, I do.
Q. How would you characterize your relationship with them?
A. Probably business.
Q. Do you know their kids?
A. Yes and no.
Q. All right. Explain that.

A. I know they got a couple of kids, but I haven't really -- Dan Mann is in -- he's got another son. I don't recall what his name is. I don't know if it's Shawn. They've got two girls.
Q. Have you been to the Manns' house before?
A. Yes, sir.
Q. Was that for social reasons or just for work?
A. Business. Take care of his yards.
Q. And how would you describe your relationship between your wife and Dr. Mann?
A. Pretty good friends.
Q. And was Dr. Mann also your wife's doctor?
A. Yes, sir.
Q. Fair to say that your wife, Rita, was closer to Dr. Mann than you were?
A. It's a possibility.
Q. Is Dr. Mann also your doctor?
A. Yes, sir.
Q. How many times have you seen him?
A. Well, not too many. Tried to stay out of the medicine field.
Q. You've been pretty healthy?
A. Yeah.
Q. Do you remember telling me, the best you can recall, you've gotten two flu shots from him?
A. Yes, sir.

Q. And that's about it?
A. Yes, sir. Might have been three flu shots. But somewhere around there.
Q. Tell us, approximately how long ago did you meet Dr. Mann?
A. I want to say probably about six years ago.
Q. And how did you meet him?
A. He was looking for somebody to take care of his yards.
Q. How did your name get brought up?
A. Well, my wife was his patient and she, I guess -- I guess he had asked her -- he'd somehow had gotten rid of the guy that was doing his yards before and he had wondered what I was doing, if I would be interested in doing it. So I guess he asked her and she had asked me.
Q. Okay. And you agreed?
A. Yes, sir.
Q. And I believe about a year later you had some equipment problems?
A. Yes, I did. I had some old crappy equipment and I had told the doctor that I couldn't do it anymore and, well, he wanted me to do it. I guess he liked the way I did stuff, or whatever. So he had offered to make a trade with me.
Q. Tell us about that trade.
A. Zero-turn Cub Cadet 50-inch lawnmower and a rider lawnmower, a push lawnmower, and blower, weed eater and trailer, we had made a deal as far as trading my work, my labor for the

equipment.
Q. So he got you the equipment and then --
A. He gave me the equipment. I started working, doing his yards.
Q. You were working it off?
A. Yes, sir.
Q. How close are you to having worked it all off?
A. Well, I think I'm pretty close. I'm going to say probably -- I think around another year, maybe, maybe a little bit more. I don't know. Somewhere around there.
Q. And for Dr. Mann, where were you mowing?
A. I was mowing his clinic in Russellville and his house.
Q. Besides mowing, what other kind of work did you do at his house?
A. I took care of his flower beds, did a little bit of landscaping work for him.
Q. Okay. And then you mow, weed, and blow everything out --
A. Yes, sir.
Q. Do you do all of Dr. Mann's yard work at home?
A. I have been, yes, sir.
Q. Since about '06?
A. Yes, sir.
Q. And you mentioned some flower beds. Tell us about that.
A. Okay. We had -- there was his front flower beds, we had to dig out some rose bushes and plant them down the property line

of his house. And then took out -- what I had done was, in his front, I put plastic down there, and then there was plastic on his -- by his front porch, in that area right there. And he had like a little retaining wall going around the side (indicating), I filled that in with topsoil dirt and put the plastic down in there, and I topped it all off with the brown-colored river rock.

Q. Okay. Let's look at -- if you'll look at your screen there, let's look at picture 100-A, please. It will pop up in a second, hopefully. Do you recognize that home?

A. I recognize that home.

Q. Whose home is that?

A. That is Dr. Mann and Sue Mann's house.

Q. Let's look at 100-B, please.

A. Look at where now?

Q. Keep watching.

A. All right.

Q. That's Exhibit 100-B on your screen. Can you see the rock beds --

A. That is the rock beds.

Q. And they're there in the front of the house?

A. They're in front of the house.

Q. Tell us, when did you install those?

A. Oh, man. I'm going to say probably when I started doing his yards.

Q. Around 2006?
A. Yes, sir. Somewhere in that vicinity, the time.
Q. How long did it take you to do that?
A. I'm going to say probably four weeks, on weekends.
Q. And how did that work? Did you bring the supplies, did Dr. Mann --
A. No, sir.
Q. Tell us about it.
A. He had purchased all the supplies. And the dirt -- the dirt and the gravel, the river rock, we had hauled -- had that hauled in by dump truck.
Q. Okay. So that was a pretty big project?
A. That was a pretty big project for me.
Q. Other than mowing and work like that, did you have any other big projects that you did for Dr. Mann?
A. Well, we just -- they have -- they had a window in the back that Sue would call and get a hold of me when it was real hot. They put a tarp on the window up on top of the house up there, the bay window, looking like a pretty good size window, they had me put a tarp on it.
Q. Anything else?
A. No. That was about it on that.
Q. Do you remember Dr. Mann being arrested --
A. Yes, sir.
Q. -- back in March of 2009?

A. Yes, sir.
Q. How did you find out about his arrest?
A. Well, I found out through the newspaper, myself, and then I had been called at work, told that they had -- told me that he had been arrested.
Q. All right. At the time of his arrest, were you doing any projects for him?
A. We went to go look at his projects.
Q. I'm sorry?
A. Are you talking about -- which one?
Q. When Dr. Mann was arrested, did you have any --
A. No, no, no, no, no.
Q. In March of 2009 --
A. No, sir.
Q. Okay. Let me finish my question so we're all clear. Okay?
A. Sorry.
Q. When Dr. Mann was arrested in March of 2009, were you working on any special projects for him?
A. No, sir.
Q. Before he was arrested, had he mentioned, "Hey, I've got this idea, somewhere down the road I'm going to want you to do something for me"?
A. Yes.
Q. What was that?
A. Well, that was his motel.

Q. Okay. Anything in his yard at home?
A. I -- no. He was -- he was arrested at his house. I guess I hauled some stuff away from his house.
Q. Okay. Hang on. Let's go back --
A. Are we not on the same page?
Q. No. And we'll get to what you're talking about later. Let's look at picture 100-A again.
A. Okay. There's his house again.
Q. You already testified that --
A. Yes, sir.
Q. -- that you put in his rock beds. Right? Now, at the time of his arrest, had he talked to you about any other special projects he wanted you to do to his yard --
A. No, sir. No, sir.
Q. And since his arrest, you've still been mowing his grass. Correct?
A. Yes, sir.
Q. And has anything changed since his arrest, anything -- any other special projects --
A. Not on the front of his house, no.
Q. Okay. So it all still looks the same?
A. It all looks the same on the front of his house.
Q. What about the back?
A. The back side of the house has been changed.
Q. What's the difference?

A. The fence goes from --
Q. Go ahead.
A. The fence goes from basically the sidewalk line down to the bluff, all the way over to, let's say -- I'd say probably the northwest corner of the house. Yeah.
Q. Okay.
A. No, that's the small fence.
Q. Is that just a little fence --
A. That was taken out.
Q. -- to keep the dogs in?
A. Yes. That's what that fence is about, to keep the dogs in. That one there was tooken down.
Q. Okay. And so this fence that's been added, what kind of fence is it?
A. It's got property line stakes on it, it's -- it's a chicken wire.
Q. Chicken wire fence?
A. Yes. Wire mesh, or something like, contains rolled wire mesh. No, I did not put that up.
Q. Since Dr. Mann's arrest, had there been any projects done outside his home that would require the use of black plastic?
A. No, sir.
Q. Okay. Now let's talk about -- you had mentioned something about a project with the hotel, or Memphis?
A. Yes.

Q. Have you ever gone to Memphis with Dr. Mann?
A. Yes.
Q. How many times?
A. Two times.
Q. Two times?
A. Uh-huh.
Q. Tell us about the first trip, when was that?
A. The first one was at the Days Inn.
Q. What's the Days Inn?
A. His motel that him and his business partner own.
Q. What was the purpose of -- and sorry. This Days Inn is in Memphis?
A. Yes, sir.
Q. What was the purpose of you going to the Days Inn in Memphis?
A. He was looking for somebody to take care of his rooms.
Q. Explain that for us.
A. In other words, he wanted somebody to do some work on his rooms, and probably -- I think probably the third or fourth floor, make them ready to -- livable.
Q. Like renovate it?
A. Yes. And handyman stuff.
Q. And who went on this trip?
A. Me and Dr. Mann.
Q. How did you get there?

A. His little gray four-door Toyota Cressida.
Q. And did you all drive to the Days Inn?
A. Yes, sir.
Q. Did you meet with anybody there?
A. We met his partner, Pete.
Q. Do you know Pete's real name?
A. Pete.
Q. All right.
A. That's all I know him by.
Q. Did you have a meeting with Pete and Dr. Mann?
A. We had a meeting with Pete.
Q. Tell us about that meeting.
A. Oh, it -- just negotiate. He was wanting me to do some work up there, you know, and we was negotiating, trying to negotiate, you know, funds.
Q. How much you would be paid?
A. Well, yeah.
Q. And when you were there at the Days Inn, did you all reach an agreement?
A. No. That didn't come until a couple of days after.
Q. After the meeting, did you go somewhere else with Dr. Mann?
A. Yes. We went to his house.
Q. Whose house?
A. Pete's house. He wanted to visit with Pete a little bit.
Q. How did you get to Pete's house?

A. His car.
Q. Whose car?
A. Dr. Mann's car.
Q. Who was in Dr. Mann's car?
A. Me and Dr. Mann.
Q. Where was Pete?
A. In his car.
Q. Were you all following Pete?
A. I think so.
Q. As you're driving to Pete's house with Dr. Mann, did he tell you why y'all were going to Pete's house?
A. Well, he wanted -- for one, he was talking about picking up a tire.
Q. What kind of tire?
A. A spare tire. Then the second time, he was wanting to -- guess Pete was wanting some work done at his house too.
Q. Did you go to Pete's house?
A. Yes, sir.
Q. What do you remember about it?
A. Well, they were just talking. And we went upstairs. They wanted to see if I could Sheetrock his attic-looking thing up there and dry it in with insulation, make it livable, make it livable quarters and stuff. And went down there, went to the bathroom. And they walked outside.
Q. Describe Pete's house for us.

A. Oh, boy, I don't -- it's been a while. A nice house.
Q. One-story, two-story?
A. Two-story.
Q. Nice?
A. Pretty nice.
Q. Was it in a neighborhood or --
A. I think it was in a neighborhood, yes. I think it was in a pretty close subdivision.
Q. Okay. And you actually recall going up and looking at the attic?
A. Yes, sir. They had all the stuff, furniture, everything moved out of there, and it was all studs, you know, ready to be insulated and dried in with Sheetrock.
Q. Okay. When you came out of the attic, you said Pete and Dr. Mann talked and went outside?
A. Yes. I was going to the bathroom. I had to use the bathroom real quick.
Q. What were they talking about?
A. I have no idea.
Q. Why not?
A. I didn't understand Hindu.
Q. They weren't speaking in English?
A. No, sir.
Q. Did you see what they were doing outside?
A. No, sir.

Q. What happened when they came back inside?
A. They were just sitting down on the couch, talking, and then about, oh, I'd say it wasn't -- it was shortly after that we had -- we had left the house.
Q. How long would you say you were at Pete's house?
A. Oh, probably about an hour.
Q. And Dr. Mann said part of the reason for going to Pete's was to pick up a spare tire?
A. They just mentioned picking up a spare tire.
Q. Did you ever see a spare tire?
A. No, I'd never seen a spare tire. Never seen anything.
Q. The car that Dr. Mann was driving, did it have a trunk?
A. The car Dr. Mann was driving did have a trunk.
Q. Did you look in the trunk?
A. No, I didn't. It was shut.
Q. Do you know what Dr. Mann and Pete were doing while you were in the restroom?
A. I've got no idea.
Q. Okay. When you left Pete's house, what did you and Dr. Mann do?
A. We left Pete's house. We had got on the freeway, got on 40, and started heading back to his house in Russellville.
Q. Okay. And just to wrap up this story, did you later work out an agreement with Pete and Dr. Mann to do work at the hotel?
A. Yes, we did.

Q. Did you go back and do that work?
A. Yes, I did.
Q. How long were you working --
A. About a week.
Q. Did you make a second trip to Memphis?
A. Yes, I did.
Q. What was the purpose of that trip?
A. Ripping down -- doing a demo job, Graceland Motel. He wanted me to give him an estimate on it.
Q. Who wanted an estimate?
A. Dr. Mann.
Q. Was Pete there as well?
A. Pete was there as well.
Q. Were you all able to work out a deal?
A. Well, he -- I couldn't give him the numbers of what I could do it for at the time. I'd have to rent the equipment and everything, and I couldn't off the top of my head give him the numbers of what it would take. And Pete had had somebody else that was already a contractor that had all the equipment to do it with, so they went ahead and had him do it.
Q. Okay. All right. After Dr. Mann was arrested, did you get a call from Sue?
A. Yes, I did. I got a call -- well, I think Rita got the call. But, anyways, it was a couple of days after. I couldn't get on it right away. But it was a couple of days after, yes, I

did.
Q. A couple of days after Dr. Mann was arrested?
A. Yes, sir. Somewhere around that vicinity. It might have been a week, somewhere around there.
Q. Okay. And what was the request?
A. The request was she had some stuff that she wanted hauled off, out of her house.
Q. Had Sue ever called and asked you to haul stuff away from the house before?
A. No.
Q. Since then?
A. No.
Q. Did you go by her house?
A. Yes, sir.
Q. When you got there, was the media out front?
A. Yes, sir.
Q. Tell us what happened at Sue's house.
A. Well, I was driving an '86 GMC truck, little truck, and I backed up to the driveway, to the -- to -- closer to the door. And I think it was Channel 11, I don't know, it might have been Channel 7, the media had come up, and, well, they had wanted to talk to me. Sue was -- you know, she's got a lot of things on her mind, so she didn't want them coming on her property, so I had to tell them that she wanted me to run them off. So I told them to go on, you know, she didn't want to talk or anything.

Q. All right. Did you collect anything from Sue's house?
A. I -- just stuff that -- just stuff that when you are moving out of a house, collectibles, lamps, like stuff you don't want to use anymore, you know. There was clothes, there was belts, there was a pillow that you lay down on the ground on to rest your arms. There was a bag of *National Geographic* books, there was coffee cups. There was just stuff that she didn't want anymore. Probably some kids' videos, you know. There was like, oh, those computer -- these cords right here. I can't think of them off the top of my head. But it was stuff like that.
Q. Okay. She had that all ready when you got there?
A. Yes, sir.
Q. And what did you do with the stuff?
A. Well, I took the stuff to my house, and for one, some of it I threw in the trash, some of it I tried to give to some of the other people, tried to give some to Marva, the Russellville place that they take clothes and stuff that people can't use, and I burned some stuff in my front yard.
Q. Okay. The stuff that you took from the Manns' house, did it fill up the back of your truck?
A. Yeah, it filled up the back of my little truck. You can't really haul much stuff in the little truck.
Q. And your wife, Rita, had taken a carload out the day before?
A. Not that I know of.

Q. She would know about that?
A. She would know about that.
Q. And so you burned some of it. Where did you burn it?
A. I burned it in my front yard. I had a bunch of limbs, bunch of pine trees, and stuff like that that I got tired of looking at in my front yard and I figured I better clean it up, and so I had it burning. I had a pretty good size burn pile going. And stuff in trash cans, the burnable stuff, I just put in it.
Q. And do you remember taking ATF agents to that burn pile --
A. Yes, sir.
Q. -- on April 16 of --
A. Yes, sir.
Q. -- of 2010?
A. Uh-huh. Yep, they come out there. They wanted to talk to Rita.
Q. And they looked at the burn pile?
A. They looked at the burn pile. As a matter of fact, I helped them look at the burn pile.
Q. All right.
A. Or I took a rake from where my tools are and I kind of raked stuff around to where they could get in there and see if there was anything that they -- anything that was of any value to them.
Q. Mr. Barthelme, did Dr. Mann or anyone else ask you to bury

any grenades for him?
A. Dr. Mann or anybody else did not ask me to bury anything for him. As a matter of fact, I've never seen a grenade until you showed me one one day. I take that back. I've seen them off TV.
Q. Did Dr. Mann ask you to bury a green ammunition, a military box?
A. No, sir.
Q. Did he ask you to bury anything at the end of Galaxy Lane?
A. Not a thing in the world.
MR. GORDON: No further questions.
THE COURT: Cross-examination?
CROSS-EXAMINATION
BY MR. LASSITER:
Q. Good morning, Mr. Barthelme.
A. Hello.
Q. I'm Jack Lassiter. You testified a moment ago about ATF agents taking a look at your burn pile?
A. Yes, sir.
Q. Was that in April of this year or April of last year?
A. It was just recently.
Q. April of this year? All right. And was that the first time you'd met with ATF agents?
A. That is the very first time I met with ATF agents.
Q. Had they been to your house before to meet with your wife?

A. No, sir.
Q. Had they talked to you or your wife before that date?
A. No, sir.
Q. You testified before the grand jury in July of 2009. Is that right?
A. I did.
Q. And when you appeared before the grand jury in July of 2009, had you talked to anybody that was an agent or attorney for the government before you went before the grand jury?
A. Did not.
Q. Just put you in there cold, nobody talked to you at all?
A. Yes, sir.
Q. And in that testimony --
A. As a matter of fact, I had a subpoena from the grand jury.
Q. Do you remember which attorney subpoenaed you?
A. Do not.
Q. And during your grand jury testimony on that date, you didn't tell the grand jury anything about removing or picking up anything at the Mann residence after Dr. Mann was arrested, did you?
A. Maybe I didn't. I don't know.
Q. Do you remember anything you testified to the grand jury about?
A. About the lawnmower and stuff like that.
Q. Did you tell the grand jury anything about this trip to

Memphis that you testified about?
A. It's a possibility.
MR. LASSITER: Your Honor, may I approach?
THE COURT: You may.
BY MR. LASSITER:
Q. Let me show you what purports to be your grand jury testimony. Let me ask you to take a look at it for a moment.
A. Is this it?
Q. You can flip through.
(Witness complies with request.)
A. You might tell me what I'm looking at.
Q. That's your grand jury -- I wanted to ask you if that's your grand jury testimony?
A. Yeah, it probably is.
Q. All right. Anywhere in your grand jury testimony did you testify about anything concerning this trip to Memphis that you testified about here today?
A. I probably did.
Q. Keep looking. I want you to show me where.
MR. GORDON: Your Honor, to save time, I mean, I don't mean to interfere with Mr. Lassiter, but I'll stipulate he did not tell the grand jury about a trip to Memphis.
MR. LASSITER: All right.
BY MR. LASSITER:
Q. And did you testify about taking any stuff up to the Mann

residence that you testified about here today with this meeting outside?
A. Maybe not.
Q. You testified on direct a little while ago about buying some equipment that you were working off?
A. Sir?
Q. You testified on direct that you had acquired some equipment for your lawn business --
A. Yes, sir.
Q. -- that you were working off with Dr. Mann?
A. Yes, sir.
Q. Around that time, had you also purchased a couple of motorcycles? Do you recall that?
A. I think so.
Q. And were you --
A. I think my wife did.
Q. And was she paying Dr. Mann --
A. No, I think we was working that off.
Q. Working that off?
A. I understand I was working that off.
Q. You were working that off?
A. Yeah.
Q. Just like you were working off the --
A. The lawn equipment.
Q. I want to go back to this meeting with the ATF in 2010.

What agents were present on that date?
A. What agents were present that day? When I first met with the ATF?
Q. Yes.
A. It was --
Q. Are you kind of nervous here today?
A. Well, sure. I've never been in this predicament before.
Q. All right. Were you nervous when the ATF agents came?
A. I'm always nervous when -- you know.
Q. Have you ever dealt with any ATF agents before that date?
A. Have I ever dealt with -- no, I don't think so.
Q. How many agents were there?
A. There was two.
Q. Again, you're telling us this is the first time you'd met with any of the ATF --
A. Very first time, with David Oliver, and there was some other guy, a bald-headed guy. And I remember that because they got stuck in my front yard.
Q. And did you know they were coming?
A. Pardon me?
Q. Did you know they were coming?
A. I knew that they had set a date that I had to talk to them at the Pope County Sheriff's Department.
Q. But they came to your house that day?
A. After -- yeah, to talk to Rita, my wife.

Q. Did you know they were coming before they came out?
A. Yeah, because they told me that they were coming.
Q. And how long were they at your house?
A. Oh, probably about an hour.
Q. And at some point in time did they take you down to the sheriff's office?
A. No. No, sir.
Q. You never went to the sheriff's office --
A. I went to the sheriff's office myself. I had to take off work and meet the guys, meet the ATF agents at the Pope County Sheriff's Department.
Q. This is the same date or another date?
A. This is the same day.
Q. So did they get to your house in the morning, early afternoon, or what?
A. It was probably early afternoon.
Q. What time --
A. As a matter of fact, it might have been morning, sometime around there.
Q. All right. And what time did you go to the sheriff's office?
A. Well, I had taken off work to go to the sheriff's office.
Q. What time did you go to the sheriff's office?
A. I don't -- I don't recall what time. It was sometime in the morning, I do believe. As a matter of fact, I think I might

have took that day off. It was probably in the morning.
Q. And they wanted you to go to the sheriff's office so they could interrogate you?
A. So they could talk to me, yes, sir.
Q. They wanted to talk to you there, not at your house?
A. They wanted to talk to me at the sheriff's office.
Q. When you got to the sheriff's office, did they put you in a room?
A. They put me in a room.
Q. Who was in that room?
A. Well, it was David Oliver and there was another guy.
Q. And do you recall what was in the room you were placed in?
A. What I recall was in a room.
Q. Was there a chair, a small table?
A. There was a table, just like what's in the witness room over there (pointing), same thing; chair, tables.
Q. All right. And was that interview recorded?
A. I don't know.
Q. You weren't told one way or another?
A. Huh-uh.
Q. Did they have a Dictaphone out?
A. Sir?
Q. Did they have a Dictaphone out?
A. Did they have a phone out?
Q. A Dictaphone, something that they were talking into or

recording you.
A. I do not recall.
Q. Did they have a tape recorder out?
A. I didn't see one.
Q. Was there any video equipment in the corner --
A. I didn't see anything. I was just looking at them. I really wasn't paying attention to what was going around the walls or anything like that. I was just basically looking at them and answering their questions, what they were asking me.
Q. Did you have anybody with you?
A. No.
Q. And were you scared?
A. Well, partially, I was. I was kind of nervous, like I am now. But, I mean, like I said, who wouldn't be? I never have been in this predicament before.
Q. Would you have been less nervous if you were at your house rather than a small room at the sheriff's office?
A. I guess it didn't matter.
Q. How long did the interview go on?
A. How long did the interview -- probably about two or three hours.
Q. And during the course of that interview, did you ever feel like you were going to be arrested?
A. Yeah.
Q. In fact, I think you've told somebody in the last few

months --
A. The way it sounded -- the way it was sounding, it -- the way it was sounding, it felt like I was.
Q. Particularly if you didn't tell them what they wanted to hear?
A. Well, I guess.
Q. Well, have you told -- do you remember talking to Drake Mann?
A. Yeah, I do.
Q. All right. And Larry Norwood?
A. Yes, sir.
Q. Do you remember that interview?
A. At the Holiday Inn.
Q. They visited with you --
A. Yes, sir.
Q. -- in Russellville at the Holiday Inn?
A. Yes, on a Saturday.
Q. Did you tell them that you felt like you were going to be cuffed and stuffed that day?
A. Well, I told them that.
Q. And tell me what you mean. Does that mean you felt like you were about to be arrested?
A. Yeah. And I didn't know what for.
Q. And did they suggest certain things to you?
A. I was confused.

Q. Confused?
A. I was confused.
Q. Confused about the Memphis trip?
A. Confused about everything.
Q. Confused about whether or not there had been any discussion about a tire?
A. No, there was a little discussion about a tire.
Q. You talked to the agents about the tire that day. Correct?
A. Yes.
Q. They brought it up first, didn't they?
A. Yes.
Q. And they suggested to you on a trip to Memphis, that when you went to the Patels' house there was some discussion about a tire. They suggested that to you, did they not?
A. That was just a suggestion, that was all. But, you know, there was no telling what it was going to be used for or anything like that.
Q. But again --
A. And it didn't pertain to me.
Q. But they suggested to you that that happened. Right?
A. Huh?
Q. They suggested to you that that happened? They brought the tire up, not you. Right?
A. They brought the tire up, not me.
Q. And before that time you hadn't mentioned anything about a

tire to anybody at the ATF or to the grand jury the summer before. Right?
A. Right.
Q. In fact, before they mentioned that to you and you even said anything about there being a trip to Memphis?
A. Pardon?
Q. Before they mentioned that to you, had you even said anything to them during the discussion about a trip to Memphis?
A. No.
Q. Now, there was a trip to Memphis and you did some work at the Days Inn eventually, didn't you?
A. Yes, sir.
Q. All right. And that was for Dr. Mann and Pete?
A. Yes, sir.
Q. It was your understanding they were business partners?
A. They were business partners.
Q. As I understand your testimony, you went to Pete's house, and Dr. Mann and Pete had some private discussion. And where were you at this time while they were talking?
A. Well, I was using the restroom, for one, and then when I got down, they was sitting on the couch, and I was sitting right there, and they was talking to each other. I couldn't figure out what they were saying because it was in Hindu. Of course, it didn't pertain to me. I was just basically there.
Q. Well, when you first went to Pete's house, did you go

inside or stay outside --
A. We walked inside, up to the top stairs to look at this room he was wanting redone --
Q. All right.
A. -- dried in. Then I walked down to the bathroom and they walked outside. I went to the bathroom, which I went to the bathroom, and then I come out, they come inside, and they was sitting down on the couch, along with me. I was sitting on the couch, and they was talking.
Q. So other than this time you're in the bathroom, they're pretty much within your sight. Right?
A. Huh?
Q. Other than this period that you're in the bathroom, they're within your sight?
A. Pretty much.
Q. When you met with Mr. Norwood and Mr. Mann, did you tell them that the ATF agents were the ones that said that there was a spare tire involved when you met with them?
A. Do what now?
Q. When you met with Mr. Mann and Mr. Norwood and you were talking about this trip to Memphis, did you say to them, when they asked about it, the ATF agents were the ones who said a spare tire was involved on that trip?
A. Yes.
Q. And did you tell them that you'd never seen a spare tire on

that trip?
A. I didn't ever see a spare tire. I never touched a spare tire.
Q. Now, in that meeting with the agents, again, did you feel like if you didn't tell them what they wanted to hear, that they weren't going to believe you?
A. Well, basically, it wasn't what they was wanting to hear.
Q. Right. What you told them wasn't what they wanted to hear. Correct?
A. Right.
Q. And that made you nervous. Right?
A. Well, I'd been nervous anyway.
Q. That made you a little more nervous, didn't it?
A. Confused.
Q. And that made you feel like you were about to get arrested. Right?
A. Well, at the time, yeah.
Q. And were they -- did you feel like they were trying to tell you what to say?
A. No.
Q. Did you feel like they were trying to crack you?
A. No.
Q. Did you feel like what they were trying to do was trying to crack you into telling them something you had no idea about?
A. No.

Q. You met with Mr. Mann and Mr. Norwood. Did Mr. Norwood ask you, "Were they trying to tell you what to say?" Did he ask you about that in the context of that meeting at the sheriff's office? Did he ask you that?
A. Yes, he did.
Q. And did you tell Mr. Norwood, "They were trying to crack me, what they were trying to do is they were trying to crack me into telling them something I had no idea about"?
A. It's a possibility.
Q. And during this two or three hours -- is that what you just told me, it was a two or three-hour conversation?
A. Something like that, I think.
Q. And during this two or three-hour conversation, were they mostly focused on this Memphis trip?
A. No, not just Memphis. They just basically focused on just I'm his groundskeeper, you know, and stuff like that.
Q. During this conversation with Mr. Mann and Mr. Norwood, did Mr. Mann ask you were they focused pretty much only on the Memphis trip that they were interested in talking about? Did he ask you that? Do you remember that?
A. Let me see if I recall what you're saying. I don't think so. Kind of like asked what we felt about the doctor and all that, you know.
Q. Again, I'm not asking you what Mr. Mann and Mr. Norwood's conversation with you was about, for how long that took. But

Mr. Mann asked you in your meeting with the ATF agents that they were basically focused on the Memphis trip?
A. No, sir. They were just basically -- they was wanting to know about lawnmower equipment, just different things.
Q. So if I were to ask you did you say basically -- you said to Mr. Mann -- if you said to Mr. Mann, basically, yes, they were focused on the Memphis trip, your testimony would be that didn't happen, that conversation didn't happen? Did you feel in that meeting with the ATF agents that they can do just about whatever they wanted to to you?
A. They can do whatever they want.
Q. Did you feel like you were captive in that room with those agents?
A. They can do whatever they want.
Q. Feel like you better tell them what they want to hear or they can do whatever they want to?
A. Tell them the truth.
Q. Let me ask you again. Did you basically feel like the agents needed to hear what it was that they wanted to hear?
A. Well, at the time.
Q. And that's because you're nervous in the room by yourself with the agents, you don't have anybody in there helping you, and you feel like you're going to get arrested if you don't comply with their statements?
A. I guess that's where their interrogation comes in.

Q. And did you tell Mr. Mann and Mr. Norwood that the ATF can do whatever they want, it doesn't matter, they can do whatever they want; if they want to cuff you and stuff you, they're going to cuff you and stuff you?
A. Yes, sir.
Q. After that meeting with the agents, did you have any other conversation with them after that?
A. After the first one?
Q. The one we've been talking about here where you were at the sheriff's department in Pope County, in the interrogation room?
A. I had two meetings with them.
Q. Tell me when those were and who was there. Tell me about the first one.
A. The first one I told you was David Oliver and some other guy. I don't know what his name was. I don't remember what his name was.
Q. And that's the one we've been talking about?
A. I don't keep track of that. That's the one. And the next one was the prosecuting attorney, which is Mike, and the lady over there (pointing), and David Oliver. Yes.
Q. And when was that?
A. Man, I don't know what the date was.
Q. Was that --
A. Probably just --
Q. -- in the last week?

A. No, I'm going to say it's been longer than that. I'm going to say probably about a month ago.
Q. Where was that meeting?
A. That was at the Pope County sheriff.
Q. Again?
A. Yes, sir.
Q. Again, were you in a room alone with them?
A. I was in a room alone with them. That was the second time, yes.
Q. And how many of them were in there with you; three, four of them?
A. There was three, I do recall, yes.
Q. And did anybody record that?
A. I do not know.
Q. Anybody taking notes?
A. Yes.
Q. Was your wife with you that day?
A. No, she wasn't.
Q. When you went to the sheriff's office on that day that we've been talking about, did anybody take your photograph?
A. I think so.
Q. So was that before the interview?
A. That was after the interview, I think.
Q. Make you feel like you were going to be arrested? Think somebody was taking your mug shot? Nobody told you?

A. I guess they had to do that. I don't know.
Q. Nobody told you, so you don't know. Right?
A. Right.
Q. They said, "Come on in here, we want to take your photograph"?
A. They said, "Let me take your photograph." So, sure, take it.

MR. LASSITER: May I have just a second, Your Honor?

(Mr. Lassiter confers with co-counsel.)

BY MR. LASSITER:
Q. Back to the sheriff's office. I've got a couple of more questions for you. During that meeting with Agent Oliver and the other bald agent you referred to, did you write down any statement that day?
A. No, sir.
Q. Okay. They write something out?
A. Yeah.
Q. But you didn't?
A. No. Not that I recall.
Q. All right.

MR. LASSITER: Pass the witness.

THE COURT: Mr. Dudley? Okay.

Redirect.

MR. GORDON: Thank you.

REDIRECT EXAMINATION

BY MR. GORDON:
Q. Mr. Barthelme, when we met with you at the sheriff's office, are you aware that we were meeting with all of our witnesses at the sheriff's office?
A. Pardon me?
Q. Are you aware that we were meeting with all of the witnesses at the sheriff's office?
A. Yes, sir.
Q. Okay. So you weren't being singled out?
A. No, sir.
Q. That's where we were meeting with everybody. Right?
A. Was meeting with everybody.
Q. And it wasn't a jail cell or a holding cell?
A. No, sir.
Q. Okay.
A. You were just talking, asking questions.
Q. Okay. And let's talk about that too. In front of the grand jury, you were merely answering the questions that you were asked. Is that correct?
A. Yes, sir.
Q. So if I didn't know about the trip to Memphis, it's not your fault that I didn't ask you about it. Correct?
A. I recognize I should have told you about it.
Q. Well, if I didn't ask you, I mean, that's my bad, not yours. Right?

A. Well, I guess. I don't know.
Q. Okay. I mean, all along, whether you'd been in front of the grand jury talking to the agents or talking to Karen and I and the jury, you've just been answering the questions we've asked you. Correct?
A. Yes, sir.
Q. Do you remember when the first time you were asked about the trip to Memphis was? Was that when David and the bald guy came to talk to you?
A. I'm thinking so.
Q. The bald agent, was his name Glen Cook?
A. It could have been.
Q. Okay.
A. I don't remember off the top of my head.
Q. Bald, short, stocky?
A. Yeah.
Q. Okay. And then when they took the picture of you --
A. Yes, sir.
Q. -- do you recall them taking other pictures as well?
A. No.
Q. Do you remember them taking pictures of the burn pile?
A. There out there, yes.
Q. Your house?
A. Yes.
Q. And the pile of brush in the back?

A. Yes.
Q. Do you remember that all being the same day?
A. Yes.
Q. This cuffed and stuffed comment, it sounded like you were going to get arrested when you talked to the ATF agents?
A. At the time it did, yes.
Q. Tell us what that's all about.
A. I've never been in this predicament before, and they were just kind of like pushing me into giving information.
Q. Okay.
A. So if I didn't -- if I didn't answer the questions correctly, you know, then they would think that I was lying. So it was coming down to where it's like you answer this question, it's the wrong answer, then, you know, I felt like I was fixing to get, you know, handcuffed and --
Q. Is that what they told you or is that what you were worried about?
A. Well, basically, it sounded like that.
Q. Explain that to us.
A. Well --
Q. Tell us exactly what they did.
A. They were asking me a question, which I answered to the best of my knowledge, and then they didn't kind of -- kind of -- it was kind of like "I don't believe you."
Q. Okay.

A. "And if you don't tell me, if you don't tell me right now, it's not going to be good."
Q. Okay. And so we're clear, one of the points that they were talking to you about was, they were trying to figure out if you were -- if you actually saw the spare tire. Correct?
A. Exactly.
Q. Because they wanted to see if you were covering for your friend Dr. Mann or not?
A. Exactly, exactly.
Q. So they pushed you on that?
A. They tried to push me on that.
Q. To see if you would come clean?
A. Right.
Q. And?
A. I did.
Q. What did you come clean on?
A. Well, there wasn't nothing I seen.
Q. Right. Do you see how they were trying to make sure you were telling the truth?
A. Right, they were pressing me.
Q. Do you remember in your grand jury testimony you told them that Dr. Mann was one of your best friends?
A. He was.
Q. So you could maybe see their concern that you might be protecting him?

A. Right.
Q. Okay. But they didn't make you say something that wasn't the truth?
A. No.
Q. Right?
A. No.
Q. They were just trying to make sure what you were telling them was the truth?
A. Right.
Q. And did you tell them anything just because, you know, they want me to say the sky is purple, so I'm going to tell them the sky was purple?
A. No.
Q. So no matter how far they pushed you to make sure you were telling the truth, you told them the truth?
A. Right.
Q. Right?
A. Yes, sir.
Q. Okay. On this spare tire and the trip to Memphis --
A. Uh-huh.
Q. -- you're sitting there under oath --
A. Right.
Q. -- and we're all here. Okay? You've got a roomful of witnesses.
A. Uh-huh.

Q. Nothing bad's going to happen to you. Is that the truth, what you told this jury about the spare tire?
A. That is the truth.
Q. Okay. That Dr. Mann said that you all were going to go by Pete's house to pick up a spare tire?
A. Yeah, he talked about it.
Q. Did ATF put those words in your mouth?
A. No.
Q. Did they make you say that?
A. No. He could have -- he could have had a flat tire at his house. I don't know. Didn't have -- it didn't pertain to me.
Q. Right. And to this day you don't know why --
A. To this day.
Q. But you know that's why Dr. Mann said you all were going to Pete's house?
A. Right.
Q. And then ATF pushed you really hard to make sure you were telling them the truth?
A. Yes, sir.

MR. GORDON: Thank you. No further questions.

THE COURT: All right. Anything further?

RECROSS-EXAMINATION

BY MR. LASSITER:

Q. Mr. Barthelme, how's your memory?
A. Huh?

Q. How's your memory?
A. Well, it's not all there.
Q. You have problems with your recollection sometimes?
A. Sometimes.
Q. Do you believe you testified -- did you tell the ATF agents that you'd been married to your wife for 15 years?
A. Yes.
Q. How long have you been married to her?
A. I think 16 now.
Q. What year did you get married?
A. Oh, you're going to get me in trouble now.
Q. What year did you get married?
A. Oh, man. September 11, I think.
Q. September 11?
A. Yeah.
Q. What year?
A. Oh, I'm in the dog house.
Q. Do you --
A. I don't keep track of it. She's going to get mad too now.
Q. I put your grand jury testimony up there a little while ago. Did you have any problems reading it?
A. Yeah.
Q. Were you --
A. I don't have my reading glasses with me.
Q. Did you have glasses with you when you went down to the

sheriff's office that day?
A. No, sir.
Q. So if they asked you to review anything that day that they wrote down, you'd have a little bit of trouble reading it?
A. Well, just a little bit, but I managed to do it.
Q. Are you and Dr. Mann friends? I think I've heard both here today, maybe in the grand jury testimony you said you were and here you said you weren't, or vice versa?
A. Pardon?
Q. Are you and Dr. Mann friends?
A. We're friends, business relations.
Q. All right. We talked a long time a minute ago about that meeting at the sheriff's office where they took your picture there that day. You told me earlier that you felt like you might get arrested. Right?
A. Yes.
Q. You told people that you might get -- felt like you were going to get stuffed and cuffed?
A. Yes.
Q. Correct? It would be fair to say you felt intimidated?
A. Yes.
Q. And did you feel like they were pointing the finger at you like you had something to do with it?
A. Yes.
Q. Did it make you feel like you were in jeopardy?

A. Yes.
Q. Out of that meeting and in that room, who do you think it was up to to determine whether or not you were telling the truth that Mr. Gordon was talking about? Did you feel in that room like it was up to you to determine whether or not you were telling the truth or it was up to the agents while you were sitting there in that room alone with them being interrogated?
A. Well, I've never been interrogated before.
Q. You feel like the agents were the ones who were going to decide whether or not you were telling the truth?
A. I've never been interrogated before.
Q. Well, that wasn't the question. Did you feel like it was up to the agents, they were going to make the determination whether or not you were telling them the truth?
A. Yes.
Q. And they weren't going to stop until they heard what they wanted to hear?
A. At the time.
Q. At any time, did you, in the two or three hours that you were in that room, did you leave that room, other than maybe to get your picture made?
A. I may have had to, yeah. I think I might have had -- might have had to go to the bathroom.
Q. Other than that, you were in there the whole time?
A. Yes, sir.

Q. Did you have some conversation with any attorney after you left there? I don't want to know the content of it. I just want to know if you talked to an attorney after that.
A. After where?
Q. After that meeting at the sheriff's office.
A. I don't think so.
MR. LASSITER: Judge, that's all I have. Thank you.
THE COURT: Anything else?
FURTHER REDIRECT EXAMINATION
BY MR. GORDON:
Q. Mr. Barthelme, despite all the pressure and the intimidation that ATF used when they questioned you, did you lie to them?
A. No, sir.
Q. Did you lie to this jury?
A. Did not lie to the jury.
MR. GORDON: No further questions.
THE COURT: You can stand down.
THE WITNESS: Thank you.
THE COURT: Call your next.
MR. GORDON: Your Honor, the next one is going to be lengthy.
THE COURT: We can take a 15-minute break. Let's recess until 10:40.
(Recess from 10:28 a.m. until 10:42 a.m.; jury not

present.)

THE COURT: Do you have something?

MR. GORDON: Your Honor, when the jury comes back, we have a stipulation of testimony, and that testimony -- the stipulation is about testimony from a records keeper from Microsoft. Essentially, it's going to spell out that the United States served them with a grand jury subpoena and a search warrant for records on a certain account, e-mail account, and they responded, and the contents are on a disc.

THE COURT: What is the person's name?

MR. GORDON: Shannon Baylor, B-a-y-l-o-r. On that disc there are certain e-mails and records that the United States intends to introduce separately. My understanding is the defense is going to have an objection to two of those records.

THE COURT: How many records are there again?

MR. GORDON: One is going to be a disc, and then there's account information sheets, there's an address book for the e-mail account, and I believe there are 16 e-mails that the United States intends to introduce. And really the way this all shakes out is that there's one e-mail in particular that we think is relevant to the case. The thing is, this is an e-mail account that multiple people use and the e-mail is unsigned. And so we're going to demonstrate that Dr. Mann uses this account through these 15 additional e-mails. They're a sample of e-mails that clearly show that Dr. Mann uses the account.

THE COURT: And what's the objection to -- first, what are the two pieces of evidence or exhibits that have objections and what are the objections?

MR. LASSITER: Your Honor, there are a series of e-mails here. Some of the e-mails are signed "Randy Mann." The ones we object to are as follows: 182-C within the government's exhibits is an e-mail that says, "Read this and let me know what you think." It's addressed to an individual that, to my knowledge, is not a witness in this case. Attached to that is a letter to Attorney General Dustin McDaniel, which is not signed by hand, but says, "Sincerely, Randeep Mann." We object to that for the simple reason that one cannot tell who the sender of this e-mail is. It's not signed. It just says, "Read this and let me know what you think."

THE COURT: So 182-C you object to? Is there another one that you object to?

MR. LASSITER: Yes, there is, Your Honor. And that is 182-G, and the e-mail is again to an individual that's not involved in this case. The communication is "Here's the write-up I was telling you about. Randeep." And attached to that is a complaint in Mann v. Arkansas State Medical Board in federal court. It does not bear a case number. It appears to be a draft. The objection is that that's a draft of a complaint that was prepared by somebody else. It doesn't make anything at issue in this case more or less probable. It's not relevant. I

believe the complaint is already in evidence as part of the medical board file, so it doesn't serve any purpose. If there's any marginal relevance, then its probative value is outweighed by the potential for confusion under 403. It's just a draft. It is not file marked. It serves no purpose in this lawsuit.

THE COURT: Going backwards, what is the relevance of an e-mail that attaches a copy of the complaint? Is this one of the complaints that was actually ultimately filed, one of the lawsuits?

MR. LASSITER: I'm not certain. Do you know?

MS. CASSINELLI COUCH: No, I don't know if it's a draft or --

THE COURT: What I'm saying is, because I think we've already received copies of the lawsuits that were filed, and what would be the relevance of essentially attaching another copy of it with an e-mail saying here's a copy of it?

MR. GORDON: Your Honor, for me, again, this all goes to show that he was using the account. The e-mail would not be complete without the attachment that he sent. And then, also, I think it also goes -- again, it shows how much the issues that he's having with the board weighs on his mind, where he's e-mailing this complaint to other people as well.

THE COURT: Let's move back to 182-C. Mr. Lassiter says that there's no way to authenticate -- all that says is "Randy Mann," there's no way to authenticate that it actually

came from his computer or him.

MR. GORDON: Your Honor, the subject line on that e-mail is "How do you like my life?", and then the attachment -- the subject line is "How do you like my life?", and then the message is "Read this and let me know what you think," and then the attachment is a letter that is -- I mean, it is addressed -- it's a four-page letter about Dr. Mann and his life, and it concludes, "Sincerely, Randeep S. Mann."

THE COURT: It's signed.

MR. GORDON: It's typed.

THE COURT: Mr. Lassiter's point is although it has the name "Randeep Mann" on it, how do you verify it is his? I'm just asking.

MR. GORDON: It's just one of those things where I think, given the totality of this e-mail, these are points he can bring up on cross. I don't think it should affect the admissibility of this evidence.

THE COURT: We know that the e-mail came from him?

MR. GORDON: We know that someone using that account, that e-mail account sent it on these particular dates. And I think when you look at the e-mail as a whole, including the attachment, it shows that Dr. Mann uses that account.

THE COURT: How many e-mails total do we have here?

MR. GORDON: Fifteen.

THE COURT: Are all of them similar or are they

different?

MR. GORDON: I believe most of the other ones it will say where the sender is addressing it, like "Dear Randeep," or something like that, or he signs it "Randeep Mann," or "Randy," or something like that.

THE COURT: Final word, Mr. Lassiter?

MR. LASSITER: One, he has plenty of e-mails here to establish whatever he wants to establish. Two, as to the e-mail that's not signed, I just would say that might be a question that would be posed by any family member at that time with that attachment. I don't have anything further to add to the other argument with the draft of the complaint attached, other than to say I think it's already in evidence, and since it's just a draft, it really doesn't add anything, it's not relevant.

THE COURT: Here's what I'm going to do. I'm going to admit the letter regarding "Here's my life," and I think that's 182-C. 182-G is another e-mail that attaches a copy of the complaint. And although the government says it goes to showing how much this was on his mind, the mere filing of a complaint indicates that there was a lot on his mind, and it's already in the record, so I'm going to exclude 182-G.

MR. GORDON: In its entirety or just the complaint? Because I can put in the e-mail without the attachment, and the e-mail is signed "Randy."

THE COURT: And the e-mail just says, "See attached."

Right?

MR. GORDON: It says, "Here's the write-up I was telling you about. Randy." I'd at least ask to be able to put that in, but not the attachments.

THE COURT: I think if you let that in, then the question begs, what was attached? I don't know if it advances the case, but I'll let you put that in. But just to put in another copy of the complaint, whether it's a draft or the final version, we already have a copy in the record. So I'm going to exclude the actual complaint. You can put in the e-mail.

MR. GORDON: Thank you.

THE COURT: Anything else? Because what you want to show is that -- your argument is that you want to show that he's using this account. I think the use of the e-mail would indicate that, if the jury believes that that's actually him. But actually attaching the complaint doesn't advance that position any.

Anything else?

MR. GORDON: No, Your Honor.

MR. LASSITER: No, Your Honor.

THE COURT: Then we have the stipulation first, and then we have what?

MR. GORDON: Agent Oliver. Your Honor, he's going to explain -- I'm going to introduce the e-mails through him. Can I have one second to let him know we're not going to bring up

the complaint?

THE COURT: Yes. We can bring the jury in.

(Whereupon, the jury entered the courtroom and proceedings continued in open court as follows.)

THE COURT: Mr. Gordon?

MR. GORDON: Thank you, Your Honor. We have a stipulation of testimony.

"The United States Attorney for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person and through undersigned counsel, hereby agree and stipulate that if Shannon Baylor were present and testifying under oath, she would testify as follows:

"Shannon Baylor is a records custodian for Microsoft Corporation, a company that develops, manufactures, licenses, and supports a wide range of computer products and software. As part of its business, Microsoft offers internet-based e-mail services through hotmail.com. On March 11, 2009, Microsoft was served with a federal grand jury subpoena to produce records pertaining to an e-mail account named mannrs@hotmail.com. Microsoft was also served with a search warrant for records pertaining to the same account on May 20, 2009.

"Government's Exhibit 180-A contains records pertaining to the e-mail account at mannrs@hotmail.com provided by Microsoft on May 29, 2009. These records include all account information and e-mails stored in that account at the time of the federal

search warrant. The records do not include any e-mails that had been deleted and purged from Microsoft's databases prior to service of the federal search warrant.

"Government's Exhibit 180-B is the account information for mannrs@hotmail.com. This information shows that the account was established on September 6, 1999, and was set up in the name of Sue Mann in Arkansas. By default, the name listed in the account information will always appear with the e-mail address as the sender whenever an e-mail is sent from the account. The name and location of the account holder is not verified by Microsoft.

"Government's Exhibit 180-C is the address book for the account mannrs@hotmail.com. The address book contains saved contact information for other e-mail accounts. 'Quickname' is a feature that allows a user to create a nickname for another e-mail account in order to prevent the user from having to type the entire e-mail address during e-mail communications.

"Government Exhibits 181 and 182-A through 182-O are fair and accurate copies of records provided by Microsoft and are contained on Government's Exhibit 180-A."

Signed by myself, Randeep Mann, Jack Lassiter, Sangeeta Mann, and Tim Dudley.

THE COURT: Ladies and gentlemen, the government and the defendants have stipulated, that is, they've agreed, that if a Shannon Baylor were called as a witness, she would testify in

the way counsel has just stated. You should accept that as being Shannon Baylor's testimony just as if it had been given in the courtroom by the witness on the witness stand.

MR. GORDON: The United States calls David Oliver.

DAVID OLIVER, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good morning.

A. Good morning.

Q. Are you the same David Oliver that testified earlier?

A. Yes, sir, I am.

Q. I remind you that you're still under oath.

A. Yes, sir.

Q. Tell us again who you work for.

A. I'm a special agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives.

Q. In this case, did the grand jury issue a subpoena to Sue Mann requesting that she produce some documents?

A. Yes, sir.

Q. Was Sue Mann served a subpoena on May 3, 2009?

A. Yes, sir.

Q. Who served her?

A. I did, through her attorney.

Q. Okay. How was that done?

A. I believe it was faxed to her attorney.

Q. And did Mrs. Mann comply with that subpoena?
A. Yes, sir, she did.
Q. On what date?
A. On the Tuesday, which I believe was May 5.
Q. Do me a favor and pull that microphone closer to you.
A. Yes, sir.
Q. Thank you. And who did she give the documents to?
A. She gave them to me.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. GORDON:

Q. I'm going to hand you what's been marked as Government's Exhibits 183-A, 183-B, 183-C, 183-D, and 183-E.
A. Yes, sir.
Q. Are those the records that Mrs. Mann provided to you in response to the grand jury subpoena?
A. Yes, sir, they are.
Q. Have you reviewed those before testifying?
A. Yes, sir, I have.
Q. Are those the actual documents she gave you?
A. Yes, sir, they are.
Q. They're not copies?
A. They're not copies.

MR. GORDON: Your Honor, at this time I would offer Government Exhibits 183-A through 183-E.

THE COURT: Any objections?

MR. DUDLEY: No objection, Your Honor.

THE COURT: They're received.

(Government Exhibits 183-A through 183-E received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, I'd like to walk through these with you, please. Let's look at Government's Exhibit 183-A first. What's the first page here?

A. The first page is a certificate of authenticity. I'll try saying that one. Certificate of authenticity.

Q. Authenticity?

A. Thank you. I knew you'd help me. And it's filled out with Sangeeta Mann's name, and on the second page it's signed saying these are the documents, the originals she's providing to us.

Q. Let's look at page 3.

A. Yes, sir.

Q. What is this?

A. Special Power of Attorney from Sangeeta S. Mann to Randeep S. Mann.

Q. Let's turn the page. And what authority was Sangeeta Mann giving to Randeep Mann in this power of attorney?

A. "To withdraw or draw against any funds, checking or savings, that I may have in any bank or depository, to endorse and cash or deposit all checks or evidence of indebtedness

payable to me. To sell or otherwise dispose of any real estate, personal property, or automobiles that may be owned by me as my said attorney shall deem fit. The above powers are to be exercised by my attorney in fact in the event of my arrest by the U.S. Border Patrol, Immigration & Naturalization Service, state or federal authorities, so that my attorney in fact may utilize this special power of attorney to provide me with the funds necessary to meet any bond conditions imposed by these authorities, or in the event that no bond is set, my attorney in fact shall remit all such funds derived from my accounts or from the sale of my properties to me at an address to be provided by me."

Q. What's the date of this power of attorney?

A. July 10, 2002.

Q. Let's turn the page, please. Is this the second power of attorney?

A. Yes, sir, it is.

Q. A general power of attorney?

A. That's correct, between Randeep Singh Mann -- I'm sorry -- Sandip Singh Mann to Randeep Singh Mann or Sangeeta Mann.

Q. What's the date?

A. July 11, 2002.

Q. Let's turn the page. In this power of attorney, what is Sandip Mann giving authorization to Dr. Mann and Mrs. Mann to do?

A. It's to "... give all general powers of attorney that have previously been signed by me or the preceding sentence shall not have the effect of revoking any power of attorney that are directly related to my health care that previously have been signed by me. My agents shall have full power and authority to act on my behalf. This power and authority shall authorize my agent to manage and control all of my affairs and to exercise all of my legal rights and powers, including all the rights and powers that I may acquire in the future. My agent's power shall include but not limited to the power to open and maintain" --

Q. Let's not read through the whole thing here.

A. Okay.

Q. This general power of attorney essentially authorizes Dr. Mann and Mrs. Mann to do anything that Sandip Mann could have done on his own. Is that correct?

A. That's correct.

Q. Let's look at Government's Exhibit 183-B. What are we looking at here?

A. It's a statement from the Bank of America with the account number of 378-590-8796, and the account is in the name of Sandip S. Mann at 313 Milky Way Lane in London, Arkansas.

Q. So these are bank records from that account?

A. Yes, sir, they are.

Q. And let's just flip through the first ten pages so the jury can see.

MR. HENDRIX: Your Honor, while the witness and Mr. Gordon are doing that, can we approach?

THE COURT: You may.

(Bench conference reported as follows:)

MR. HENDRIX: Your Honor, this is a relevance objection. I'm not sure where this is going and what the relevance of these documents are.

MR. GORDON: These are the documents that were removed from the office.

THE COURT: Okay.

MR. HENDRIX: That would be part of the obstruction count? This is what, the allegation was, hidden from the grand jury?

MR. GORDON: Yes.

THE COURT: Okay.

MR. HENDRIX: Thanks.

(Whereupon, proceedings continued in open court as follows:)

BY MR. GORDON:

Q. Agent Oliver, let's look at Government's Exhibit 183-C.

A. Yes, sir.

Q. And are these deposit receipts for the same account?

A. Yes, sir, they are.

Q. I was going to show the first seven pages to the jury. Let's look at 183-D. What are we looking at here?

A. These are photocopies of signed checks that are drawn on the same account, and we did not get the original checks on this. These are the original photocopies that we got, but we didn't get the original checks.
Q. Okay. Tell the jury why that was.
A. I believe there's an agreement between the government and her attorney to allow her to keep the checks because she still needed to use them.
Q. So we accepted copies instead?
A. Yes, sir.
Q. And on these checks, whose name is on the account?
A. Sandip S. Mann.
Q. At what address?
A. 313 Milky Way Lane, London, Arkansas.
Q. And then they're signed. Correct?
A. Yes, sir, they are.
Q. Other than that, they're blank?
A. That's correct.
Q. And we have checks 1091 through 1120, and they're all blank signed checks?
A. Yes, sir.
Q. On the same account?
A. That's correct.
Q. Do you have Government's Exhibit 183-E up there with you?
A. Yes, sir, I do.

Q. What's in that?
A. It's a bank -- I'm sorry -- from the Bank of America box, and what's in it are deposit tickets for that account, or deposit slips.
Q. Was this information relevant to your investigation of Dr. Mann?
A. Yes, sir, it was.
Q. How so?
A. Because in an investigation, one of the things you always follow is the trail of the money, and the reason why you do that is you can develop a lot of leads when you're looking at someone's finances, that is, you can tell who they're doing business with, you can figure out if those are people that you need to go talk to. And as you know, everybody has an ATM card, you can also look at the ATM card withdrawals and see what locations where those are made and you can kind of track a person.
Q. Now, these accounts are in Sandip Mann's name. Is that correct?
A. Yes, sir, they are.
Q. Who is that?
A. Sandip Mann is the brother of Randeep Mann.
Q. Where does he reside?
A. In India.
Q. Did he used to live in the United States?

A. Yes, sir, he did.
Q. And what was the last known address that he listed as his address in the United States?
A. 313 Milky Way Lane, London, Arkansas.
Q. The same address as Dr. Mann?
A. That's correct.
Q. Was Sandip Mann deported from the United States?
A. Yes, sir, he was.
Q. In what year?
A. I believe it was 2002.
Q. During the course of your investigation, had the name Sandip Mann come up earlier?
A. Yes, sir, it had.
Q. How so?
A. I believe when we started doing a preliminary check, the vehicles we saw were registered to Dr. Mann and some of his property -- I'm sorry -- to Sandip Mann. The vehicles that were at Dr. Mann's house were registered to Sandip Mann. I think we did some open-source queries and we saw that Sandip's name was associated with 313 Milky Way Lane, and I also think we learned that he had owned the medical clinic, or his name was associated with the medical clinic.
Q. Was he also discussed in some of the phone calls that Dr. Mann and Mrs. Mann made?
A. Yes, sir, he was.

Q. Did you obtain personal property tax information on Sandip Mann?
A. Yes, sir, I did.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'll show you what's been marked as Government's Exhibit 184-A. Do you recognize that?
A. Yes, sir, I do.
Q. Is that the personal property tax information on Sandip Mann?
A. Yes, sir, it is.
Q. Are those certified copies?
A. Well, I picked up certified copies. I'm not -- oh, yeah. I'm sorry. It's on the back. Yes, sir, they are.
MR. GORDON: Your Honor, I'd offer Government's Exhibit 184-A.
MR. HENDRIX: Your Honor, do you want us to approach the bench? I'm not sure of the relevance of this.
THE COURT: Let's approach.
(Bench conference reported as follows:)
THE COURT: What is the relevance of 184-A, which is personal property records for Sandip Mann?
MR. GORDON: The defense had stated in their opening statements that the records that were taken out of the office

had nothing to do with this case, and so we're showing how they were relevant to the investigation of the case.

THE COURT: Okay. And those personal property records of Sandip Mann are going to show how these documents were relevant to the cases?

MR. GORDON: Well, it's going to show that they had checks -- they were checking Sandip Mann out.

MR. HENDRIX: And I'm sorry. But apparently it didn't result in anything, and certainly nothing germane to the charges.

THE COURT: I'll sustain that. I thought that the way the indictment reads is that he was conspiring with -- I mean she was conspiring with Randeep Mann to obstruct the investigation, and you're saying, Mr. Gordon, that they were investigating Sandip Mann?

MR. GORDON: Well, what I'm trying to show -- I know Mr. Dudley specifically in his opening statement said these documents will have nothing to do with the case, and we're trying to show they were relevant to the investigation of this case. And he wasn't charged, but it certainly was something relevant to their investigation based on the things that they were seeing.

THE COURT: But nothing was ever found, or Sandip was never charged, and apparently -- are you saying that the hiding of these documents or the moving of these documents prevented

the government from being able to develop a case against Sandip, or are you saying that just the mere fact that she moved them and Sandip Mann -- she was obstructing the investigation of Sandip?

MR. GORDON: Because, again, they're going to say the records she moved had nothing to do with the case, and they did because he was someone that we took a good hard look at.

THE COURT: A person of interest, I understand.

MR. GORDON: Yeah. And this is just showing how and why he was investigated.

THE COURT: Mr. Dudley's, what's your position on this?

MR. DUDLEY: Judge, I don't see it. But, I mean, I have seen nothing in any grand jury testimony where they were investigating Sandip Mann. Now, if they want to get up here and say they were, they can get up here and say they were. But I hadn't seen it.

THE COURT: I mean, I don't know, I haven't seen any of that, so I wouldn't know if they were investigating Sandip at all. I'll overrule the objection. But how much of this is going to relate to Sandip Mann and not Dr. Mann? Because, I mean, you can almost say they were investigating the last guy that was up here -- and I forget his name -- by having him come out to the house, she was obstructing justice by having him come to the house and telling the media to get away. We can keep

extending this out to the point where we can find somebody who was a person of interest who might have affected the case. How far are we going to go with this?

MR. GORDON: I mean, we're talking about him, and we're only going to talk about him, being Sandip, because that's what the checks are about.

THE COURT: So you don't have any other persons of interest who are going to go down those roads as well? It's just going to be Sandip, limiting it to him?

MR. GORDON: To show why the checks were relevant to our investigation.

THE COURT: I'll overrule it.

(Whereupon, proceedings continued in open court as follows:)

BY MR. GORDON:

Q. Agent Oliver, let's look at Government's Exhibit 184-A. We're going to start on page 5. Before we go into this, I guess I want to ask you, was Sandip Mann investigated as part of the West Memphis bombing?

A. Yes, sir.

Q. Why?

A. Because, first of all, his name had come up in relation to Dr. Mann. And I'm not sure what evidence has already been presented, but there was an e-mail that was sent to his brother that attracted our attention.

Q. We'll get to that in just a minute. On page 5 of this exhibit, what are we looking at here?
A. Page 5 is the 2007 personal property assessment for Sandip Mann.
Q. Okay. And essentially this lists the cars --
A. Yes, sir. Personal property is the cars, watercraft, motorcycles that are, I guess, assessed in the name of Sandip Mann.
Q. Read through those real quick for us.
A. 2002 Porsche, 1993 Mazda, a 1996 Dodge, a 2005 Ford, a 1995 BMW, a 2005 Honda, a 1997 Sea-Doo, a 2002 Sea-Doo, a 1998 Sea-Doo, a 1998 Sea-Doo, a 2002 watercraft trailer, a 2002 Honda, a 2003 Lamborghini, and a 1998 watercraft trailer.
Q. And Sandip Mann was deported when?
A. In 2002.
Q. To India?
A. Yes, sir.
Q. Looking at this list, which cars would have been clearly added after his deportation?
A. The 2005 Ford, 2005 Honda motorcycle.
Q. How about down at the bottom?
A. Oh, I'm sorry. A 2003 Lamborghini.
Q. Go to page 3 of this exhibit.
A. Yes, sir.
Q. What are we looking at here?

A. 2008 personal property assessment for Sandip Mann, vehicles and boats, motorcycles.
Q. Okay. And is this essentially the same as the 2007 list, except the Lamborghini has been taken off?
A. That's correct.
Q. And the boat has been added?
A. Yes, sir, the 1992 Bayliner.
Q. Look at page 2 of this exhibit. What are we looking at here?
A. The 2009 personal property assessment for Sandip Mann.
Q. And the difference here is that the Porsche is now gone?
A. That's correct.
Q. The Dodge Viper is now gone?
A. That's correct.
Q. And the 2005 Ford GT is gone?
A. Yes, sir.
Q. Let's look at page 1 of this exhibit, please.
A. Yes, sir.
Q. What are we looking at here?
A. The 2010 personal property assessment for Sandip Mann.
Q. So this is the current information?
A. Yes, sir.
Q. In addition to this, did Dr. Mann and Mrs. Mann have other vehicles registered to them?
A. Yes, sir, they did.

Q. Did you also obtain the real property tax information from Pope County?
A. Yes, sir, I did.
MR. GORDON: May I approach the witness?
THE COURT: You may.
BY MR. GORDON:
Q. Let me show you what's been marked as Government's Exhibit 184-B.
A. Yes, sir.
Q. Is that the real property information for Sandip Mann?
A. Yes, sir, it is.
Q. Are those certified copies?
A. Yes, sir, they are.
MR. GORDON: Your Honor, I'd offer Government's Exhibit 184-B.
MR. HENDRIX: Subject to our relevance objection.
THE COURT: It's received subject to the objections of the defendant.
(Government Exhibit 184-B received in evidence.)
BY MR. GORDON:
Q. Agent Oliver, let's look at Government's Exhibit 184-B. What are we looking at here?
A. It's the Pope County, Arkansas rural property card. It's what I got from the tax office in Pope County for Sandip S. Mann. I believe it's for 3.24 acres of land.

Q. In whose name?
A. Thank you. Sandip S. Mann.
Q. At what address?
A. 313 Milky Way Lane.
Q. And when was this land transferred to Sandip Mann?
A. It looks like the sale date was October 18, 2005.
Q. And where was Sandip Mann at that time?
A. He was in India.
Q. Let's look at page 2. I'm sorry. Page 3. Is this an additional piece of land?
A. Yes, sir, it is. It's for 30.7 acres of land in the name of Sandip S. Mann.
Q. And when was it transferred to Sandip Mann?
A. Looks like October 18, 2005.
Q. Let's go to page 5, please. What are we looking at here?
A. Again, it's another document from the Pope County tax office.
Q. Dealing with property at what address?
A. The property address is 111 Skyline Drive in Russellville.
Q. What's located at that address?
A. Dr. Mann's medical clinic.
Q. And who does this record indicate is the taxpayer?
A. Sandip S. Mann is the owner -- I'm sorry -- the taxpayer, Sandip S. Mann.
Q. And when was this property transferred to Sandip Mann?

A. June 11, 2004. Well, I'm sorry. It went to -- went from Goodin to Mann on 9-15, 1999, and then from Mann to Mann on June 11, 2004.
Q. Let's look at the next page. Is that a picture of the property in that upper left-hand corner?
A. I can't really tell from that picture.
Q. Never mind. Let's look at page 9. Is this the additional property in Sandip Mann's name?
A. Yes, sir. It's for a 5.9-acre parcel of land in Sandip Mann's name.
Q. Transferred to him when?
A. October 21, 2005.
Q. Let's step ahead two more pages. Is this additional property?
A. Yes, sir. It's for a 3.75-acre of land with the taxpayer name of Sandip Mann.
Q. When was it transferred to Sandip Mann?
A. October 21, 2005.
Q. Okay. You mentioned an e-mail that was sent to Sandip Mann, and that's really what got your attention focused on Sandip Mann for a while?
A. Yes, sir.
Q. Did we issue a grand jury subpoena to Microsoft for all records pertaining to the e-mail account mannrs@hotmail.com?
A. Yes, sir, we did.

Q. Did we then follow up that grand jury subpoena with a search warrant for the same account?
A. Yes, sir.
Q. Okay. Why both?
A. Because the grand jury subpoena gave us -- because of the legal requirements would allow us to go back six months or older, that is, any e-mail that was saved in the account that was six months or older we could get with the grand jury subpoena, and to get from six months to the current date, we had to do a search warrant.
Q. Okay. And the grand jury subpoena was issued on March 5 of '09?
A. Yes, sir, it was.
Q. Microsoft, did they respond to both the grand jury subpoena and the search warrant?
A. Yes, sir, they did.
Q. The e-mail that we're about to talk about, was it in both responses?
A. Yes, sir, it was.
Q. And are you the one who found the e-mail we're going to talk about?
A. Yes, sir.

MR. GORDON: Your Honor, I guess at this time I need to offer into evidence, based on the stipulation, Government Exhibits 180-A, 180-B, 180-C, 181, 182-A through 182-O.

THE COURT: Any objections to those? I know we have the objections that have already been made. These will be received subject to the objections we took up at the break.

(Government Exhibits 180-A through 180-C, 181, 182-A through 182-O received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, let's look at Government's Exhibit 181. Is this part of the e-mail that you were talking about?

A. Yes, sir, it is.

Q. For the record, we're looking at the first page.

A. Correct.

Q. What account was this e-mail sent from?

A. It was sent from mannrs@hotmail.com.

Q. Mannrs. What's Dr. Mann's middle name?

A. Singh.

Q. And who was this e-mail sent to?

A. Mannss@hotmail.com.

Q. Do you know Sandip's middle name?

A. I believe it's Singh.

Q. What's the date the e-mail was sent?

A. February 24, 2008.

Q. What was the subject of the e-mail?

A. "Picture."

Q. Was there a message in the e-mail?

A. Yes, there was.

Q. Let's look at page 2 of this exhibit. Is that the message?
A. Yes, but -- yes, sir, that's the message.
Q. Please read it for us.
A. "I hope this picture is good. The guy on the left is Dr. Trent Pierce, the current chairman of the board, and the guy on the right is Dr. Ray Jouett, the old chairman."
Q. Was there an attachment to this e-mail?
A. Yes, there was.
Q. Did that attachment have a name?
A. Yes, sir, it was -- I believe it was a jpg file with the name "Pierce."
Q. Let's look at the next page. Is this the picture that was attached?
A. Yes, sir, it is.
Q. Do you recognize anybody in this picture?
A. I recognize both people in that picture.
Q. Who are they?
A. The person on the left is Dr. Pierce, the victim of the West Memphis bombing, and the picture on the right is Dr. Jouett.
Q. And this is the e-mail that got your attention and made you, among other things, start investigating Sandip Mann?
A. Yes, sir.
Q. Why?
A. Because it was very suspicious to me that someone would

send this type of e-mail, especially with that caption. You know, I thought that maybe he was sending the picture for someone to use to target someone.

Q. And what was the date of the e-mail? Let's go back to page 1, please.

A. The date of the e-mail was February 24, 2008.

Q. And let's look at Government's Exhibit 86-C so we can see what was going on with the Arkansas State Medical Board at that time. 86-C, what are we looking at in 86-C?

A. It's a letter from the Arkansas State Medical Board addressed to Randeep Singh Mann.

Q. Dated what date?

A. February 20, 2008.

Q. And what was the message to Dr. Mann?

A. "Dear Dr. Mann: The Arkansas State Medical Board voted at the February 7, 2008, meeting that they would not address your request to have your DEA permit reinstated. Should you have any questions regarding this matter, please contact our office. Sincerely, Peggy Cryer."

Q. Any idea how long it takes for mail to get from Little Rock to Russellville?

A. I can assume it's three or four days, like most mail around here.

Q. And the e-mail was then sent to Sandip Mann four days after the date of this letter?

A. That's correct.
Q. With the picture of Dr. Pierce?
A. Yes, sir.
Q. Now, the e-mail, Government's Exhibit 181, page 2 is unsigned. Correct?
A. Yes, sir, it is.
Q. And if we look at page 1 of this exhibit, it says "From Sue Mann at mannrs@hotmail.com."
A. Yes, sir.
Q. Have you reviewed the entire contents of the response sent by Microsoft?
A. Yes, sir, I did.
Q. And from your review of those records, does it appear that more than one person uses this account?
A. Yes, sir, it does. It appears that Dr. Mann uses the account and his wife, Sue Mann, used the account.
Q. Did I ask you to go through some of the e-mails and pull out a sample so we can see that Dr. Mann uses this account?
A. Yes, sir, you did.
Q. Did you do so?
A. Yes, sir, I did.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:
Q. I'll show you what's been marked as Government's

Exhibits 182-A through 182-O. Are those the e-mails you picked out?

A. Yes, sir, they are.

Q. And are they fair and accurate copies of e-mails from the response that Microsoft sent?

A. Yes, sir, they are.

MR. GORDON: Your Honor, at this time I would like to offer Government Exhibits 182-A through 182-O.

THE COURT: I think those were already received. Isn't that what you just --

MR. GORDON: You're right. I'm sorry.

THE COURT: Subject to the objections of the defense.

BY MR. GORDON:

Q. Agent Oliver, let's look at Government's Exhibit 182-A.

A. Yes, sir.

Q. What was the subject of this e-mail?

A. "A Viper friend."

Q. The date?

A. February 28, 2007.

Q. You mean September?

A. I'm sorry. Yeah, September 28, 2007.

Q. Let's look at page 2. Who signed this e-mail?

A. "Randy Mann."

Q. If you look below that, who was the e-mail actually sent to?

A. "Randy."
Q. Does it say, "Hi, Randy"?
A. It says, "Hi, Randy," yes, sir.
Q. Let's look at 182-B. What's the subject?
A. "Cobra wiper knob."
Q. The date?
A. October 23, 2007.
Q. Let's look at page 2. How is the message signed?
A. It's signed "Randy."
Q. When you look below that, who was the e-mail sent to?
A. It's addressed, "Hi Randy."
Q. Is Dr. Mann a car enthusiast?
A. Yes, sir, he is.
Q. 182-C, what's the date?
A. "How do you like my life?" I'm sorry. October 30, 2007.
Q. The subject?
A. "How do you like my life?"
Q. Let's look at page 2. Is it unsigned?
A. Yes, sir, it is.
Q. Is there an attachment to this e-mail?
A. Yes, sir, there is.
Q. There's a letter attached there?
A. Yes, sir, there is.
Q. Who's life is this letter about?
A. It's about Dr. Mann's life.

Q. At the very end of this letter?
A. It's signed, "Sincerely, Randeep S. Mann, M.D."
Q. 182-D, what's the date and subject?
A. The date is January 23, 2008, and the subject is "VCA raffle-membership dues needed."
Q. Let's look at the message on the next page. How is that signed?
A. "Randy Mann."
Q. Look at 182-E. What's the date and subject, please?
A. The date is February 5, 2008. The subject is "Z-06 wheels."
Q. And on the next page, who are the wheels supposed to be shipped to?
A. To Randy Mann, 111 Skyline Drive, Russellville, Arkansas.
Q. Look at 182-F, date and subject, please?
A. The date is February 27, 2008, and the subject is "Message from o2 simulator."
Q. And let's look at the message on the next page. Is it unsigned?
A. Yes, sir, it is.
Q. Down below, who was it sent to?
A. It was sent to Randy.
Q. 182-G, date and subject, please?
A. The date is August 11, 2008. The subject is "Lawsuit."
Q. Let's look at the message on the next page. Who is it

signed by?
A. "Randy."
Q. Let's go to 182-H. Date and subject, please?
A. The date is September 23, 2008. The subject is "Cobra HP."
Q. The message on the next page is signed by whom?
A. "Randy Mann."
Q. And the phone number listed there, is that Dr. Mann's cell phone number?
A. Yes, sir, it is.
Q. 182-I, date and subject, please?
A. September 24, 2008 is the date. Subject is "03 Murcie."
Q. Who signed the message on the next page?
A. "Randy Mann."
Q. Actually, let's go one more page into this one. Who is the original e-mail sent to?
A. I'm sorry?
Q. Who is the original e-mail sent to?
A. It's addressed to "Good afternoon, Randy."
Q. 182-J, date and subject?
A. The date is December 4, 2008. The subject is "Cancellation Re: Invoice from Global Telelinks."
Q. Who signed the message on the next page?
A. "Randeep S. Mann, M.D."
Q. 182-K, date and subject, please?
A. The date is December 23, 2008. The subject is "Camera

quote."
Q. Who signed the message on the next page?
A. "Randy Mann."
Q. And again that phone number listed there, is that his cell phone?
A. Yes, sir, it is.
Q. 182-L, date and subject?
A. The date is February 8, 2009. The subject is "Purchase agreement."
Q. Who signed the message on the next page?
A. "Randy."
Q. 182-M, date and subject, please?
A. The date is February 16, 2009. The subject is "Saturday plans."
Q. And on the next page, how is the message signed off?
A. "Randy."
Q. 182-N, how about this one?
A. The date is February 17, 2009. The subject is "Saturday plans."
Q. How is it signed off?
A. "Randy."
Q. 182-O, date and subject, please?
A. The date is February 17, 2009, the subject is "Saturday plans."
Q. And how is this one signed off?

A. "Randy."
Q. Where it says "My cell is," and lists a phone number, is that Dr. Mann's cell phone number?
A. Yes, sir, it is.
Q. And then is that Sue Mann's cell phone listed after that?
A. Yes, sir, it is.
Q. You testified earlier about a state and federal search warrant being executed on the Manns' residence back in March. Was there a third search warrant executed on the house in August of 2009?
A. Yes, sir, there was.
Q. Is that a state or federal search warrant?
A. It was a federal search warrant.
Q. What was the purpose of that search warrant?
A. We were going to seize the firearms that were at the house. And when I say "firearms," we weren't going to seize all of them, but we were only going to seize the firearms that either were registered or needed to be registered.
Q. So the firearms and what else? Something black and shiny?
A. I'm sorry. The black plastic that was in the flower beds.
Q. Was black plastic seized?
A. Yes, sir, it was.
Q. Where was it seized from?
A. It was seized from the rock gardens in front of the house.
Q. Let's look at Government Exhibits -- hold on one second.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Agent Oliver, I'm going to show you what I've marked as Government's Exhibits 187-A, -B, and -C.

A. Yes, sir.

Q. Did you all take pictures of where the black plastic was removed from on that date?

A. Yes, sir, we did.

Q. And Government Exhibits 187-A, -B, and -C, does that accurately show the area?

A. Yes, sir, it does.

MR. GORDON: Your Honor, I'd offered Government Exhibits 187-A, -B, and -C.

THE COURT: It's received.

(Government Exhibits 187-A, 187-B, and 187-C received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, let's look at Government's Exhibit 187-A. Is that some of the rock bed area?

A. Yes, sir, it is.

Q. 187-B?

A. That's the black plastic in the bags after it was removed from the flower beds.

Q. And 187-C?

A. That's the flower bed area and, again, the black plastic in the bags off to the right.
Q. And during the execution of that search warrant, did you all also seize some firearms?
A. Yes, sir, we did.
Q. Where were those firearms located?
A. Downstairs in the gun safes.
Q. And they were seized pursuant to a search warrant?
A. Yes, sir, they were.
Q. Did you take photographs before seizing the weapons, or did someone take photographs?
A. Yes, the firearms were photographed.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Agent Oliver, do you recall how many guns were seized?
A. I believe it was 93. And when you're saying "guns," there were also -- I think there were some Auto Sears in there that are also considered guns.
Q. And silencers?
A. That's correct.
Q. I'll hand you what's been marked as Government's Exhibits 185-A through 185-OOOO. Did you review those before testifying?
A. Yes, sir, I did.

Q. Are those fair and accurate pictures of the guns that were seized during this August search warrant?
A. Yes, sir, they are.
Q. And the silencers?
A. That's correct.
MR. GORDON: Your Honor, for the record, there is no 185-O, 185-P, 185-BBB, 185-CCC, 185-DDD, 185-LLLL, 185-FFFF, and 185-GGGG. So except for those eight, I would offer the rest of Government's Exhibits 185-A through - OOOO.
THE COURT: Any objection?
MR. LASSITER: Can we just look at them?
MR. GORDON: Yes.
(Mr. Lassiter and Ms. Couch review documents.)
MS. CASSINELLI COUCH: Subject to our previous objections, Your Honor.
THE COURT: They're received over the previous objections.
(Government Exhibits 185-A through 185-0000, with the exception of 185-O, 185-P, 185-BBB, 185-CCC, 185-DDD, 185-LLLL, 185-FFFF, and 185-GGGG, received in evidence.)
MR. GORDON: Your Honor, at this time I would ask the Court's permission to just show the jury these pictures one at a time on the screens.
(Exhibits shown on monitors.)
BY MR. GORDON:

Q. Agent Oliver, were those guns seized from the gun room in the basement of the Mann residence?
A. Yes, sir, they were.
Q. Was there anything else found in the gun room?
A. Yes, sir. We found a bag with some -- with some money in it.
Q. Do you recall how much money was found?
A. I think it was $47,000. Wait a minute. Maybe it was $42,000.
Q. Were pictures taken of it?
A. Yes, sir, there were.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government's Exhibits 186-A and 186-B. Do you recognize that?
A. Yes, sir, I do.
Q. Is that the money that you were just testifying about?
A. Yes, sir, it is.
MR. GORDON: I offer Government's Exhibits 186-A and -B, Your Honor.
THE COURT: It's received.
(Government Exhibits 186-A and 186-B received in evidence.)
BY MR. GORDON:
Q. Agent Oliver, what is 186-A?

A. That's a picture of the black bag with another white bag inside containing the money that was found in the gun room.
Q. And 186-B?
A. That's the money after it was taken out of the bag and spread out on the table, and you can see the black bag off to the left.
Q. Did you seize that money?
A. No, sir, we didn't.
Q. What did you do with it?
A. We put it back in the gun room and locked it up.
Q. Was there any additional money found in the house?
A. Yes, sir, there was.
Q. How much and where?
A. I believe it was $7,000, and it was located in the same area, in the hot tub -- I'm sorry -- underneath the hot tub where the pipes were.
Q. Did you all take pictures of that money too?
A. Yes, sir, we did.

MR. GORDON: May I approach?

THE COURT: You may.

BY MR. GORDON:
Q. I'll show you Government's Exhibits 186-C and 186-D.
A. Yes, sir.
Q. Is that the money that was found underneath the hot tub?
A. Yes, sir, it is.

MR. GORDON: Your Honor, I offer Government Exhibits 186-C and -D.

THE COURT: Those are received. And I think we've already received the pictures of those, haven't we?

MS. CASSINELLI COUCH: I think so, and I think we had a previous objection too.

THE COURT: That's received over the previous objection.

(Government Exhibits 186-C and 186-D received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, what are we looking at on 186-C?

A. That's the yellow bag that the money was in.

Q. 186-D?

A. That's the money spread out on the table and photographed.

Q. And was this money seized?

A. No, sir, it was not.

Q. Agent Oliver, actually, I want to go back to when the state search warrant was executed on the Manns' residence on March 4 of 2009. I believe you testified earlier, the first time you testified, that you searched a Lexus that day?

A. Yes, sir, I did.

Q. Remind us why you searched the Lexus.

A. Because Dr. Mann indicated that he wanted to leave to go to the airport, and I searched the Lexus to make sure if there was any evidence in it, that he didn't drive off and we weren't able

to recover the evidence.
Q. Okay. And inside -- did you take some pictures inside of the car?
A. Yes, sir, I did.
Q. Of a map that I believe you found in there?
A. That's correct.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to hand you what's been marked as Government's Exhibit 225.
A. Yes, sir.
Q. 233?
A. Yes, sir.
Q. 227?
A. Yes, sir.
Q. 228?
A. Yes, sir.
Q. 230?
A. Yes, sir.
Q. 232?
A. Yes, sir.
Q. And 231?
A. Yes, sir.
Q. Are those fair and accurate depictions of the home, the

Lexus, and the map inside the Lexus from the state search warrant?

A. Yes, sir, they are.

MR. GORDON: Your Honor, I'd offer Government Exhibits 231, 232, 230, 228, 227, 233, and 225.

(Ms. Couch and Mr. Hendrix review exhibits.)

THE COURT: Any objection?

MS. CASSINELLI COUCH: No objection.

THE COURT: They're received.

(Government Exhibits 231, 232, 230, 228, 227, 233, 225 received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, let's look at 225 first, please. What are we looking at here?

A. That's the front of Dr. Manns' residence, and to the left, next to the jet skis, you can see the gray Lexus.

Q. Okay. And is that the gray Lexus that you searched and allowed Dr. Mann to leave in?

A. Yes, sir, it is.

Q. It was not a brown Lexus?

A. No, it was gray.

Q. Let's look at 233. Is that the license plate for that Lexus?

A. Yes, sir, it's a close-up with the license plate of the gray Lexus.

Q. And in that picture you can see the color of the car?
A. Yes, sir, you can.
Q. Is that brown?
A. No, it's gray.
Q. 227. What are we looking at here?
A. That's the driver's seat and the -- you can see the map book that's open, and there's a white piece of paper, and then there's also an Arkansas map. And then the black folder underneath is my folder, and those are my keys.
Q. Okay. How did the map -- how did those maps end up on top of your stuff?
A. Because I had my folder in my hand when I got in the car, and I put it down on the seat, and I started searching the car, and when I found stuff, I put it down on the seat to take a picture.
Q. And what's the area that that map is open to?
A. It's open to the Memphis area.
Q. And what's the town right across the river in Arkansas?
A. West Memphis, Arkansas.
Q. 228, what is that?
A. They're names and phone numbers and date.
Q. 230.
A. That's writing that was on the same map that you saw in the previous picture, it's a close-up of it.
Q. 232.

A. That's the -- I believe I unfolded it because it was folded. I unfolded it so you can see what it was.
Q. And it is a Memphis map?
A. Yes, sir, it is.
Q. 231.
A. That's a close-up of some writing that was on it.
Q. Okay. Those pictures we just looked at were from the state search warrant?
A. Yes, sir, they were.
Q. On March 4, 2009?
A. That's correct.
Q. And in those is there like a really good shot of the Lexus that you searched?
A. There was not a good picture, no, sir.
Q. All right. Was there a picture from the August 2009 search warrant that showed the Lexus better?
A. Yes.

MR. GORDON: May I approach?

THE COURT: You may.

BY MR. GORDON:

Q. Is that what we're looking at on 236?
A. Yes, sir, that is.

MR. GORDON: Your Honor, I'd offer Government's Exhibit 236.

THE COURT: It's received.

(Government Exhibit 236 received in evidence.)
BY MR. GORDON:
Q. Is the car in Government's Exhibit 236 the same car that you searched before you allowed Dr. Mann to leave the residence?
A. Yes, sir, that's the gray Lexus.
Q. And when Dr. Mann was allowed to leave during the search warrant, who drove away in that car?
A. Dr. Mann.
Q. Not Mrs. Mann?
A. No, sir.
Q. Did you execute another search warrant in this case in Germantown, Tennessee, on May 28 of 2009?
A. Yes, sir, I did.
Q. Was that a state or federal search warrant?
A. It was a federal search warrant.
Q. And what was the item to be searched?
A. The item to be searched was a 2002 Nissan Altima.
Q. Who did the Nissan Altima belong to?
A. A gentleman by the name of -- I'll call him Pete Patel, but I can't pronounce his name. It's like Pramoud -- I'll just butcher it. I know everybody calls him Pete, so Pete Patel.
Q. Okay. How did you find out about Pete Patel?
A. Through some of the -- I believe through some of the financial records, some checks were written to him, there were also some phone calls that were made to him, and we also found

his name in open-source databases.
Q. What is Pete Patel's relationship to Dr. Mann?
A. They own some hotels together.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'll show you what's been marked as Government's Exhibit 188-F. Do you recognize that?
A. Yes, sir, I do.
Q. What is it, please?
A. It's from the -- it's a document showing that the 2002 Nissan Altima is owned by both Alka and Pete Patel at 8720 Somerset Lane in Germantown, and what it is is an Application for Certificate of Title and Registration from the Tennessee Department of Safety.
Q. Is that a certified copy?
A. Yes, sir, it is.
MR. GORDON: Your Honor, I'd offer Government's Exhibit 188-F.
MR. LASSITER: No objection.
THE COURT: It's received.
(Government Exhibit 188-F received in evidence.)
BY MR. GORDON:
Q. Agent Oliver, what was the purpose of the search warrant?
A. We were trying to determine if the doughnut-size spare tire

was going to be in the trunk of the car.
Q. Why were you looking for that?
A. Because there was a doughnut-size spare tire that was used in the bombing of Dr. Pierce. We knew that it came from a 2002 to a 2006 Nissan Altima.
Q. And how did you find out that Pete Patel had a 2002 Nissan Altima?
A. Initially it was through some open-source database queries.
Q. And did he have more than one Nissan Altima registered to him or that belonged to him?
A. Yes, sir, he did.
Q. How many?
A. I believe that he had three.
Q. Did you locate the car?
A. Yes, sir, we did.
Q. The one mentioned in Government's Exhibit 188-F?
A. That's correct.
Q. Where did you find it?
A. We found it at his house in Germantown.
Q. Whose house?
A. At Pete Patel's house.
Q. Where is Germantown?
A. It's a suburb of Memphis, so it borders Memphis, Tennessee.
Q. Was Pete there?
A. Yes, sir, he was.

Q. Did you meet with Pete?
A. Yes, I did.
Q. Did you explain to him why you were there?
A. Yes, sir, I did.
Q. Did you ask for consent to search his car?
A. I did.
Q. Did he refuse?
A. He did refuse to give consent to search the vehicle.
Q. What did you do after that?
A. I told him that we had a search warrant and we executed the search warrant.
Q. Did you confirm that you were dealing with the correct car?
A. Yes, sir.
Q. How did you do that?
A. By the VIN plate that was on the dashboard.
Q. Did you search the car?
A. Yes.
Q. Including the trunk?
A. That's correct.
Q. What did you find in the trunk?
A. We found that there was not a doughnut-size spare tire, that there was, in fact, a full-size spare tire.
Q. Did you take any pictures?
A. Yes, sir.
MR. GORDON: May I approach, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibits 188-A, -B, -C, -D, and -E. Are all of those photographs taken during the search warrant on the Altima?

A. Yes, sir, they are.

MR. GORDON: Your Honor, I'd offer Government Exhibits 188-A through -E.

MR. HENDRIX: I haven't seen them in a while, but I'm sure I have no objection.

(Mr. Hendrix reviews exhibits.)

MR. HENDRIX: No objection.

THE COURT: They're received.

(Government Exhibits 188-A through 188-E received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, let's look at 188-A. What are we looking at?

A. That's the garage for Mr. Patel's residence, and the white vehicle on the right is the 2002 Nissan Altima.

Q. 188-B?

A. Kind of a close-up of the vehicle.

Q. 188-C?

A. The trunk area --

Q. 188-D?

A. -- the license plate. That's the interior of the trunk.

Q. 188-E?
A. That's the full-size tire that was taken out of the 2002 Nissan Altima, and you can see the Nissan Altima off to the left.
Q. Did you talk to Mr. Patel and his wife about what happened to the doughnut spare -- doughnut-size spare tire?
A. Yes, I did.
Q. After talking to them, did you look elsewhere for the doughnut-size spare tire?
A. Yes, sir, we did.
Q. Where did you look?
A. Well, they told us that it would be in the garage, so we looked in the garage.
MR. HENDRIX: Objection, Your Honor.
THE COURT: It's sustained.
BY MR. GORDON:
Q. Without saying what they told you, where did you look?
A. We looked in the garage. We didn't find the tire in the garage.
Q. Did you look anywhere else at the house?
A. Yes, sir, we did.
Q. Where did you look?
A. We looked on the side of the garage, or on the side of the residence outside. We did not find the doughnut-size spare tire there.

Q. Did you go somewhere else to look for it?
A. Yes, sir, we did.
Q. Where did you go?
A. We went to their warehouse and looked in their warehouse.
Q. Did you find it in their warehouse?
A. We did not find it in the warehouse.
Q. Agent Oliver, before testifying, were you asked to listen to a recording --
A. Yes, sir, I was.
Q. -- on a CD?
A. Yes.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibit 178.
A. Yes, sir.
Q. Is that the CD you listened to?
A. Yes, it is.
Q. How do you know that's the one?
A. Because I put my initials on it and the date.
Q. Were you also asked to listen to another recording --
A. Yes, sir.
Q. -- and verify that it came off of Government's Exhibit 178?
A. That's correct.

MR. GORDON: May I approach?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government's Exhibit 178-A.

A. Yes.

Q. Is this the recording that came off of Government's Exhibit 178?

A. Yes, sir, it is.

Q. And were you also asked to review a transcript of the recording on 178-A?

A. Yes, sir.

MR. GORDON: May I approach?

THE COURT: You may.

BY MR. GORDON:

Q. I'll show you Government's Exhibit 178-B. Is that the transcript of Government's Exhibit 178-A?

A. Yes, sir, it is.

Q. And is it a fair and accurate translation of 178-A?

A. Yes, sir, it is.

MR. GORDON: Your Honor, I'd like to offer Government's Exhibit 178-A into evidence.

MR. HENDRIX: I don't know what it is, Judge. I can't object without knowing what's going on.

MR. GORDON: Your Honor, they've been provided copies

of all this stuff before trial.

THE COURT: Just identify what it is.

MR. HENDRIX: That may be true. I just don't know what we're doing.

THE COURT: Just identify what it is. That's all.

MR. GORDON: Your Honor?

THE COURT: He said he wants you to identify what it is so he'll know what the objection should be.

(Defense counsel review exhibit.)

MS. CASSINELLI COUCH: No objection.

MR. GORDON: Your Honor, at this time I ask the Court's permission to publish Government's Exhibit 178-A to the jury.

MR. HENDRIX: That's fine, Judge.

THE COURT: It's received.

(Government Exhibit 178-A received in evidence.)

MS. CASSINELLI COUCH: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: We were going to ask the Court for an instruction -- I can't talk very well. We were going to ask for the instruction on the transcripts before he plays it.

THE COURT: Before he plays it?

MS. CASSINELLI COUCH: Yes, sir.

(Whereupon, proceedings continued in open court as

follows:)

THE COURT: Ladies and gentlemen, we're about to hear a recording. And I think we have a transcript of the recording.

Mr. Gordon?

MR. GORDON: We do, Your Honor.

THE COURT: I have an instruction here, but although this instruction tends to deals with recordings you've already heard and transcripts you're about to see, I'll try to word it in a way that makes sense to you.

There are typewritten transcripts of the tape-recording you're about to hear. And I'm paraphrasing here, this instruction. Those transcripts are also on the tape to identify the speakers engaged in the conversation. You're permitted to have transcripts for the limited purpose of helping you follow the conversation as you listen to the tape recordings, and also help you keep track of the speakers. The transcripts, however, are not evidence. The tape recording itself is the primary evidence of their own content. You are specifically instructed whether the transcripts correctly or incorrectly reflect the conversations or the identity of the speakers is entirely for you to decide based upon what you've learned here about the preparation of the transcripts and upon your own examination of the transcripts in relation to what you hear on the tape recordings. If you decide that any of the transcripts are in any respect incorrect or unreliable, you should disregard the

transcript to that extent. Differences in meaning between what you hear in the recordings and reading the transcripts may be caused by such things as the inflection in the speaker's voice. You should therefore rely on what you hear rather than on what you read when there is a difference.

(Audiotape played in open court.)

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. Agent Oliver, I'm going to hand you Government's Exhibit 178-A again, and tell us the date and time of that call, please.

A. June 12, 2009, at 19:53 p.m., or, I'm sorry, 19:53 hours, which is 7:53 p.m.

Q. Did you go by Rita and Phil Barthelme's house on April 16 of 2010?

A. Yes, sir, I did.

Q. Did you go by yourself or with somebody?

A. I went with Special Agent Cook.

Q. What does Agent Cook look like?

A. He's a white guy, kind of ugly. He's not here. I can say that. He's a stocky white guy. He's late forties, early fifties.

Q. Bald?

A. We're crossing the line now, but yes.

Q. Some people say he looks like Shrek?
A. You're not going to get me to go there.
Q. He was with you?
A. Yes, sir, he was.
Q. What was the purpose of going by Rita and Phil's house that day?
A. We had spoken to Phil at the sheriff's office and he had told us about some property that Sue Mann had brought to him and Rita to get rid of, and he told us they had burned it at the house, so we went by the house to see what was left in the burn piles.
Q. Okay. Property that Sue had brought to him?
A. I believe to him -- to he and Rita, yes, sir. I think it was to Rita, and he might have picked some of it up.
Q. Okay. And so you went by the house why?
A. We went by to see, to confirm what he had said and to see if there was anything left in the burn piles.
Q. Did Phil take you to the area where he had said he had burned some stuff?
A. Yes, sir, he did.
Q. What did you see?
A. A burn pile. There was some ashes in one location, and then there was a second location behind the house, and there was some books and stuff in that location.
Q. Did you take some pictures?

A. Yes, sir, I did.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government Exhibits 189-A through 189-I. Do you recognize those?

A. Yes, sir, I do. They're the pictures of the burn pile, pictures of Phil picking through the stuff at the burn pile and the stuff that was in the burn pile, and the last picture is a picture of Phil.

MR. GORDON: Your Honor, I'd offer Government Exhibits 189-A through -I.

MR. HENDRIX: No objection.

THE COURT: They're received.

(Government Exhibits 189-A through 189-I received in evidence.)

BY MR. GORDON:

Q. Look at 189-A. What is this a picture of?

A. In the center of the picture is the area where there was ashes and to the right is the trailer, and it's Phil standing there with the rake.

Q. 189-B?

A. That's looking from the trailer towards the street, and that's the ashes.

Q. 189-C?

A. That's Phil raking the ashes.
Q. 189-D?
A. That's a metal piece from what appears to be like a three-ring binder.
Q. 189-E?
A. This is the pile that's behind the trailer, and it's the boxes that Phil was going through.
Q. 189-F?
A. Again, a close-up of the boxes and the bags.
Q. 189-G?
A. Some of the stuff that was in the boxes, spread out.
Q. 189-H?
A. That was a three-ring binder with the name "Sunny Mann" on it. It's from a bank.
Q. 189-I?
A. That's a picture of Phil.
Q. Do you recall why you took that picture of Phil?
A. I think you guys asked us to take a picture of him, you and Karen.
Q. When you were at Phil and Rita's house that day, did you seize any evidence while you were there?
A. I seized the binder.
Q. The one that was in the picture?
A. That's correct.
MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'll hand you what's been marked as Government's Exhibit 190. Is that the folder that you seized from behind Phil's house?

A. Yes, sir, it is.

MR. GORDON: Your Honor, I'd offer Government's Exhibit 190.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government Exhibit 190 received in evidence.)

BY MR. GORDON:

Q. Agent Oliver, hold it up, if you would, so the jury can see it. Whose name is that written on the folder?

A. It's -- there's a sticker that says "Sunny Mann."

Q. So is there anything inside the folder?

A. There's a sticker, and it says, "If found, please call (901)337-6266."

Q. What's written on the spine of that folder?

A. "Community First Bank."

Q. Who is Sunny Mann?

A. Sunny Mann is a nickname for Sandip Mann, Dr. Mann's brother.

Q. When you met with Phil at the sheriff's office on April 16 of 2010, after that you went to the burn pile?

A. That's correct, on the same day.
Q. During your interview with Phil at the sheriff's office, what was the purpose of meeting with Phil that day?
A. We had been told by one of Rita's sisters, I can't remember her name, that Sue Mann -- that Rita and Phil had gone and got what she said was evidence and gotten rid of it for Sue, and she said that they did this right after Dr. Mann was arrested.
MR. HENDRIX: Your Honor, again, the witness is testifying to hearsay, and I ask that the jury be instructed to disregard the hearsay.
THE COURT: That's sustained. That's hearsay.
BY MR. GORDON:
Q. Before meeting with Phil and Rita, had you obtained new information relevant to the investigation?
A. Yes, we did.
Q. Information that you did not previously have?
A. That's correct.
Q. And was the purpose of meeting with Phil that day to talk to him about that evidence or information?
A. Yes, sir, it was.
Q. And during your interview with Phil that day, was that the first time the topic of the burn pile came up --
A. With Phil, yes, sir.
Q. -- that he talked about?
A. Yes, sir.

Q. And was that also the first time that Phil ever mentioned taking a trip to Memphis with Dr. Mann?
A. Yes, sir.
Q. And was that the first time Phil ever mentioned anything about a spare tire?
A. Yes, sir.
Q. Tell the jury how the information about Memphis and the spare tire came up.
A. Well, we knew that he had taken a trip to Memphis, and Special Agent Cook asked him, "Tell me about the trip to Memphis." And he told us that he had gone to meet with -- he had gone with Dr. Mann to meet with Pete at the hotel.

MS. CASSINELLI COUCH: Your Honor --

MR. HENDRIX: Again, Your Honor, the witness is testifying to hearsay, what other people have said.

THE COURT: I think on this occasion he's explaining why he took the course of action that he took. I don't think it's being offered for the truth of the matter asserted. Now, I'll let you make a record on that. But he's saying, "This is why I did this, he told me this, so I did this."

MS. CASSINELLI COUCH: I think the question was, how did he get the information, which the answer is hearsay.

THE COURT: Well, I think the answer is he got it from Phil. But the objection's sustained to the point that he goes on and on and on about what Phil tells him. We know that Phil

was taking this course of action, so let's move on with it.
BY MR. GORDON:
Q. When you and Agent Cook were talking to Phil on this occasion, did you know -- you knew about the trip to Memphis. Correct?
A. Yes, sir, we did.
Q. Did you know anything about a spare tire being involved?
A. No, sir -- well, I knew there was a spare tire involved at the scene of the bombing.
Q. Did you know anything about a spare tire being involved or discussed during Phil's trip to Memphis with Dr. Mann?
A. No, sir.
Q. And that's the first time it came up?
A. Yes, sir.
Q. Did you all suggest that information to him?
A. No, we didn't.
Q. When he mentioned the spare tire, did you push him about it?
A. We asked him about it.
Q. What were you asking about?
A. We asked him what -- you know, he told us about the spare tire, that Dr. Mann had said he went there to get the spare tire. And we asked him if he saw the spare tire, if he had loaded the spare tire in the car, if he had taken the spare tire out of the car afterwards, when they got back. We asked him

those types of questions.
Q. Okay. And did he deny seeing the tire?
A. He denied seeing the tire.
Q. Did he deny handling the tire?
A. He denied handling the tire.
Q. Did you believe him?
MR. HENDRIX: Your Honor, I object to that.
MR. GORDON: Your Honor, this all goes back to their cross-examination of Phil.
THE COURT: I think it does. I mean, Phil was cross-examined on why he changed his story, whether he felt stuffed and cuffed, and all of these things, and so I think what Mr. Gordon is doing is trying to get the officer to explain that regardless of what Phil perceived, this is what they did.
MR. HENDRIX: And, Your Honor, the question that I'm objecting to is, "Did you think he was telling you the truth?" That's for the jury to decide, who's telling the truth, not --
THE COURT: And that objection is sustained. It's sustained.
MS. CASSINELLI COUCH: I would like to add to that, I think that some of these statements that the officer is testifying to were statements that Phil made on the stand, so they're not inconsistent. But I don't think the rules of evidence preclude bolstering it in that way.
THE COURT: I understand that. Let's move along with

the testimony. We've heard from Phil. You can ask him questions to clear up whether you pressured Phil, because that would be subject to the cross-examination. But asking him what Phil told you, especially considering his testimony is not necessarily inconsistent with Phil's, let just move it along.

BY MR. GORDON:

Q. When Phil denied seeing or handling the tire, did you push him on that issue?

A. Yes, sir.

Q. How and why?

A. Again, we asked him -- we asked him -- the answer to why is, I wanted to make sure he was telling us the truth. And we pushed him by asking him specific questions again, did you take the tire, did you see the tire, because to me it just seemed like --

MR. HENDRIX: Your Honor, it's beginning to sound like speculation on the part of the witness.

THE COURT: That's overruled.

A. To me it seemed like he might have seen the tire and was afraid to tell us.

Q. Afraid why, in your opinion?

A. I think he thought he was going to get in trouble.

MS. CASSINELLI COUCH: Objection, Your Honor.

THE COURT: That's sustained. That's sustained. This witness can't testify as to why Phil felt threatened. That was

a question for Phil, and I think you asked him that. So this witness can't testify to that.

MR. GORDON: Well, my question was intended to be, why did he think, not what did he think Phil was thinking -- never mind. This is going to get too confusing. Thank you.

Pass the witness.

THE COURT: Let's take our morning break. We will come back at 2 o'clock. So we'll be in recess until 2.

(Lunch recess at 12:47 p.m.)

C E R T I F I C A T E

I, Eugenie M. Power, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Eugenie M. Power, RMR, CRR, CCR Date: March 11, 2011
United States Court Reporter

(Proceedings continuing in open court at 2:02 p.m.)

THE COURT: Cross-examination.

MR. HENDRIX: Thank you, Judge.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q Agent, let's go back to the very beginning, the day of the bombing, February 4th of 2009, and your original testimony from earlier on -- that day, you, or someone, called the Arkansas State Medical Board and talked to, I believe, Peggy Cryer and got the names of five doctors to investigate. Is that right?

A We got the names of five doctors, yes, sir.

Q Did you make that phone call?

A Yes, sir, I did.

Q And did you ask for the names of five doctors, did you leave the number up to Ms. Cryer or what?

A I believe I asked her for five doctors that had been most recently disciplined by the medical board.

Q Say that one more time.

A Five doctors that had been most recently disciplined by the medical board.

Q So you established the criteria and it was I want the names of five doctors, criteria number one; right?

A Correct.

Q Second criteria is people who most recently had issues

with the medical board; is that correct?
A And had been disciplined by the Board, yes, sir.
Q She met that criteria by giving you those five doctors' names, correct?
A That's correct.
Q Again, tell us the names of those five doctors. Actually, I'll lead you through and just tell me if I'm wrong.
A James Dilday?
A Yes, sir.
Q A Lonnie Harrison?
A Yes, sir.
Q Robert Kale?
A That's correct.
Q Is it Robert Miller?
A I have James Miller.
Q James Miller. And of course, Dr. Mann, correct?
A Randeep Mann, yes, sir.
Q The first to be interviewed was Dr. Miller; is that right?
A Off the top of my head, I believe that Dr. Miller had already been interviewed prior to us arriving or as we were establishing the command post.
Q Do you know who interviewed Dr. Miller?
A Off the top of my head, I believe it was some of the FBI agents, but I'm not 100 percent certain.

Q Why was Dr. Miller the first to be interviewed?
A Again, it was done before we arrived.
Q Is Dr. Miller a West Memphis doctor?
A I'm not sure. I know he's from that area.
Q Okay. Then teams were put together, and at a minimum, those five doctors were shortly interviewed; is that right?
A Yes, sir.
Q And we know it was later that evening that Dr. Mann was interviewed in Russellville by state police officer, I believe, Stacie Rhoads and ATF Agent Tony McCutcheon; is that right?
A Yes, sir.
Q I think you testified on direct then that it was about two weeks or so later that the idea was formulated that agents were -- specific agents were assigned to further the investigation on each of those specific doctors; is that right?
A That's correct.
Q And that was your idea?
A That was.
Q And then you ended up getting assigned to investigate Dr. Mann, correct?
A That's correct.
Q What other agent was assigned with you?
A We only have seven agents in the office, so I was assigned to Dr. Mann.
Q So it was you alone?

A Yes, sir.
Q All right. Do you remember the names, what other agents were assigned specifically to which doctors?
A I don't.
Q Not a problem. I guess the next most significant thing then is the search of Dr. Mann's home on March 4th, 2009; is that right?
A I'm not sure I understand your question.
Q After Dr. Mann was interviewed on February 4th of 2009, then -- well, actually, I guess the next significant thing is there's the finding of these 40-millimeter grenades, right?
A That was something that happened during the investigation, yes, sir.
Q Right. That was, what, March 4th of 2009, about a month later?
A That's correct.
Q As I gather, you're kind of putting two and two together. Dr. Mann had invited Agent McCutcheon and State Trooper Rhoads down to see his gun collection, correct?
A Yes, sir.
Q And they noticed in there two grenade launchers, correct?
A Yes, sir, they did.
Q Then a month later, then these people find these grenades about 300 yards from Dr. Mann's home, right?
A It was 875 feet, so yeah, that's about 300 yards.

Q About three football fields, right?
A Yes, sir.
Q That was not on Dr. Mann's property, correct?
A No, sir, it was not.
Q Okay. And at that point then, you queried the NFRTR; is that right? You guys started to apply for the search warrant to search Dr. Mann and Mrs. Mann's home, correct?
A That's right.
Q Then as part of that process, you queried, you asked -- you accessed the database of the National Firearms Registration and Transfer Record, correct?
A Yes, sir.
Q You got a list of the weapons that were registered to Dr. Mann; is that right?
A That's correct.
Q Do you recollect -- I was looking, I think I've got those records. Do you have them up there?
A I do not. I just have the ROFs.
Q The purpose of querying the NFRTR, again, was to determine what was properly registered to him, right?
A Yes, sir.
Q That way you could go into the home, see his gun collection, and if something didn't fit on the computer printout, you assumed it was an unregistered and, therefore, unlawful firearm; is that correct?

A That would be the start of the process to determine if it was unlawfully possessed, that's correct.
Q Okay. When you went into the home, you found, what, 110, again, what we call NFA weapons; is that right?
A Yes, sir.
Q You compared those 110 to the NFRTR computer printout, and you determined that there were 17 that were unregistered; is that right?
A In my initial reports, I said 17, but when I counted the inventory, I counted 18 the other night, so that's why I said there were 17 or 18 because it would appear that I made a mistake.
Q You remember testifying in the detention hearing on, I believe it was March 9th of '09?
A Yes, sir, I do.
Q And you were asked, "So, 110 machine guns throughout the house. When you found those guns, what did you do?" And your answer was: "We compared the weapons that were found in the house to a list of weapons that Dr. Mann legally had registered to him under the NFA." Question: "When you made that comparison there on the scene, were there any guns that you were unable to determine -- well, let me put it this way, were there any firearms that were not on Dr. Mann's list?" Your answer: "Yes, sir, we came up with approximately 17 that were not on the list." Question: "Okay. And at that time, with

further investigation, how many firearms located in his house were not registered to Dr. Mann?" Answer: Four of those 17 guns that we initially thought were unregistered were, in fact, either registered to someone else or not registered at all."

You recollect that testimony?

A I do.

Q I'm gathering the process is you access the NFRTR, you got the list of lawfully registered weapons, you compared that to what you found in the home, and the NFRTR was telling you there were 17 unregistered firearms, correct?

A That's not correct.

Q Did you just hear what I said?

A Yeah, but you're taking things out of context. And if you'd like, I'd explain it for you.

Q Sure. Let me just read your answer again. "Four of those 17 guns that we initially thought were unregistered were, in fact, either registered to someone else or not registered at all." Now, am I taking it out of context when I read the 17 that we initially thought were unregistered were, in fact, registered? How have I taken that out of context?

A Well, you're saying that the NFRTR says it's unregistered.

Q Actually, what I'm saying is that's what you testified to under oath on March 9th of 2009.

A Okay. I understand what you're saying, but would you

like me to explain it?
Q Please.
A Okay. The NFRTR, the way I queried the database, I asked for guns registered to him by his name. They provided me with a list of guns registered to him by his name.
MR. HENDRIX: May I approach while he's testifying?
THE COURT: You may.
BY MR. HENDRIX:
Q Is this what we're talking about?
A Yes, sir, it is. It's the computer printout.
Q That's the query of the NFRTR, correct?
A This is, yes.
Q That's the computer printout that you had when you entered the home, correct?
A Yes, sir, it is.
Q And that's what you used to compare against the 110 NFA weapons that were in the house, correct?
A That's correct.
Q Again, from that, you seized 17 weapons, correct?
A 17 or 18, yes, sir.
Q Okay. And then after further analysis, you determined that there were actually not 17, but four; is that right?
A That's correct.
Q And how did that change from 17 to 4?
A Because some of the firearms, when we ran the serial

numbers, they came back registered to Dr. Mann or they came back that there was an auto sear or a part that wouldn't be apparent when you look at it from the outside that was internally in the gun that was registered to Dr. Mann.

Q Say that again. I'm gathering -- a sear, that's s-e-a-r, correct? That's the device that we're talking about, a sear?

A It's a machine gun part, yes, sir.

Q The NFA considers it actually a weapon in and of itself, right?

A They consider it a machine gun, yes, sir.

Q Even though it doesn't have a stock or barrel, because it's a machine gun part, it also has to be registered, right?

A Say that again.

Q Although it's not a full weapon, it doesn't have a stock, it doesn't have a barrel, it doesn't have a trigger, right?

A It does not. It's simply a part that makes a semiautomatic gun fire fully automatic.

Q It's a conversion?

A It's a part.

Q Fair enough. All right, go ahead. I cut you off. You were explaining, and let me finish the remaining part of this proposition. We now know that Dr. Mann is only charged with having two out of 210 weapons that were allegedly not properly registered to him, correct?

A If you said 110, that's correct. I think you said 210

though.
Q Sorry, 110. Sure. Out of his collection of 110, correct?
A Yes, sir.
Q Now, it's down to an allegation that two were unregistered, correct?
A There were two guns that were unregistered to him, yes, sir.
Q We've gone from 17 to four, now to two, correct?
A That's correct.
Q Does that tell you anything about the reliability of the NFRTR?
A It does not.
Q Okay. Fair enough. Now, the March 4th of '09, that search, one, you found those grenade launchers, correct, those two grenade launchers we've been talking about?
A I didn't personally find them, but they were found during that search.
Q Are you the case agent at that point?
A Yes, sir, I was.
Q Okay. And the lead investigator on Dr. Mann, correct?
A That's correct.
Q You also took those two grenade launchers; is that right?
A Yes, sir, we did.
Q And did you test -- did you submit them for forensic

testing with the ATF lab?
A No, we did not.
Q You did not?
A We didn't.
Q Did it occur to you that there might be wisdom in having those grenade launchers tested to determine whether 40-millimeter rounds, specifically the ones that were found 300 yards from Dr. Mann's house, had ever been fired from them?
A I'm not sure if I understand your question. You're saying that I should have tested them to see if those 40-millimeter rounds could have been fired from the gun? I already knew that they could be fired from the grenade launcher.
Q Whether they were, in fact.
A None of those 40-millimeter rounds had been fired, sir. They were in tact.
Q Did you determine whether the grenade launchers had ever fired a 40-millimeter round?
A We did not.
Q You did find practice rounds, 40-millimeter practice rounds in, I guess, the garage area in one of those closets, those storage rooms, correct?
A Yes, sir.
Q And you looked at those 40-millimeter practice rounds, right?

A Yes, I did.
Q And you determined that the lot number on those 40-millimeter practice rounds did not match the lot numbers on the 40-millimeters that were found 300 yards from the home, correct?
A That's correct.
Q You also found a spare tire, correct?
A That's correct.
Q And it was sitting in the shower?
A It was propped up in the shower, yes, sir.
Q Correct. We don't have it here. You did notice corrosion on the inside part of the wheel part of that tire, correct?
A I believe I was asked if there was any rust on it and my answer was no.
Q My question is corrosion.
A I'd have to look at it again.
Q Do we have it handy?
May I, Judge?
THE COURT: Yes.
BY MR. HENDRIX:
Q Unfortunately, the said item is not available to us right now, but we'll get that squared away with you. But you did actually, you did notice corrosion on the inside part of the wheel, did you not?

A I remember some pitting in the metal. I don't know if that was corrosion or not.
Q Say that again.
A There was some pitting in the metal that I recall, but I don't remember rust or corrosion off the top of my head. I remember pitting in the metal.
Q Pitting?
A Like indentations, kind of like holes.
Q P-i-t-t-i-n-g?
A Yes, sir.
Q Gotcha. Now, are you aware did Dr. Mann own a vehicle that that spare tire matched?
A I believe that he -- that we found out that -- yes, how's that.
Q An RX-7, right?
A RX-7.
Q Mazda RX-7. I think it's been fairly well established, it'd be fair to call Dr. Mann a car guy, right?
A Yes, sir.
Q And a gun guy, right?
A Absolutely.
Q As part of that, Dr. Mann, as has been established, was cooperative throughout this process, unlocked doors, let people in, let the search continue, didn't get in the way of the search or anything like that, right?

A He assisted us with what we needed to take care of. To characterize him as cooperative is a word that you might use, but he unlocked doors, he unlocked the safes, and he brought us and pointed out the things that we asked for, yes, sir.
Q Did he try to keep you from going to any area of his home?
A No, sir.
Q And so at some point, he decides to leave, right?
A Yes, sir.
Q Which is -- not to editorialize -- but a good idea and oftentimes what people in my business tell our clients is leave, get out of the way of the search, don't interfere; is that fair enough?
A I think it's -- I could answer that and I don't know if I'm supposed to say it in front of the jury, so I'm not sure what you say to your clients, how's that?
Q Fair enough. So he gets in the Lexus, right?
A Yes, sir, he does.
Q But you want to search the Lexus before he leaves?
A I'm sorry, he does not get in the Lexus. I search the Lexus before he leaves.
Q He allowed you to search it, right?
A Yes, sir.
Q I don't want this to be portrayed like he was trying to get away and you ran after him and stopped and said let me

search your car. It wasn't a situation like that, right?
A No, that didn't happen.
Q So you searched the vehicle and you find a couple of maps, right?
A Yes, sir.
Q And one that you mentioned was a map of Memphis; is that right?
A Yes, sir.
Q And I believe, let me see if I can find the number on that. Well, I have printed out a black and white copy and a blowup of just the map. This is the map of Memphis that you're talking about that -- actually, does that help?
A Yes, sir.
Q Now, let's look at this. This is not a detailed map of any sort; is that right?
A No, sir, it's not.
Q I mean, it just shows I-40 coming in and the -- I'm going to use my fingers, I-40 and the I-55 split, right, 55 goes down to Jackson; 40, and then you've got the loop around Memphis, which if my memory's right, 240 is the loop around Memphis, right?
A I can't see what it says. I can barely read 40 and I-55, but I know those highways are there.
Q You're familiar enough with Memphis to know that that's the basic outline of Memphis, right?

A Yes, sir.
Q So that's all this map shows is just the very generic area, right?
A It is not a detailed map.
Q Then when it gets to West Memphis across the river, there's no detail, it just says 40, I-40, right?
A Yes, sir.
Q You can't take that map and find 411 North Avalon in West Memphis, right, if you didn't know where it was; is that right?
A Not from what I see there, no, sir.
Q Right. Also, in the storage room in the garage, let me move to that real quick, there was testimony earlier, and I think you had testified to this, you found several, well, one, you found some manuals, right, or manuals were found is what I should say; is that correct?
A I don't believe that I've testified to that.
Q Was it somebody else? Did you guys find manuals for firearms?
A There were -- well, there were manuals for grenades found if that's what you're asking me.
Q That one's been introduced, right?
A Sir, I'm not in the courtroom.
Q Fair enough, and actually a really good answer to make me be more precise. There was found, at the search, a grenade manual, correct?

A I believe there were two of them found.
Q I think one grenade manual and one grenade launcher manual, correct?
A I thought there were two grenade manuals. I remember two military manuals being found. And if you can show them to me, that would refresh my recollection, but I remember two military manuals being found and I thought they were both for grenades.
Q Okay. And I don't have the government's -- I bet I can figure it out though. Is it 108-B? I'm looking at Government's 107 and 108-B.
May I approach?
THE COURT: You may.
BY MR. HENDRIX:
Q Do you recognize those?
A Yes, sir. These are the two military manuals that I was just talking about.
Q One is a hand grenade manual and one is a grenade launcher manual; is that right?
A The first one is a grenade manual, hand grenade manual. *Grenades, Hand and Rifle* is what it's titled. And the second one is a 40-millimeter grenade launcher manual, but it does have pictures of the 40-millimeter grenade in it and it also has a breakdown of it so I guess that's why I thought it had grenades in it because I remember seeing this.
Q Understood. Now, your recollection is that these were

found in one of the storage rooms off the garage, correct?
A Since I didn't find them, I believe that to be true, but ...
Q If there's been testimony to that effect, you would not dispute it, correct?
A I'd really like to see a report that says that, but I -- and I have my report here if you don't mind.
Q Sure, not at all.
A Actually, I don't have that part of the report.
Q I'm going to show you pictures that were taken of the storage room where there were boxes. You recollect seeing a lot of boxes in a storage room?
A I do. And if you have a picture of it, that would help.
Q Let me show you what is marked as Government 100-GG and I'll put it on the elmo as well. Storage room?
A Yes, sir, that storage room on the right-hand side of the garage.
Q Lots of boxes?
A Lots of boxes.
Q All right. Would you dispute if there had been previous testimony that the manual was found in this box?
A I would not dispute that. Now that you're pointing that out, I remember that.

MR. HENDRIX: May I approach again, Judge?

THE COURT: You may.

BY MR. HENDRIX:
Q Now, having refreshed your recollection about that, are these the same boxes? I'll just leave those, if you wouldn't mind thumbing through them.
A I'm not sure if they're the same boxes or not. I've never seen these pictures before. I've never seen these pictures, so I can't really answer that.
Q That's all right. What do they appear to you to be?
A It looks like a box of records.
Q Boxes like you see in that picture, right, which are essentially banker's boxes?
A They're boxes, cardboard boxes.
Q Just to -- remember the manuals you were just seeing that had the manila type of covers? See that up there?
MR. GORDON: Your Honor, I'm not sure these pictures are in evidence.
MR. HENDRIX: I'm sorry, I shouldn't have published them.
THE COURT: What exhibits are those?
MR. HENDRIX: They are going to be, if he can identify them.
THE COURT: What are they marked as?
MR. HENDRIX: Next in order, which I think is, what, Defense 17?
BY MR. HENDRIX:

Q Here, David, look through those, describe them for us.
A The first picture is a box, cardboard box with documents in it. The second picture is a cardboard box with books and binders in it. The third picture is a cardboard box with documents in it, and there are some, looks like, books that are bound with a binder on it. And the next one, there's a box with looks like a Department of Army training manual for Squad Automatic Weapon. The next one has some manuals and it's another manual for a rifle, a .308 Winchester rifle, and it's in a box. The next one is a close-up of -- I'm not sure what it's a close-up of. It's a close-up of some text that talks about firearms, a 9-millimeter sub machine gun. The next one is a box that has the *Small Arms of the World, The Eleventh Edition*, looks like a photocopy of a book.

The next one, again, is a box and it has a magazine or some type of pamphlet entitled *Sentinel*. Again, in a box, Excalibur Enterprises Night Vision Equipment Price List. In the box, there's a book entitled *Gun Digest of Assault Weapons*. In a box, there's a hard covered book that's green that says *Jane's Infantry Weapons*. In a box, there's a book that says -- looks like a hard cover book, *The Black Rifle*. And then there are some pamphlets in a box that say *Minimi* on them.
Q Those are a lot of manuals for firearms, are there not?
A There are some manuals for firearms in here, yes, sir.
Q Okay. Here's my question. Having shown that these are

manuals for lots of different firearms -- and are you familiar with *Jane's Small Arms*, that publication?

A I'm not.

Q You're not?

A I've seen Jane's books around, but to say that I've read it or flipped through it wouldn't be accurate.

Q You know that Jane's, it's J-a-n-e-s, is sort of the pre-eminent firearms publication in the world? Is that fair to say?

A Actually, my knowledge of Jane's comes from their books that they put out about military ships and airplanes and stuff like that. I've not seen the firearms books.

Q Okay.

Well, may I approach again, Your Honor?

THE COURT: You may.

BY MR. HENDRIX:

Q Can you identify that?

A Yes, sir. It appears to be the same book that was in there, *Jane's Infantry Weapons*, 1999 to 2000, 25th Edition.

Q So we know Jane's isn't limited -- I know it does publications on ships, on armament of all sorts, right?

A That's what I'm familiar with. I'm not familiar with this book.

Q We also now know that it does it for firearms as well, right?

A Yes, sir.
Q Now, I guess what I'm getting at is there were -- y'all didn't seize everything that was in that storage room, right, and everything that was in the boxes in the storage room?
A No, sir, we did not.
Q But you did select out two manuals, the grenade launcher manual and the grenade manual, right?
A As I recall, the scope of the search warrant was for 40-millimeter grenades and the 40-millimeter grenade launchers, so I think it's safe to assume that when we came upon these, they were kind of evidence of what we were looking for.
Q Understood. But there were many manuals in there, right, so these were not the only two manuals that were actually there, correct?
A They were not, no, sir.
Q Now, for purposes of this, and you may not be able to do it, my question is, do those pictures that I've shown you, can you testify whether that fairly and accurately represents those boxes that were found in the storage unit?
A I can't, and I actually tried to look at the bottom and I don't even recognize the surroundings.
Q You didn't take the pictures, so I completely understand.
A No, sir.
Q Okay. Now, we know you guys took, what, 17 weapons that at the time you thought were unregistered, the two grenade

launchers also, right?
A Yes, sir.
Q No problem out of the grenade launchers, they matched to the NFRTR, and you didn't have any questions about the legitimacy of that registration on those two items, right?
A Registration was not an issue, no, sir.
Q Right. And then I know you seized a lot of black plastic, duct tape. All in all, can you give us an estimate of the number of items that were seized from Dr. Mann's house?
A It'd be a guesstimate. I remember it was a page and a half on the list that I saw.
Q More than ten, less than 100, or more than 100 or what?
A More than ten, less than 100. That sounds accurate.
Q How many agents were used in the search?
A Again, there's probably 10 or 15 of us there. When you say agents, I'm assuming you mean all law enforcement personnel.
Q Everybody in law enforcement.
A Yes, sir, between 10 and 15.
Q How you conduct a search, to do a thorough search is you are taking -- you're going into an area and pulling items off shelves, looking behind shelves, going into drawers. Is that fair enough?
A It depends on what you're searching for. If you're searching for something that's this big, you can only search in

an area where something this big could be hidden. But if you're searching for something that's small, you can search in an area where it can be hidden.

Q Would you consider the search of Dr. Mann's house on March 4th to be a comprehensive search?

A Comprehensive?

Q A thorough search.

A I think we did the best job we could.

Q I'm not making a judgment about the value of how you did your job. But, rather, you went into all parts of the home, correct?

A We searched all the rooms of the house. Again, we did the best that we could. But you have to understand when you're searching someone's house, you know, if you want to hide something from me, it's going to be difficult for me to find. I've searched hundreds of houses throughout my career and you always hear the story about what you missed.

Q Right. And so you're looking for some very specific stuff, right? One, you're looking for weapons, but at that point, are you also looking for, like, white string?

A Yes, sir, we were looking for white string.

Q That's like a small thing, right?

A That's correct.

Q You guys are looking hard and deep into the recesses of this home, correct?

A We were looking and we were doing the best job that we could.
Q Good enough. It's not your job to put everything back in place when it's done, though, is it?
A It's not.
Q Okay. The items that you seized included black plastic; is that right?
A Yes, sir.
Q And it was ultimately submitted to the ATF forensic lab to be compared against the black plastic that the ammo can that contained the 40 millimeters was wrapped in, correct?
A Correct.
Q There was no match, correct?
A No, sir.
Q You also seized duct tape from Dr. Mann's home on March 4th?
A I believe we found some duct tape outside the residence or someone found some duct tape outside the residence, someone in law enforcement.
Q That duct tape was submitted for forensic analysis to compare it to the duct tape that was also found on the ammo can and duct tape that was found at the bombing scene, correct?
A Yes, sir.
Q And there was no match, right?
A There was not.

Q Then later in August, I think you guys go back and get more black plastic that was in this rock bed?
A Yes, sir.
Q And that was also compared to the plastic on the ammo can; is that right?
A Yes, sir, it was.
Q And it came back no match?
A To the ammo can, that's correct.
Q By the way, moving slightly backwards, going back to that spare tire, was there any duct tape on it? Let me be clear for the record. The spare tire that was in Dr. Mann's home.
A I don't recall any duct tape, no, sir.
Q Okay. Let's move on to your testimony from earlier today. One of the things you testified about, there was a lot of information that you supplied to the jury about Sandip Mann also known as Sunny Mann -- that would be the Anglosized name -- who's Dr. Mann's brother; is that right?
A That was the nickname that Dr. Mann referred to him as, yes, sir.
Q Right. Sort of like Randeep, some people called Dr. Mann Randy Mann?
A Yes, sir.
Q Sangeeta Mann, Sue Mann?
A Yes, sir.
Q One of the items you testified about was a power of

attorney; is that right?
A Yes, sir.
Q And it was a power of attorney from Sandip Mann granting Dr. Mann, Randy Mann, his brother, power to essentially conduct his financial affairs; is that right?
A I believe that was one of the things that he could do, yes, sir.
Q It was dated July 10th of 2002, correct?
A I believe so, yes, sir.
Q That was right around the time that, I believe it was his -- his Visa was no longer valid and Sunny got deported back to India, correct?
A He was deported to India, yes, sir.
Q That would make sense for him to grant his brother, assuming that he has business still going on in America, for him to grant a power of attorney to his brother to conduct his financial affairs, right?
A Are you asking me why Sunny Mann did it?
Q No, I'm saying it would make sense if he had unfinished financial business before he got deported to grant a power of attorney to someone in America to continue to conduct that, correct?
A Yes, sir.
Q The other thing, you guys introduced a lot of documents regarding Sandip Mann, like property tax returns and that sort

of thing. Is that right?
A I'm not sure if I would characterize it as a lot. There was some introduced, yes, sir.
Q And is that a charge?
A Is what a charge?
Q Is anybody in this courtroom charged with some financial irregularity regarding Sonny's power of attorney or Sonny's property taxes?
A No, sir.
Q In fact, I think one of the points that seemed to me that was trying to be made is you showed these documents that showed property like cars, Seadoos, that sort of stuff that were obviously there for Dr. Mann's use that Dr. Mann would say were his, but as far as the 2007 personal property tax assessment, they were in Sandeep's name; is that right?
A I'm not sure that I understand. We introduced documents that showed the personal property that was in the name of Sandip Mann.
Q Right. Who had been deported, and I think those were personal property tax forms from 2007, I think.
A I think they started from 2007 to 2010, yes, sir.
Q And I remember Mr. Gordon asking you, I think it was, after Sunny got deported, were there items, cars or whatever, that ended up in his name; is that right?
A Ended up in whose name?

Q Sandip Mann's.
A All those items were in Sandip Mann's name.
Q There's nothing wrong with that, right, there's nothing unlawful about having personal property in, say, your brother's name, right?
A Not inherently at face value, no, sir.
Q And it's not unlawful for a foreign national to own assets in this country, right?
A Not that I'm aware of. I mean, and, again, that's at face value, but I mean, when you stop and look, there are reasons that people put things in other people's names such as, you know, for instance, if I had a lawsuit against me and I didn't want people to take my property, I might put it in someone else's name.
Q Is Dr. Mann charged with that?
A Charged with what?
Q Whatever it is you found wrong with that.
A He is not.
Q Okay. Yeah, if my family owned some property in Mexico, please don't tell me that's illegal, okay. That's not illegal, right?
A I don't know that it is, no, sir. I don't think it's illegal.
Q I was just trying to figure out why you guys were introducing that. It is not a crime to have a car -- give you

another example -- I see it all the time -- for a man to have his home in his wife's name or a wife to have the couple's home in the husband's name, right?

A Are you asking me if that's illegal?

Q Yeah.

A No, it's not.

Q E-mails. You guys introduced the series of e-mails and I just wanted to make sure we're all on the same page of that. The one that gathered the most interest was an e-mail that had a picture, and I believe we've already seen it, it was from the state medical board newsletter of Drs. Jouett and Pierce, right?

A Yes, sir.

Q And it got e-mailed to whom?

A It got e-mailed to his brother's account in India, to Sunny Mann.

Q That was on February 24th of 2008, correct?

A Yes, sir.

Q And in your direct testimony, you said you found that suspicious. When asked why was that suspicious, you said because it could have been to target someone, correct?

A That's correct.

Q And then the next document that was introduced was a letter from the state medical board four days before that said, Dr. Mann, not time for us to consider the reinstituting your

DEA permit, correct?
A I'm not sure that that's an accurate -- it said they had taken it up and they weren't going to consider it.
Q Right. And to paraphrase, what it said is --
A You're not getting it back is what it said.
Q Right. So that was in February of 2008, right?
A That's correct.
Q That's what you found suspicious about it, right?
A What I found suspicious about the picture --
Q You found it suspicious because four days before, the Board had said, you're not getting your DEA permit back right now?
A No. I mean, that added to the suspicion, yes, sir, but that's not the reason why it was suspicious. The caption underneath the picture to me was what made it suspicious. "I hope this picture is good enough." That, to me, he's sending it to someone for a purpose that I'm not aware of, but he's concerned about the quality of it.
Q To somebody in India?
A Yes, sir.
Q Okay. All right. Now, we know that the bombing occurred February 4th, 2009, right?
A Yes, sir.
Q Now, by that time, Dr. Mann had been invited to the medical board, correct?

A He had been invited to the medical board?
Q To the June 2009 meeting of the medical board to discuss him getting his DEA permit back, right?
A I believe there was some communication where that was in the future, yes, sir.
Q Okay. Now, some of those other e-mails that were introduced, there were a couple I thought that were interesting. You went through a series of -- one I wrote down, I called it the viper e-mail and the wiper knob e-mail. You remember essentially those?
A I remember there were e-mails that dealt with car parts, yes, sir.
Q Those were not to Sandip, right?
A No, sir, they were not.
Q Okay. And I gathered the reason that you were -- well, that may be an unfair question, but I'll try it. Is the reason you were introducing those is just to show that Dr. Mann used that specific account?
A Yes, sir.
Q Okay. Now, there was one called, How do you like my life. Do you remember that?
A I do.
Q And it had an attachment on it, correct?
A It did.
Q It was essentially a letter complaining to the attorney

general of Arkansas about Dr. Mann's treatment. Is that fair?
A It was a letter to the attorney general showing his dissatisfaction with the medical board, yes, sir.
Q Do you remember the date of the letter to the attorney general?
A I don't. I think it was 2008, but again --
Q 2008, okay. Prior to the bombing?
A Prior to the bombing, yes, sir.
Q The attorney general of the state of Arkansas is the state's highest ranking law enforcement officer, correct?
A I suppose it could be argued that. I would consider the colonel of the state police the state's highest ranking law enforcement person, but my boss would probably consider himself the state's highest. But he's the highest ranking attorney that has a law enforcement purpose.
Q In general, yeah, the general one. Now, I don't think there's any dispute Dr. Mann is an intelligent guy, a smart guy. I don't think anybody disputes that, right?
A Are you asking me my opinion?
Q No. I'm saying, generally, he's a doctor, he's board certified in three disciplines. Most doctors are only board certified in one. He's got to be a bright guy, right?
A I have information about those board certifications and how they came to be, from other doctors, and it's my understanding that there are certain ways to get board

certifications. One of them is to actually complete a course and do something. There's another way that you do it and that's by paying a fee. And it's my understanding that he got some of those certifications by doing that. He paid a fee. So for you to say that he's board certified and that makes him smart, it doesn't mean anything to me, sir.

Q Okay. He went to Johns Hopkins. Are you familiar with Johns Hopkins?

A I am.

Q He was involved in a teaching facility that was related to Johns Hopkins. Fair enough?

A I'm not aware of that.

Q Here's my question to you, Agent. If you're a smart guy, are you going to write the attorney general of the state of Arkansas a letter complaining and then kill somebody and think you're going to go undetected?

A You asked me if I thought he was a smart guy and I didn't answer that.

Q Let me put it this way. I've been sitting next to these two for a month now, and if Mr. Lassiter or Ms. Couch was getting really on my nerves and I go down to LRPD after court today and go, Mr. Lassiter and Ms. Couch are just killing me in this trial, they end up dead tomorrow, who are the cops going to come see first?

A I would hope they'd come see you.

Q It would not be a bright notion for me to do, right?
A Not for you to do, no, sir.
Q All right. Let's move to, now, August 5th of 2009, you get another search warrant and go back to the Mann home, correct?
A August 5th?
Q Isn't it August 5th?
A I think it's August 7th.
Q It's --
A It was a Friday, yes, sir.
Q All right. August '09, you go back to the home and that's when Ms. Mann's arrested, correct?
A Yes, sir.
Q Okay. And black plastic is again seized from the home?
A Yes, sir.
Q Again, forensic analysis, no match, correct?
A Well, that's not quite accurate. There was no match to the grenade cans, but there was a match to some black plastic that was found in the house.
Q Got it. Say that one more time.
A You're asking me about the black plastic that was seized on the 7th?
Q Right.
A It didn't match what was found around the grenades, but it did match some of the black plastic found in the house.

Q Back in the house, yeah. Didn't, again, match the black plastic around the ammo can?
A Correct.
Q Got it. There was money there. Generally, about how much?
A There was --
Q I had written down 42,000 and 7,000.
A Yes, sir.
Q Not seized?
A No, sir.
Q No reason to suspect that that was illegal in any way, right?
A No, sir.
Q Now, this is important because I don't -- I want to make sure the jury is not left with a false impression on this. The remaining weapons that had not been seized on March 4th were then seized in August; is that right?
A The remaining weapons that would have been required to be registered, there were probably another hundred and there were in excess of a hundred firearms that were left at the house but the remaining weapons that would require registration were seized during that time.
Q The 17 or 19 -- or less than 20 were seized on March 4th of 2009, correct?
A Yes, sir.

Q And that's been whittled down to result in an allegation of two unregistered weapons, correct?
A He's been indicted for two of those, yes, sir.
Q Now, August of '09, you go back and seize the remainder of the weapons, correct?
A There were other weapons that we didn't seize, but we seized the remainder of the weapons that needed to be registered. So, in other words, you're probably familiar that some weapons need to be registered and some don't, so those that required registration, we took at that time. Other guns that were not required to be registered, we did not take, and that was probably another hundred guns that were left at the house.
Q And there was picture after picture of those weapons, right?
A Yes, sir.
Q And this is the thing that I want to make sure everybody understands. There is no allegation, or has there ever been, that those weapons were illegally possessed, correct?
A No, sir, there's not.
Q The reason you went to the home was not on suspicion of illegal weapons and to seize them, right?
A The reason why we went to the house is one of the elements in proving that someone unlawfully possessed a machine gun is you have to prove that they had knowledge that it needed

to be registered, so we went back to the house and we took those other guns to show that he had knowledge enough to register those, but that he didn't register the two that are unregistered.

Q Okay. And let's go through the warrant process just very briefly. In order to get a search warrant issued by a judge, a law enforcement officer, for instance, in your case, fills out an affidavit, correct?

A Yes, sir.

Q And that goes with the application to the judge for the search warrant, correct?

A Yes, sir.

Q And what you're trying to do in the affidavit is say, Judge, here are facts that I believe establish probable cause for me to be able to go in and seize these items. Is that good enough?

A Yes, sir.

Q Okay. And on the August 2009 search warrant, you were the affiant, or the person who did the affidavit; is that right?

A Yes, sir.

Q And just so that we're all on the same page, let me read to you from it so we know why you were there. It says, "Evidence to be seized. Title 26, United States Code, Section 5861 requires proof that the defendant knew of the

characteristics of the weapon that made it a firearm. This focus is on the concern that Congress did not intend to make outlaws of gun owners who were wholly ignorant of the offending characteristics of their weapons. The firearms that are the subject of this warrant are evidence that Mann was a gun enthusiast and was fully aware of the characteristics of the firearms he possessed and failed to register."

Is that right?

A Yes, sir.

Q Okay. So, again, just to make sure. You guys just seized those weapons because the United States Supreme Court has said a guy can't be convicted of possessing a machine gun if he didn't know it was a machine gun, right?

A We seized them to prove evidence of knowledge. I'm not sure what the United States Supreme Court has said in that case.

Q Well, maybe you're not the affiant, because you cite the case from the United States Supreme Court --

A I'm sorry, I didn't realize that was a Supreme Court case.

Q *Staples v. United States* essentially holds a man can't be convicted of possessing a machine gun if he didn't know it was a machine gun. Fair enough?

A Correct.

Q So part of the government's proof is to show that the

defendant knew it was, for instance, a machine gun, correct?
A Yes, sir.
Q And that's what they say when they say knew of the offending characteristics, right?
A Yes, sir.
Q So the point of seizing those weapons and the point of bringing all those pictures in front of the jury today was simply to show that Dr. Mann knew that the USAS-12 and the RPD were weapons that had characteristics that should have required him to register them with the NFA; is that correct?
A I believe that was one of the points of bringing them before the jury. The other is to show his access and his ability to obtain these types of weapons.
Q He's got an FFL, of course he can get them, right?
A Well, that's correct, he can get them, he can get them with his -- he can't just get them with the FFL, he has to get them with another document called an SOT, which is the occupational tax.
Q Special occupational tax, sure. So just to make sure we're all on the same page, all of those weapons that were here in the pictures are lawfully possessed, nobody's alleging there was anything wrong about that?
A The pictures that were showed today?
Q Yeah.
A Yes, sir.

Q Okay. Let's move to, I guess it's Pete Patel, okay? You went to Memphis in search of a spare tire; is that right?
A Yes, sir.
Q And when was that, Agent Oliver?
A It was the end of May, May 28th.
Q Okay. What I heard from your testimony and what I wanted to address is that you guys got a search warrant to search, apparently Mr. Patel has one or more 2002 Altimas; is that right?
A Yes, sir.
Q And one of the things that I noted that you seemed to emphasize was that Mr. Patel refused a consent to search; is that right?
A Yes, sir. When we got there, we told him that we were conducting an investigation that involved his vehicle and we asked him for permission to search it and he said no.
Q Weren't you actually there two days before on May 26th?
A Me there on May 26th?
Q Uh-huh.
A I don't recall that.
MR. HENDRIX: May I approach?
THE COURT: You may.
BY MR. HENDRIX:
Q Is this what we call an ROI, report of investigation?
A Yes, sir.

Q Is that your name at the bottom?
A Yes, sir, it is.
Q And does it say on May 26th, 2009?
A It does.
Q Do you have that report?
A I have that one and I have another one that says May 28th, so I have two.
Q Go to the one appears May 26th, that in paragraph 1 says on May 26, 2009, at approximately 1855 hours, Special Agents David Oliver and Benny Allen interviewed Mr. Patel. You got that one?
A I do, but just so you're not confused because it's probably confusing by these reports, we were only there once. We went there on one occasion, so one of those is a typo on the date.

MR. HENDRIX: May I approach again?

THE COURT: You may.

BY MR. HENDRIX:
Q That one, paragraph 1, is May 28th; is that right?
A Yes.
Q At what time?
A 1840 hours.
Q 1840. So you were there twice in one day?
A No, we were there once.
Q Let's read these and get it figured out.

A I can help you, because you're going to confuse it. I can see where we're going with this.
Q I'm going to confuse it? Go ahead.
A We got there about 1840 to begin with and we didn't sit down to interview him until about 1855. So there are two reports. One is the execution of the search warrant which details what we found, and then the second report is when we actually sat down to interview him with his attorney.
Q Okay. I'm confused.
A I knew you would be.
Q Look at the report where the narrative paragraph 1 says on May 26th of 2009.
A Yes, sir.
Q You got that one?
A I do.
Q Regardless of that date, look at paragraph 14. You with me?
A I'm getting there. Yes, sir.
Q It says, "At the conclusion of the interview, Oliver asked Patel for consent to search his warehouse." I'll skip ahead. Oliver explained to Patel and Alexander, who's his lawyer; correct?
A Yes, sir.
Q "That they were only looking for a donut-size spare tire. Patel agreed to give consent."

A That's correct.
Q Fair enough?
A Yes, sir.
Q So the full story is it's not exactly he just refused to give consent like that was left on your direct examination, he at one time refused to give consent, he also gave you consent to search; is that correct?
A He never gave us consent to search the residence. He gave us consent to search another location.
Q Gotcha. Well, in my estimation, it was left -- we were left with the impression that this guy was just simply uncooperative with you when truth in fact is he did consent to a search of the warehouse; is that right?
A Yes, sir, he did consent to a search of the warehouse.
Q Okay. Now, you never found the spare tire, right? Never found a spare tire, right?
A We found a spare tire, yes, sir.
Q You know what I'm talking about. When you went to Memphis, you didn't find the spare tire, right?
A We found a spare tire.
Q If you and I are on the same page, you went to the Patels and what you found was, instead of the small spare tire in the 2002 Altima, there was a full-size tire, correct?
A There was a full-size tire, but it was in the trunk in the place a spare tire would be.

Q Right. So instead of finding the mini spare tire, what you found was a full-size tire being used as a spare, correct?
A That's correct.
Q Okay. Now, did you understand that they had children, or does he travel, do you know? Did you know much about Mr. Patel?
A I'm not aware of that. I do know that they have children. I don't know whether he travels.
Q I guess what I'm trying to suggest is this. If you travel a lot and you're going down the freeway, does it make sense to you that you would want to have a full-size spare tire so if you have a flat, you can get the full size on, continue about your business instead of having to hobble along on a little mini spare tire?
A I know that there was some conversation with him where he indicated that that was something that he did, but I know that we also searched some of his other vehicles and they still had the mini spare tire in them, so yes, he did say that I change out all of the spare tires on my cars to go -- to become a full-size spare tire. But then when we executed other warrants, we found that there were donut spare tires still in those cars.
Q Well, how many 2002 Altimas did they have?
A I believe there were five Altimas in between the year of 2005 and 2006. I don't recall. I remember one of them was at

least a 2002. I think the other one was a 2005 and I don't recall what the third one in Georgia was.

Q Okay.

A It was in that range of 2002 to 2006 though.

Q To be clear, Dr. Mann did not own a 2002, 2003, 2004, 2005, or 2006 Nissan Altima, correct?

A No, sir, he did not.

Q Phil Barthelme -- this burn pile, I want to make sure we understood what the nature of that, of your testimony was. The allegations regarding obstruction of justice go back to March of 2009; is that right?

A If that's what's in the indictment.

Q Fair enough. Now, did I understand you to say that you guys went to the burn pile in April of 2010?

A Yes, sir.

Q Okay. Did we see pictures where there were still books that were apparently part of what Phil, Mr. Barthelme, took over to his house?

A Yes, sir. There was a burn pile in the front that was just ash and there was some metal in it and then in the back, there was a second pile.

Q He identified those books, and I think there were some National Geographics as part of the stuff that Sue had given him?

A Yes, sir.

Q Okay. That was 13 months after the allegation of obstruction of justice, March of '09 to April 2010, right?
A We went there when we found out about it. I didn't know about it in March of 2009.
Q My point is, you still seized stuff and I remember a picture in there it looks like Phil is still -- when you guys are there taking pictures of him, was he, like, raking the burn pile or something?
A He raked the burn pile, yes, sir.
Q So, obviously, nobody's in a big hurry to obstruct justice here and destroy all these offending documents if it's 13 months later.
A I think it'd be more accurate that they didn't do a good job.
Q So he's just going to show you these, and is he burning them in front of you?
A No, we went there and that's what had already -- they had already been burned.
Q A good job, I mean, it didn't look like some of the stuff had actually even been put in the burn pile, right? I mean, the books weren't sitting in the burn pile, the National Geographics were in pristine condition, right?
A They looked to be in good condition, yes, sir.
Q Is it fair enough to say, is that -- if one engages in spring cleaning, one of the things they throw out are books and

magazines that have piled up?
A Yes, sir, you could do that.
MR. HENDRIX: Can I have just a second?
THE COURT: Uh-huh.
BY MR. HENDRIX:
Q Agent, I gave you the NFRTR printout?
A Yes, sir.
MR. HENDRIX: May I again approach, Judge?
THE COURT: You may.
BY MR. HENDRIX:
Q Do you know the date of the manufacture of that RPD?
A I believe Mr. Hahn said that he made it post 1986, but I don't remember the date of manufacture.
Q And to be clear, when a gun manufacturer manufactures an NFA weapon, they have to register it then, right?
A Yes, sir.
Q Okay. In other words, the fact of the manufacture gets registered, and then when they transfer it, registered again, right?
A Yes, sir.
Q Would you mind looking at this entry. It's got serial number 1442. You see that?
A Yes, sir. You mind if I bring it closer?
Q No.
A How about if I move it over here?

Q What is that date?
A It's the approval date, 23 July 1993.
Q Do you know what that means?
A I don't.
Q It says -- so the jury's clear, we're looking at what the NFRTR printout gave you regarding the RPD with the serial number 1442, correct?
A Yes, sir.
Q Okay. We know that Dr. Mann did not get it until 2001. There's a date on there of, what is it again?
A It says approved date, 23 July 1993.
Q Would that be the date Hahn manufactured it and registered it?
A I don't know what that date signifies.
Q No clue?
A I don't.
Q Is it possible that that's the date Hahn registered it when he manufactured it?
A I could find out from the NFRTR people what that date is, but I don't know what it is.
Q Just one second. Just a few more, Agent. Going back to Dr. James Miller, the first doctor that got interviewed.
A Yes, sir.
Q Were you aware that Dr. Pierce had just recently testified against Dr. Miller?

A I was not.
Q Obviously Dr. and Mrs. Mann are Hindu and Indian. Have you made any efforts to learn about those traditions?
A No, sir.
Q Okay. Fair enough. I want to go back to this one final thing. Ultimately the house gets searched, what, three times; is that right?
A Yes, sir.
Q Okay. And it's fair to say that it's left in a state of disarray each time. Is that fair enough?
A I don't know if you'd call it disarray. I don't think we put things back exactly where they were when we got there.
Q Fair enough. That's all I've got.
THE COURT: Mr. Dudley.
BY MR. DUDLEY:
Q Agent Oliver, your job as a ATF agent is to conduct investigations, at least one of them?
A Yes, sir.
Q Is it fair to say that you ought to find the evidence and follow it where it leads you?
A I think it's fair to say that my job is to conduct investigations and if we recover evidence, to analyze the evidence.
Q Let me ask it this way. Is it your job to decide who's guilty and then go find evidence to support what you've

decided?
A No, sir.
Q Your job is to find the evidence and see to whom, if anybody, that evidence leads you, right?
A Again, it's my job to investigate, to uncover evidence, to analyze the evidence.
Q You can't answer my question. That's a yes or no question. Is it your job, yes or no, to find the evidence and follow it to whoever or whatever it leads you to?
A That is one of my jobs, yes, sir.
Q Okay. And in doing that, do you think you ought to be impartial?
A Yes, sir.
Q As an investigator, are you on the side of the government?
A I think that you hit the nail right on the head initially. My job is to investigate something, to uncover the evidence, to analyze the evidence, to be impartial, and to present it to the government.
Q Okay. Agent Oliver, you and I are going to have a problem if you can't answer my question. I think that was a yes or no question.
A And I think you're trying to put words into my mouth.
Q See if you can answer this yes or no. Are you, in your investigation, on the side of the government?

A I work for the United States government, yes, sir.
Q Okay. So are you saying that as an investigator, you're an advocate for the government?
A I didn't say that.
Q Well, are you saying it? Will you say it?
A Again, you're trying to put words in my mouth.
Q I'm asking you a question. In your role as an investigator, are you an advocate for the government? That's easy. Either I am or I ain't.
A I don't have any control over what the government does, so to say that I'm an advocate is not fair.
Q Okay. I didn't ask you if you control what the government did. This is not a hard question. I asked you a simple question. In your role as an investigator, are you an advocate for the government?
A No, sir.
Q All right. Now, in addition to -- well, let me follow up on the investigation. When you investigate, you want to do that as thoroughly and accurately as you can, do you not?
A I do the best job that I can.
Q Yes, sir. And when you uncover things in your investigation, you know that at some point you might have to sit in front of a jury like this and tell the jury what you found, right?
A Yes, sir.

Q And to assist you and to build your file in doing that, you prepare reports through the course of the investigation, correct?
A Yes, sir, I do.
Q And you document your investigation, correct?
A That's correct.
Q When you get to the point or the government gets to the point that they're going to take a case to the grand jury, do you participate in that?
A I testify before the grand jury, yes, sir.
Q And in this case, you were what I call the lead agent, the case agent?
A I was one of the case agents on this investigation.
Q Okay. Were you, at one time, the lead agent on it? And I may be using a wrong term. Were you the primary fellow in charge of this investigation at one time?
A No, sir. Glen Cook's always been the primary agent in charge of the investigation.
Q But when it came time to take this case to the grand jury, you were the one from the ATF who testified, correct?
A Yes, sir.
Q And you did so three times, I think?
A At least.
Q And when you testified, you basically summarized the government's case for the grand jury, did you not?

A No, sir, that's not accurate. On one occasion, I summarized the investigation, but on previous, in previous appearances before the grand jury, I testified to the grand jury, answered the government's questions, and explained some of the evidence that we found.
Q Okay. And in testifying for the grand jury and testifying to this jury, you certainly have the same obligation everybody else has to tell the truth; correct?
A Yes, sir.
Q You should not embellish your testimony, should you?
A No, sir.
Q You shouldn't speculate about things that might happen, should you?
A Speculate?
Q Yeah, speculate.
A I'm not sure I understand. Are you asking me if I've speculated?
Q No. I asked you should you.
A No, sir.
Q Your job is to give the jury verifiable facts, right?
A My job is to answer the questions that are asked me when I'm in front of the jury.
Q But you should answer those questions by telling the truth?
A I have always answered those questions by telling the

truth.
Q All right. Now, you agree with our justice system?
A Yes, sir.
Q You agree that nobody should be convicted of a crime unless there's proof beyond a reasonable doubt?
A Yes, sir.
Q You would certainly agree that speculation doesn't provide proof beyond a reasonable doubt, wouldn't you?
A I think that speculation is used to explain things sometimes and it can be taken out of context. So maybe you and I have a different definition of speculation. So I guess do you have another question?
Q Okay. Are you telling me that you think that speculation can provide proof beyond a reasonable doubt?
A I'm not sure that I understand your question. I don't know.
MR. GORDON: Your Honor, I'm going to object.
THE COURT: Hold on, what's the objection?
MR. GORDON: We're beyond facts here. We're getting into irrelevant matters.
MR. DUDLEY: Your Honor, I promise I'll tie this back in.
THE COURT: That's overruled.
BY MR. DUDLEY:
Q Do you know what speculation is?

A It's when you think something happened, I believe.
Q Okay. Speculation is when you're just guessing about what might have happened.
A Then I'm sorry, I don't know what speculation is.
Q Taking my definition, would you agree that speculation can't provide proof beyond a reasonable doubt?
A I think that speculation, in itself, cannot provide proof beyond a reasonable doubt.
Q So the answer is yes?
A Again, you're taking it out of context. Speculation in itself cannot provide proof beyond a reasonable doubt. I mean, any case that's presented to a jury is not just one set of facts, it's the whole investigation as a whole or all the facts in the investigation.
Q Do you have any powers beyond the ordinary powers that all of us have?
A Again, I don't understand. I guess I have the power to arrest people. Is that what you mean, conduct warrants?
Q Let me be more direct in my question. Can you read people's minds?
A No, sir.
Q Can't read my mind?
A Not today.
Q Can you read Sue Mann's mind?
A No, sir.

Q Why did you tell the grand jury you could?
A I'm sure that I didn't say that I could read her mind.
Q Okay. Let's see what you told the grand jury. You did tell the grand jury that Sue lied, didn't you?
A I don't recall.
Q You don't recall?
A I do recall testifying to what she testified to before the grand jury.
Q Well, that's not what I asked you. Did you tell the grand jury that Sue Mann lied?
A If you have my grand jury testimony, I'd be more than happy to look at it and answer that question.
Q You can't tell the jury without looking at what you testified to whether you told the grand jury that Sue Mann lied; is that right?
A I would feel more comfortable looking at something that you're referring to when you're going to ask me a question about it.

MR. DUDLEY: May I approach, Your Honor?

THE COURT: You may.

BY MR. DUDLEY:
Q Is this your grand jury testimony?
A Yes, sir.
Q Fourth day of August, 2009?
A Yes, sir.

Q On page 15, you can look back, I'm not trying to trick you, and see whether you're talking about Sue here.
A Do you mind if I take a minute to read it?
Q You take all the time you need to read it. By the way, did you not have a chance to read your grand jury testimony before you testified today?
A I didn't read it today, no, sir.
Q Did you read it yesterday?
A I think I read it at the beginning when the trial started about three weeks ago.
Q You certainly knew you needed to review your grand jury testimony before you got on the stand, didn't you, Agent?
A Again, I read it about three weeks ago, yes, sir.
Q You go ahead and take your time reading it.
A Thank you. Thank you.
Q You're talking about Sue Mann, correct?
A Yes, sir.
Q Is what this question is?
A Yes, sir.
Q Ms. Whatley's asking you about Sue Mann's testimony before the grand jury, correct?
A Yes, sir, she was.
Q She said, were all of her answers truthful regarding that information, and you said they were not truthful.
A That's correct.

Q Not truthful means they were a lie, right?
A They were not truthful was my answer.
Q Is there a difference between being untruthful and lying, Agent?
A No, sir.
Q Okay. And she's charged with lying, right?
A Yes, sir.
Q Making a false declaration to the grand jury?
A Yes, sir, she is.
Q All right. Tell this jury what answers Sue gave to the grand jury that were not true.
A She was asked about the checks, and one of the questions that she was asked was why she removed the checks from the office. She answered that she removed the checks from the office because she thought that it was safer. But at the time, when I testified to that grand jury, I already knew that her husband had directed her to remove those checks in a phone call that I had listened to. So there's another question on there where she said is that the only reason why you removed the checks, and I'm paraphrasing, and she said yes, that's the only reason.
Q Okay. Now, what she said was -- she was asked, Why did you remove the checks. And I've got the testimony here and you're welcome to look at it. But she said, I just thought it would be safer. Right?

A Yes, sir.
Q And that's the testimony you told the grand jury was a lie, right?
A It wasn't the complete truth.
Q Okay. Now, do you know what she thought?
A No, sir, I don't.
Q That's what she said, though, "I just thought it would be safer." Right?
A That's correct.
Q The only person in the world who knows what she thought was Sue Mann, right?
A Yes, sir.
Q You can't read her mind, can you?
A No, sir.
Q So when you tell the grand jury that's false testimony or untruthful testimony, the only way you can know that is to read her mind; isn't that right?
A That's not correct.
Q That's not correct?
A No, sir.
Q Then tell the jury how you know what she thought.
A Well, again, you're taking it out of context. The reason why I knew that she was being untruthful is because I had already listened to a conversation between her and her husband where her husband told her to go and remove the stuff from the

clinic. So, again, in the follow-up question, she was asked -- and again, you have it in front of you, but she was asked, "Is that the only reason why you removed the items?" Again, I'm paraphrasing. And she said, "Yes, that's the only reason why I removed the items."

Q Who would know, who in this whole world would know whether the only reason she removed those items is because she thought it would be safer?

A I'm not sure I understand.

Q Can you tell me why I do something?

A No, sir.

Q Can you tell the jury why Mr. Crabtree does something?

A No, sir.

Q Okay. So the only person who knows why Sue Mann does something is Sue Mann. Isn't that right?

A Well, but again, if I see you bend down to pick something up off the floor that I saw you drop, I know that you bent down to pick it up because you dropped it. So in this case, I knew that her husband had told her to remove the checks.

Q Let's see if you can answer this then. Let's assume that I'm driving down the street in my car and my wife's with me and my wife says turn right at the next corner, and I do. And the next day I'm asked before a grand jury why did you turn right at that corner and I said because I thought that was the shortest route to my destination. Now, can you tell whether I

lied or not when I said that?
A It would depend. And, again, it would depend if I knew about the conversation that you had with your wife.
Q I'm saying you knew about the conversation. You knew my wife told me to turn right and you knew I turned right, and then I said I turned right because I thought that was the shortest route to my destination.
A Then, if there was a follow-up question that said, are you the -- is that the only reason why you turned right, and you said yes, that's the only reason, and I knew that your wife had told you to, then yes, you wouldn't be completely truthful.
Q Well, that assumes that I actually turned right because my wife told me to. Doesn't it? What if I was going to turn right if my wife had kept her mouth shut, how about that? I wouldn't be turning right because she told me to, would I?
A Well, again, we're speaking hypothetically.
Q Yeah, we're talking about turning right in a car right now.
A Okay. You're confusing, but you're saying if you just turned right because your wife never told you to and you just wanted to turn right.
Q Yeah, if that was my reason for turning right despite the fact that my wife told me to, I wouldn't be lying if I said that was my reason, would I?
A You would not be if your wife hadn't told you to and

there was not a question after that asking you is that the only reason.

Q So you're saying if my wife told me to turn right, that has to be one of the reasons I turned right, right?

A "Has to be" never came out of my mouth, sir.

Q Okay. All right. But you told the grand jury that Sue lied when she said the only reason she removed them is because she thought it would be safer, right?

A Yes, sir.

Q So you're telling the grand jury and this jury that you know what Sue Mann thought?

A I'm telling the grand jury and this jury that I knew that there was a conversation where her husband directed her to go remove the checks and that she was subsequently asked, is that the only reason why you removed the checks, and she said yes.

Q Okay. So to put it another way, you're telling this jury and the grand jury that you know that one of the reasons she removed the checks is because her husband told her to. Is that right?

A Say that again.

Q Are you telling this jury and told the grand jury that you know one of the reasons she removed the checks is because her husband told her to?

A Yes, sir.

Q You're telling them you know that?

A I heard it.
Q You heard Sue say that?
A I heard her husband tell her to remove the checks.
Q Okay. But you don't know what Sue thought and whether Sue did it because her husband told her to. How can you know that?
A I don't know that.
Q That's right, you don't. When you testified to the grand jury, you also told them -- let me go back. You know one of the charges in this case is that Sue and Dr. Mann conspired to impede or obstruct an official proceeding, correct?
A Yes, sir.
Q Okay. And you were asked about that in your grand jury testimony, correct?
A Yes, sir.
Q And you told the grand jury when you testified on, I believe it's August 4, I'll check that in a minute and make sure, that there had been a number of official proceedings in the case up until the time of that testimony, correct?
A Yes, sir.
Q To tell the grand jury there had been a number of official proceedings, obviously you know what an official proceeding is, correct?
A Yes, sir.
Q Tell the jury what an official proceeding is.

A In this case, there were detention hearings, there were grand jury, there was grand jury testimony, and I believe there were arraignments and stuff like that. Those are official proceedings.
Q Okay. Well, let's go back. At the time you gave this testimony, there hadn't been any arraignments, had there?
A When was the testimony, sir?
Q I believe it's August 4 of '09.
A Yes, sir, I believe that Dr. Mann had already been arraigned for some of the charges.
Q Is that execution of a search warrant an official proceeding?
A I'm not sure legally under the statute if it is or not.
Q Do you know whether it's a crime to conspire to impede an official investigation?
A I believe that it is.
Q You do. And, in fact, you told the grand jury it was, didn't you?
A Again, if that's what I said in my grand jury and you have it in front of me, yes, sir.
Q Would you agree with me that all criminal offenses in the federal system are set forth in what's called the United States Code?
A Yes, sir.
Q Can you tell the jury what section of the United States

Code criminalizes conspiracy to impede an official investigation?

A I don't have it in front of me.

Q You don't have it in front of you and you can't tell the jury, and if I gave you the code, you think you could find that?

A I'm not sure. If it were in there, it might take me a minute to find it.

Q The truth is, Agent, you told the jury that a crime exists which doesn't exist. Isn't that true?

A I'm not sure.

Q Well, you think you ought to be telling a grand jury about a crime you're not sure of?

A Again, you're telling me what's in my grand jury testimony. I'm not sure what you're referring to. And if you're going to ask me a question about it, I guess I need to read it every time.

MR. DUDLEY: May I approach, Your Honor?

THE COURT: You may.

BY MR. DUDLEY:

Q Same grand jury testimony, August 4, 2009.

A Yes, sir.

Q "Question: And this is a conspiracy to obstruct, influence, and impede an official investigation?" And your answer was, "Yes, ma'am."

A Yes, sir.
Q And that was testimony before the grand jury, right?
A Yes, sir.
Q And you can't tell this jury any statute that makes it a crime to impede an official investigation, right?
A I believe that is an element of one of the crimes that she was charged with.
Q Impeding an official investigation?
A Yes, sir.
Q There's the indictment. Read to the jury what you're talking about.
A The indictment wouldn't have the elements of the crime in it. The United States Code would.
Q Okay. There's 18, U.S.C., Section 1512, which is the section she's charged with violating, so go ahead and read to the jury out of that where it says impede an official investigation. You need this back?
A Thank you. I don't mean to be difficult, but do you have anything that's bigger than this?
Q Have anything what?
A The font or the text is bigger than this.
Q I'm sorry, I don't. You want my glasses?
A I'll try. Much better, thank you.
Q I got to have them back though.
A I promise to return them to you. It says whoever

knowingly uses intimidation, threatens or corruptly persuades another person or attempts to do so or engages in misleading conduct toward another person with intent to influence, delay, or prevent the testimony of any person in an official proceeding. To cause or induce any --

Q Let me interrupt you. Instead of just reading the statute, that's that official proceeding, right?

A Yes, sir, it is.

Q I want you to find and then read to the jury any place in there where it talks about an official investigation.

A I'm not sure that I understand your question. Are you asking me to look for the word "investigation" in here?

Q Yeah. You told the grand jury it's a crime to conspire to impede an official investigation and you said you think it's in there, so I gave it to you, find it.

A What I said is I thought that that was an element of the crime.

MR. GORDON: Your Honor, I'm going to have to object here. There's word games going on here. He testified in layman's terms in front of the grand jury. I mean, whether or not this meets the definition of the crime that you're going to give the jury is for them to determine and it's not based upon the language that Agent Oliver used in front of the grand jury.

THE COURT: He can cross him on his testimony and you can clear it up on redirect.

BY MR. DUDLEY:

Q Find it, Agent?

A No, sir, I didn't.

Q Any place else you think you need to look to see whether you can find whether it's a crime to impede an official investigation like you told the grand jury?

A No, sir.

Q Now, you do agree, I think we agreed on this early on, that when you testify you ought to be careful and accurate in what you say, right?

A Yes, sir.

Q Is that an example of not being very careful or accurate in what you were testifying to?

A I mean, I think, again, you're taking things out of context. I think that I testified accurately that she had obstructed an official proceeding.

Q Okay. We read what you said, right, we read that to the jury?

A And, again, you're asking me if it was my intent when I went to the grand jury to testify accurately that she had obstructed an official investigation. And that was based on the fact that she went in and she removed items from the office.

Q Okay. Now, at the time of the search warrant, and we're talking about removing items from the office before the search

of the clinic on March 11th, 2009; sound right?
A No, sir, it doesn't sound right.
Q What date?
A I believe the initial appearance was on March 5th. We got the search warrant -- the initial appearance was on March 5th, which was a Thursday. The phone calls indicated that she went into the office on either Saturday or Sunday and the detention hearing was the following Monday. So the 5th was a Thursday, the 6th was a Friday, Saturday was the 7th, Sunday was the 8th.
Q Okay. Now, what official proceeding, if any, was scheduled when you think she removed these items from the office?
A The detention hearing was scheduled for the Monday.
Q Okay. Are you telling this jury that she removed those checks to impede or obstruct or influence the detention hearing?
A I believe that she took those items to impede or obstruct the whole investigation in general.
Q Okay. Well, she's not charged with impeding or obstructing the investigation.
A Again, I'm saying that that's what I believe she did.
Q Okay. And that's fine for you to believe that. But I want to concentrate on what she's charged with, not what you believe. She's charged with conspiracy to obstruct or impede

an official proceeding, not an investigation. Okay?
A Okay.
Q All right. Is it your testimony that she did this to impede the detention hearing?
A It's my testimony that she did it to impede the whole investigation.
Q Okay. You've already said that, and you're welcome to say that. What other official proceeding occurred after the detention hearing?
A I believe that there were grand jury proceedings.
Q When?
A Well, we arrested them in March, there would have been some in April, I believe there were some more in May. I don't recall. I don't remember the dates after that, but definitely April and May that I do recall off the top of my head.
Q Okay. And do you have any information that Sue Mann knew there was going to be a grand jury proceeding in April?
A We gave her a subpoena for the grand jury.
Q When?
A At some point.
Q When?
A I don't recall.
Q Before you claim she took the documents out of the clinic?
A No, sir, it was after.

Q Okay. Before she took the documents out of the clinic, do you have any information that she knew anything about any official proceeding that was going to happen with the possible exception of the detention hearing?
A What I know is she talks about a phone call that she got from her attorney or from Dr. Mann's attorney. In the phone call, and I'm paraphrasing, but she says something -- there's a conversation where she says something to the effect that, you know, the attorney said that they're going to be coming to the office, and it sounded like she meant with a search warrant, and also during that conversation, Dr. Mann's like, oh, no big deal and he switches up and he says, go to the office and remove certain items, and then he tells her what to do with it. So that conversation happened sometime around the weekend, I think before the weekend.
Q All right. I'll let you say all that, but do you think you answered my question?
A Yes, sir, I do.
Q Then that tells the jury some knowledge she had of an official proceeding that was going to occur in the future? What official proceeding did that give her knowledge of?
A She told her about the -- he told her about the search warrant.
Q Am I going to have to show you the search warrant, execution of a search warrant's not an official proceeding? Is

that what you're going on, you think definition of -- I mean, a search warrant is an official proceeding?

A Sir, I'm not a lawyer.

Q But is that what you're telling the jury she had notice of is that there was going to be a search warrant executed?

A She had notice of that and she also had notice that there was going to be a detention hearing the following Monday.

MR. DUDLEY: May I approach, Your Honor?

THE COURT: You may.

BY MR. DUDLEY:

Q You need my glasses again?

A Yes, sir, if you don't mind. Oh, I can read that one.

Q She's charged with violating 18, U.S.C., Section 1512. I showed you that, correct?

A Yes, sir.

Q Okay. And Section 1515 defines an official proceeding. See that?

A Yes, sir, I do.

Q You don't have to read that out loud, but I want you to read it and tell the jury whether or not it says execution of a search warrant is an official proceeding.

A Again, in this document, it says a proceeding before a judge or court of the United States. It doesn't define what a proceeding is in this document.

Q Well, Agent, I think you're being unnecessarily

difficult. Let's see. As used in Section 1512, that's what we're talking about, right?
A Yes, sir.
Q The term "official proceeding" means. Is that a definition of official proceeding?
A Yes, sir.
Q Okay. It doesn't say execution of a search warrant in there, does it?
A Well, a proceeding before a judge or court of the United States.
Q I'm going to stop you right there.
A Unless I'm mistaken, I went before a court of the United States and had a warrant signed.
Q That's right. You got the search warrant in front of a judge, right?
A Yes, sir.
Q Did you execute the search warrant in front of a judge?
A The judge authorized me to execute the search warrant.
Q That wasn't my question. Did you execute the search warrant in front of a judge?
A No, sir.
Q You weren't in court when you executed the search warrant, were you?
A No, sir, I wasn't.
Q All right. So the execution of a search warrant is not

before a judge or court of the United States, is it?
A But you get the warrant from a judge.
Q I'm not arguing that you get the warrant there, I'm asking you if you executed it before a judge or court of the United States.
MR. GORDON: Again, Your Honor, I'm going to have to object. We are now getting beyond the scope of presenting facts. These are legal arguments the Court decides, not Agent Oliver.
THE COURT: Let me say this. Mr. Dudley has the right to ask him is this this, and he has a right to say either yes or no. And we'll move faster if it's yes or no. So, I mean, overruled.
BY MR. DUDLEY:
Q One more time. Where did you execute the search warrant?
A At his residence.
Q Or at his clinic, right? Wasn't a judge there, was there?
A No, sir, there wasn't.
Q So that wasn't done before a judge or court of the United States, was it?
A No, sir.
Q Now, are we finished? We talked about you said she had knowledge that the warrant was going to be executed and of a detention hearing. Do you have any information she had

knowledge of any other future official proceeding in the case?
A Not at that time, no, sir.
Q Tell the jury how you can conspire to impede or obstruct an official proceeding that you don't know is going to occur.
A She knew the detention hearing was going to occur.
Q So it is your testimony that all of this was done to impede or obstruct the detention hearing?
A Not all of it, no, sir.
Q Okay. Tell me how what she did obstructed or impeded the detention hearing. And for the jury's benefit, let's get a little definition here. A detention hearing is a hearing before the judge on whether you're going to be let go or put in jail pending trial, right?
A Yes, sir. If you want me to make a legal argument like a lawyer, at a detention hearing, the judge decides whether someone's at risk of flight, so therefore, they look at someone's finances. She was removing stuff from the office that dealt with his finances. So she obstructed the detention hearing by removing stuff that the judge needed to consider about Dr. Mann's finances.
Q Was the search of the clinic conducted before or after the detention hearing?
A It was after.
Q It was after. So even if they had the detention hearing and those documents had been sitting in the drawer at the

clinic the whole time, it wouldn't have affected that detention hearing one bit because the search warrant wasn't executed until afterwards, right?

A But she removed them before.

Q All right. But how did it impede or obstruct it because you wouldn't have had the documents at the time of the detention hearing whether she removed them or not, would you?

A When she removes them, I would have never had them.

Q You would not have had them at the time of the detention hearing if she had not removed them, would you?

A If she would have not removed them, I would not have them at the time of the detention hearing.

Q That's right. You didn't search the clinic until after the detention hearing, right?

A That's right.

Q So you couldn't have had the documents at the time of the detention hearing, right?

A That's correct.

Q So removing the documents couldn't have impeded or obstructed the detention hearing, could it?

A The documents were relevant to the detention hearing if we would have known about them, so therefore, it would have obstructed it.

Q How would it have obstructed it if you would have never known about it and it never happened?

A How would it have obstructed it? I explain the documents are relevant at the detention hearing to the judge who wants to decide whether they're going to release someone on bond or not.
Q You understand that the removal of the documents had to impede or obstruct the detention hearing; do you understand that?
A Yes, sir.
Q Okay. Now, you wouldn't have had the documents whether she removed them or not, because you hadn't searched the clinic before the detention hearing, had you?
A We had not before the detention hearing.
Q You actually testified before the grand jury that anybody who removes anything from a place they know are going to be searched has committed a crime, didn't you? Actually you testified to that in the detention hearing, didn't you?
A I'm not sure, but if you have it, yes, sir.
Q Pardon?
A If you have that, I'm agreeing with you. I'm not asking you to read it.
Q You know I have it if I asked you that, don't you?
A Well --
Q I'll be happy to show it to you if you want to see it. Do you?
A I'll believe you that I've said that.
Q Pardon?

A I believe you that I've said that.
Q Okay. Is that still your testimony today?
A That if you know that I'm going to do a search warrant on your house and if someone goes and removes it, that they're committing a crime?
Q Yeah.
A Yes, sir.
Q Regardless of what's removed?
A I don't know about regardless of what's removed. If it's relevant to the investigation.
Q There you go. If it's relevant to the investigation and the person who removes it has to have the intent to obstruct or impede the investigation, right? If you know. If you don't know, that's fine.
A I don't know the answer to that.
Q You don't know the legal elements required, right?
A No, sir.
Q Do you believe in the constitution, Agent?
A Yes, sir.
Q In fact, when you became a ATF agent, did you take an oath?
A Yes, sir, I did.
Q Was part of that oath to uphold and defend the constitution of the United States?
A Yes, sir.

Q You agree that at least the bill of rights to the constitution are designed to protect citizens from the government?
A I suppose that could be argued that's one of the purposes of the bill of rights. I think there's other reasons in the bill of rights, there's other things in the bill of rights, not just protecting them from the government.
Q That's fair enough. Are you familiar with the Fourth Amendment?
A Yes, sir.
Q You agree that the Fourth Amendment is designed to protect citizens from unreasonable searches and seizures?
A Yes, sir.
Q And would you agree that, and I can ask you this, I think, because to defend and uphold the constitution, you got to know what the constitution says, don't you?
A Yes, sir.
Q You can't defend and uphold something unless you know what it is you're defending and upholding, right?
A Yes, sir.
Q Now, under the Fourth Amendment, you agree that -- and there are exceptions and I'll admit it, but I'm talking about general rules right now -- as a general rule, you cannot search without a warrant?
A But you've answered your own question, but there's

exceptions.
Q Sure, there are exceptions and I'll agree there are, but actually the Fourth Amendment says you got to have a warrant, doesn't it?
A It says that you have to have a warrant, but again, there are exceptions.
Q Okay. And if you get the warrant, forget about the exception, let's talk about a case where you get a warrant, okay? So you would agree we're not talking about exceptions if you get the warrant, right?
A That's right.
Q Okay. If you get the warrant, one of the ways the Fourth Amendment protects us is the warrant has to specifically describe the place to be searched?
A Yes, sir.
Q And another way the constitution and the Fourth Amendment protects us is the warrant must specifically describe the things to be seized?
A That's not always accurate because in some cases, you can be searching for a piece of paper and see something that's contraband or something like that that's drugs and you can seize it.
Q Okay. I won't argue that point either. I agree with you, if there is some contraband you run across that's in plain view in a search, you can seize it, but the warrant must

specifically describe the things or objects to be seized, correct?
A Yes, sir.
Q And the scope of the warrant is defined by the place you can search and what it says you can seize, correct?
A That's correct.
Q Now, you actually did the affidavit for the search warrant for the clinic, did you not?
A Yes, sir, I did.
Q You were the one who went to the judge and obtained a warrant?
A Yes, sir, I was.
Q And when you got the warrant, the warrant actually did specifically describe the place you were going to search, correct?
A Yes, sir.
Q The clinic in Russellville?
A That's correct.
Q It also specifically described the things that you could seize, did it not?
A Yes, sir, it did.
MR. DUDLEY: And may I approach, Your Honor?
THE COURT: You may.
BY MR. DUDLEY:
Q Let me show you the warrant. If you need my glasses

again.
A That one's bigger, thank you.
Q Okay. I'm actually looking at attachment B which is the description of the things that can be seized pursuant to the warrant, correct?
A Yes, sir.
Q Now, read to the jury on there where it says you can seize, when you search the clinic, anything regarding the financial condition of Sandip Mann.
A It's not on there.
Q Is Sandip -- I'm going to say Sunny, that's easier. Is Sunny Mann's name on there?
A No, sir, it's not.
Q Does it say anything about financial records of Sunny?
A No, sir, it doesn't.
Q So if you had searched that clinic and the financial records had been there, you couldn't have taken them, could you?
A I couldn't have taken them, but I could have written down the account number and followed up on it that way.
Q You sure could have, but you couldn't have taken them, right?
A No, sir, I couldn't have.
Q You had a chance to follow up on them anyway, didn't you?
A I'm not sure I understand your question.

Q You got the records, didn't you?
A We did get the records, yes, sir.
Q So you had a chance to follow up on them, didn't you?
A After we got the records, we had that chance, yes, sir.
Q Count 8 of the indictment, again, you're welcome to look at what I'm talking about, charges that Sue and Dr. Mann, aiding and abetting each other, concealed or attempted to conceal, in part at least, the financial documents of Sunny Mann, correct?
A Yes, sir.
Q And I'm interested in the dates. It says from March 4, 2009, to on or about May 5, 2009, right?
A Yes, sir.
Q Okay. When did Sue testify before the grand jury?
A I'm not sure. It's in the indictment. I think it was -- I don't think it was April, I think it was May.
Q Actually, will you accept that it's April 8, 2009?
A Yes, sir.
Q I'll be happy to show that to you. In her testimony to the grand jury, she testified about those documents, didn't she?
A Yes, sir, she did.
Q And you think she was attempting to conceal those documents after she testified about them to the grand jury?
A After she testified about them?

Q Yeah.
A No, sir.
Q So if the indictment says she was trying to conceal them till May whatever, May 9, you don't agree with that?
A The U.S. Attorney puts the dates in there. I mean, I don't get involved in that and I'm not sure. There's legal reasons why they do that.
Q All right. Let's talk about the search on March 3. First search, right?
A Yes.
Q Is that the date you searched the gray Lexus?
A March 3rd is the date that the city workers found the grenades.
Q Okay. And was there not a search at the house that night?
A No, sir.
Q Okay. When was the first search, March 4?
A Yes, sir.
Q Okay. March 4, is that the day you searched the gray Lexus?
A Yes, sir, it is.
Q Were there other cars at the house?
A Yes, sir, there were.
Q Did you search the other cars?
A They were searched. I've searched some of them, but the

cars were searched.
Q Were all of the cars there searched?
A Yes, sir, I believe they were.
Q Was the brown Lexus at the house?
A I don't recall a brown Lexus.
Q Okay. So you don't know one way or the other whether a brown Lexus was searched at the house?
A I don't remember a brown Lexus being there. I remember that there was a gray Lexus there. I don't recall seeing -- there was not a brown Lexus there.
Q Okay. So you or nobody else, to your knowledge, searched a brown Lexus that day?
A No, sir.
Q You told the grand jury that Sue took something from, I think, the brown Lexus on or after March 28. Do you recall that?
A I don't.
Q Actually, I may have misstated it this time. We'll see what you really said.
A So you made the mistake this time?
Q Back to your same testimony in August 4 of 2009.
A Yes, sir.
Q I'll just read this, you read it with me. "On March 28, was there a telephone call in which he, talking about Dr. Mann, wanted to make sure that she had removed items from one of the

vehicles at their house?" Your answer was, "Yes, there was." "Question: When he thought that she had not done so, was he very agitated?" Your answer was, "He's more agitated than I've ever heard him in any of the other phone calls. He obviously felt that we had something we missed." I think that just means y'all missed in the search, right?

A Yeah, I think I was trying to say we had found something that we missed.

Q Okay. Then you were asked, "Are those some of the items that are the basis for Count 5?" And the indictment's been changed since then, it's Count 8 now. Will you accept that?

A Yes, sir.

Q Okay. "Count 8 of this indictment; is that correct?" And you said, "Yes, ma'am."

Right?

A Yes, sir.

Q Now, did Sue Mann remove something from the Lexus after March, on or after March 28?

A No, sir.

Q Pardon?

A No, sir. Not that I'm aware of.

Q Okay. So if that's the basis for part of count, at least part of the basis for Count 8, there's nothing you know that would substantiate that, correct?

A There was a phone call where -- there's the phone call

that I described in there and I believe that's what the count is substantiated on.

Q But did she remove something from the car?

A Not that I'm aware of.

Q If she did, what was it?

A I'm not aware that she removed anything.

Q So whether or not she removed something and, if so, what it was, you just have to speculate, you'd have to guess on what it was, right?

A I'm not aware that she removed anything.

Q Okay.

Your Honor, I probably have 10 to 15 minutes more to go. You want me to continue on?

THE COURT: Let's take a few minutes. We'll take 15, come back at 4:15 and then we'll go to 5:30 and then we'll conclude for the afternoon. We'll be in recess until 4:15.

(Recess at 3:58 p.m., until 4:17 p.m., jury present.)

THE COURT: Mr. Dudley.

MR. DUDLEY: Thank you, Your Honor.

BY MR. DUDLEY:

Q Agent Oliver, did you visit with Mr. Gordon over the break?

A Yes, sir.

Q Pardon?

A Yes, sir, I did.

Q Did y'all talk about what he's going to ask you and what you're going to say when he gets back up here?
A He told me what he was going to ask me.
Q Pardon me?
A He told me what he was going to ask me, yes, sir.
Q Okay. You arrested Sue, correct?
A Yes, sir, I did.
Q Did that on August 8th?
A I believe it was August 7th, but I have August 8th on my report.
Q That's the date I looked at. You arrested her on August 7th?
A Yes, sir. It was a Friday and I believe it was August 7th.
Q During that same time period while you were at the home, you also executed another search warrant?
A There were two, yes, sir.
Q During that search warrant, were two of her kids there?
A Yes, sir.
Q Did you detain them?
A Yes, sir, we did.
Q Did you handcuff them?
A I believe that we did.
Q Had they committed any crime?
A No, sir, they hadn't committed any crime.

Q Did you have probable cause to believe they committed any crime?
A No, sir.
Q Well, we talked about offending and upholding the constitution, right?
A Yes, sir.
Q The Fourth Amendment prohibits not only unreasonable searches, it prohibits unreasonable seizures of persons, does it not?
A Yes, sir.
Q And doesn't the Fourth Amendment provide that you either have to have a warrant or probable cause to seize somebody?
A I'm not a lawyer, but you have to have a warrant or probable cause to arrest someone. We were detaining them, we went into the house and we detained them for our safety.
Q You thought the kids were a threat to you?
A We were in a house full of machine guns, I did believe that they were a threat to me, yes, sir.
Q Okay. You didn't do that to scare Sue?
A No, sir.
Q When you had these kids arrested, did you tell Dan Mann, I know your mom is not guilty?
A I never arrested him.
Q I didn't say when you arrested him, I said when you had these kids handcuffed.

A You asked me when I had them arrested.
Q I apologize. I misspoke. When you had these kids handcuffed, did you tell Dan Mann, I know your mom is not guilty?
A I don't recall that conversation.
Q Did you transport Sue back to Little Rock from Russellville?
A Yes, sir, I did.
Q Did you have a conversation with Sue on the way back?
A I talked to her on the way back, yes, sir. She didn't respond though.
Q Well, did you tell Sue she was going to prison for 20 years?
A No, sir.
Q Did you tell Sue she was going to prison?
A I told Sue that it was a possibility that she was going to prison, yes, sir.
Q And why would you tell her that?
A Because she was charged with a crime in which she could go to prison.
Q Okay. You think she didn't realize that?
A You're asking me to think what or to --
Q You're right. I'll withdraw the question. After you told her she could be going to prison, did you tell her if she would help you, she'd be back home that same day with no

charges?
A No, sir.
Q Did you ask Sue to cooperate with you?
A Yes, sir, I did.
Q And testify against her husband?
A I don't know if I asked her to testify against her husband because I know that she couldn't testify against her husband because of a privilege, but I believe that I asked her to cooperate with us.
Q And give you information?
A Yes, sir.
Q And did you tell her if that happened, the charges would get dropped?
A I told her if she was interested in providing information, that she needed to get with her attorney and have her attorney contact the U.S. Attorney's office.
Q Do you know of any law that requires a citizen to talk to an ATF agent if they don't want to?
A There is no law.
Q So if you go talk to -- want to go talk to a citizen and they say, I don't want to talk to you, they can be subpoenaed to the grand jury but they don't have to talk to you, do they?
A No, sir, they don't.
Q In your experience, do folks who construct IEDs -- is that improvised explosive devices?

A Yes, sir.
Q Do folks who construct IEDs normally or frequently construct IEDs in their residence?
A Are you asking me if they normally construct them in their residence?
Q Yeah, or frequently do so.
A I'm sorry, I didn't understand you. I have investigated other cases where they construct them in their residence, yes, sir.
Q Okay. And when that happens, in your experience, do they fail to dispose of the materials used to construct the IED?
A Yes, sir, in some cases, they do.
Q You told Mr. Oliver that you investigated Sunny Mann in connection with the West Memphis bombing, correct?
A I am Mr. Oliver. I'm not sure that you -- you just said I told Mr. Oliver.
Q I apologize again. You told Mr. Gordon in your direct testimony that you investigated Sunny Mann in connection with the West Memphis bombing.
A Yes, sir.
Q If I understood you correctly, that investigation began based on the e-mail sending the photographs to Sunny?
A Yes, sir. That was one of the -- yes, sir.
Q Is that what triggered that investigation?
A That was part of it.

Q Well, had you started the investigation before you saw that e-mail?
A The investigation of the West Memphis bombing started on February 4th.
Q I understand that. Had you started an investigation of Sunny Mann before you saw that e-mail?
A I believe that I had run records checks on them and indices checks and I knew that he had already been deported to India at that time, so yes, sir, I had.
Q You were running that investigation before you saw the e-mail in connection with him being a suspect in the West Memphis bombing?
A I had started looking into him, yes.
Q We've already established, I think, that you say you prepare reports and document your investigations, correct?
A Yes, sir.
Q Have you got your reports in front of you?
A I have some of them in front of me, yes, sir.
Q Are you missing any reports that you authored?
A Yes, sir.
Q Okay. Well, let me show you what I've got.
May I approach, Your Honor?
THE COURT: You may.
BY MR. DUDLEY:
Q I'm going to show you the reports I was given and I want

to know if there are any reports you authored other than the ones I handed you.

A Yes, sir, there are.

MR. DUDLEY: Your Honor, may we approach?

THE COURT: You may.

(Bench conference reported as follows:)

MR. DUDLEY: His reports are Jencks Act. I'm entitled to all of them.

MR. GORDON: Matters he's going to testify to, there were interviews and stuff that he's conducted that he's not testifying about, those were not turned over.

MR. DUDLEY: I'm going to have to go back and look at the Jencks Act because I think it says any statement signed or adopted by the witness, I don't think it says what he testifies about.

MR. GORDON: I read the rule specifically for this reason to see what I had to give up.

THE COURT: I don't know off the top of my head.

MR. DUDLEY: I don't either, Judge. I'd have to look at it.

MR. GORDON: I've got the code.

THE COURT: Let's take a look at it.

MR. HENDRIX: 18, 3500.

THE COURT: Don't get me started rattling off code sections. 3500?

MR. GORDON: 18, 3500.

THE COURT: This would seem to indicate in section C that he only has to produce the parts that are subject of the testimony, and if there's a dispute as to whether there are certain parts that are the subject of the testimony or not, I should have an in camera inspection of them and make a determination.

MR. DUDLEY: I tell you what, let me continue and if he says he's done a report about something else then I'm going to ask him about it, then I'm going to ask to see the report.

MR. GORDON: That's fine.

THE COURT: Okay.

(Proceedings continuing in open court at 4:28 p.m.)

BY MR. DUDLEY:

Q Let me show you the reports that I have. And you look through them if you need to, but I want you to tell the jury where in any of those reports you mention any investigation of Sunny Mann.

A It's not in these reports.

Q When you testified -- well, is it in any other report? Do you have another report that reports on an investigation of Sunny Mann?

A I believe he's mentioned in several of the search warrant affidavits.

Q Okay. I'm asking about a report. Do you have any report

of investigation like these I've just showed you other than these that mention any investigation of Sunny Mann?
A No, sir.
Q When you testified in front of the grand jury on three different occasions, did you tell the grand jury anything about any investigation of Sunny Mann?
A No, sir.
Q So in terms of your reports and your testimony to the grand jury, today's the first time you've testified about any investigation of Sunny Mann?
A Yes, sir.
Q The e-mail you got that I thought you told Mr. Gordon started or focused your investigation on Sunny Mann, when did you get that?
A I don't recall the date.
Q Is it fair to say it was long after the search of the clinic on March 11?
A It's fair to say it was after. I don't recall the date.
Q Let's look at the stipulation that's already been read to the jury. These e-mails came from Microsoft, right?
A Yes, sir, they did.
Q Through a subpoena and the search warrant?
A Yes, sir.
Q Microsoft delivered them on May 29, 2009, correct?
A Yes, sir.

Q Okay. Which would have been over two and a half months after the search warrant of the clinic was executed, correct?
A Yes, sir.
Q Thank you.
No further questions, Your Honor.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. GORDON:
Q That was the return for the search warrant, correct?
A I'm sorry, I didn't understand your question.
Q That response from Microsoft on May 29th was for the search warrant, correct?
A I'm sorry, I didn't read it fully. I guess I needed to read it fully.
Q From the stipulation, what was the date that Microsoft was served the search warrants?
A She was served a search warrant on May 20th, 2009.
Q Okay. Then I believe the next line says that they responded with records on May 29th?
A Yes, sir.
Q And they were served with the grand jury subpoena --
A On March 11, 2009.
Q Okay. And you're actually the one that served them with the grand jury subpoena and the search warrant, correct?
A Yes, sir.

Q Do you recall getting the results from the grand jury subpoena before we executed the search warrant?
A Yeah, because we used it as probable cause for the search warrant, so yes.
Q Do you recall Microsoft responding pretty quickly to the grand jury subpoena?
A I don't remember the time frame. I remember sometime after March 11th, sometime before May 20th.
Q Fair enough. I'd like you to read Title 18, Section 1512(c)(1).
A Yes, sir. It says whoever --
Q Read slowly for us.
A "Whoever corruptly alters, destroys, mutilates or conceals a record, document or other object or attempts to do so with the intent to impair the object's integrity or availability for use in an official proceeding."
Q That's one of the counts that Mrs. Mann is charged with, correct?
A Can you just open it up so I can see what the charge is at the top? Yes, sir.
Q Okay. That's the count where Mr. Dudley kept asking you about official investigation and official proceedings, correct?
A Yes, sir.
Q And there at the end of the section, it says official proceeding?

A Yes, sir, it does.
Q Let's look at one more section of the law. Read here. Hang on. Let me back up so you can see we're still dealing with the same section, if you look up here.
A 18, U.S.C., 1512.
Q Subsection F.
A For purposes of --

MR. DUDLEY: Your Honor, may we approach just one moment?

(Bench conference reported as follows:)

MR. DUDLEY: Your Honor, he's going somewhere the U.S. Supreme Court says he cannot go. I understand that's in that statute and the Supreme Court recognized that in Arthur Anderson, but the Supreme Court said the government has to prove they have some knowledge that an official proceeding is going to happen, and he's fixing to try to say it's not so. And that was Section 1512, the same section involved in this case.

MR. GORDON: Actually, Your Honor, I'm not going to say that. That section says it doesn't have to be pending. It does not have to be pending at the time the crime was committed. That's the law. And then after that, I'm going to lay out the facts that already occurred where she would know that this official proceeding, this grand jury investigation was coming. There's no way anyone would have thought

otherwise.

THE COURT: I'm going to overrule that.

(Proceedings continuing in open court at 4:36 p.m.)

BY MR. GORDON:

Q Agent Oliver, please read Title 18, Section 1512(f)(1).

A "For purposes of this section, an official proceeding need not be pending or about to be instituted at the time of the offense."

Q Okay. An official proceeding need not be pending or about to be instituted at the time of the offense. Then let's jump ahead to Section 1512 where the term "official proceeding" is defined.

A You said 1512, do you mean 1515?

Q I'm sorry, thank you. 1515.

A Definition for certain provisions; general provisions. "As used in Sections 1512 and 1513 of this title and in this section, the term "official proceeding" means a proceeding before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a judge of the United States tax court, a special trial judge of the tax court, a judge of the United States court of federal claims, or a federal grand jury."

Q Okay. So when you read that in combination with what we read in 1512(f)(1), the grand jury proceeding didn't even have to be started yet, correct?

A That's correct.
Q From your knowledge of the case, I believe you testified that the checks and the bank records were removed on either Saturday, March 7th or Sunday, March 8th?
A Yes, sir.
Q Okay. Remind us what had happened in this case before that Saturday or Sunday. Had Dr. Mann and his wife already been interviewed about the West Memphis bombing?
A Yes, sir.
Q Had Dr. Mann been arrested?
A Yes, sir, he had.
Q Had two search warrants been run on this home?
A Yes, sir.
Q Had a criminal complaint, federal charges already been filed against him?
A Yes, sir.
Q Did he actually appear in federal court on those charges already?
A Yes, sir, he did.
Q Was his wife at that hearing?
A Yes, sir, she was.
Q And at that hearing, did they schedule yet another hearing, a detention hearing?
A Yes, sir, they did.
Q And Dr. Mann was in jail?

A Yes, sir, he was.
Q While he was talking to Sue Mann, he was in jail, correct?
A Yes, sir, he was.
Q And grand jury subpoenas had already been issued in the West Memphis bombing, correct?
A Yes, sir.
Q Now, in your experience, after all that has been done, do we normally just go away?
A No, sir, we don't.
Q Would a reasonable person believe that a grand jury investigation, if it hadn't already started, was coming?
A Yes, sir.
Q Who gets to decide what's relevant to your investigation?
A I do.
Q Does Sue Mann get to say, oops, you don't need this, trust me? Does she?
A No, sir, she doesn't.
Q Was there also a phone call where Sue Mann mentions that there was some firearms in the office, in the clinic?
A Yes, sir, there was.
Q When the search warrant was executed on the office, were there any firearms found?
A No, sir, there were not.
Q There was talk also about those checks being beyond the

scope of the search warrant. If they had been there, you might not have been able to seize them under the warrant that you were executing, correct?

A That's correct.

Q But you could have gotten another search warrant and gone back, correct?

A Yes, sir, I could have.

Q And you had already done that in this case with the spare tire in the shower, correct?

A Yes, sir, we went back the next day.

Q So that's not unheard of, is it?

A No, sir.

MR. GORDON: No further questions.

THE COURT: Anything else?

MR. HENDRIX: Just a few.

RECROSS-EXAMINATION

BY MR. HENDRIX:

Q I don't know if I want to get into that fight, but those checks and those financial documents, had you seen them in the office, would you have seized them?

A I would not have seized them. Probably what I would have done is taken a picture of them, recorded the account number, and called Mr. Gordon and asked him how he wanted to proceed.

Q I mean, that just didn't make any sense to a gun bombing investigation, right?

A Well, I mean, again, in any investigation of this magnitude, you always are going to look at the trail of the money so it would have been something that I was looking at.
Q There are just a few quick areas, Agent, I want to go over with you just to make sure we get our facts down and solid for the jury, okay?
A Yes, sir.
Q So there's no false impressions, and I want to go back to the Patels.
And may I approach again?
THE COURT: You may.
BY MR. HENDRIX:
Q I want to go back over those reports and investigation again with you and I'm going to hover over you if you don't mind. First thing I understand is when this one says on May 28th, 2009, at approximately 1840 hours you guys went to the Patels, you're saying that that's wrong, that it's actually -- no, it's this one that says May 26th when you went at 1855, actually that's a typo, it should be May 28th?
A Yes, sir. One of the dates is wrong and I'd have to look at the return of the search warrant to figure out which one's wrong, but one of those dates is wrong. This occurred on the same day.
Q And that's what I'm getting. When you read the reports, it appears that it's two entirely separate days, right?

A It does.
Q I accept what you're saying is, you went one day?
A Yes, sir.
Q Okay. And, again, this issue is about whether Patel was cooperative, uncooperative, obstructive or not with you, okay?
A Okay.
Q Now, let's assume that it's the same day and let's assume that it's May 28th. If I may, it's on May 28th at approximately 1840 hours, that's 6:40 p.m.?
A Yes, sir.
Q You, Benny Allen, Alvin Moore, David Allen, and Warren Newman went to Germantown. Correct?
A Yes, sir.
Q And met with Patel?
A Yes, sir.
Q You observed the 2002 Altima that he has, correct?
A Yes, sir.
Q Told him that you were conducting an investigation regarding a white 2002 Nissan Altima, right?
A Yes, sir.
Q Oliver produced an ATF form 3220.11 consent to search and asked Patel for consent to search the vehicle, Patel refused to give consent.
A That's correct.
Q But then, stating he would not sign it, Patel then made

telephone call to his attorney, Michael Alexander. Michael Alexander, the attorney, arrived at the residence at approximately 1846.

A That's right.

Q That's all correct, right?

A Yes, sir.

Q And 1845, within five minutes of you guys getting there, you went ahead then and said, well, I don't need your consent, I have a search warrant; is that right?

A That's correct.

Q So you began the search, right?

A Yes, sir.

Q Okay. Just, again, I just want to make sure we got our story correct. Then, it's at 1855, same day, which is again ten minutes later, right?

A Yes, sir.

Q Then you guys interviewed Mr. Patel, correct?

A In the presence of his attorney, yes, sir.

Q With his attorney, Michael Alexander, correct?

A Yes, sir.

Q And it was at the conclusion of that interview that you say we'd like to go look for the spare tire in the warehouse, correct?

A Yes, sir.

Q And in the presence of his attorney, he gave consent to

search that, correct?
A Yes, sir, he did.
Q So tell me if this is a fair rendition of the true facts of what happened. You guys got there, Mr. Patel was without his attorney, said will you sign this consent, and he said no, I'd like to talk to my attorney first?
A I don't remember him asking to talk to his attorney first. What I remember is I asked him to sign the consent form and he said no and then after he said no, he indicated that he wanted to talk to his attorney.
Q Okay. Is it fair to assume that he wasn't going to sign it without talking to his lawyer first?
A Yes, sir.
Q Okay. Because that's what happened is that his attorney arrives and he signs a consent to search the warehouse, correct?
A Yes, sir.
Q Okay. I want to go back again to this issue about the original search on March 4th of '09, and you and I talked about that and your memory didn't seem to be exactly clear on searching one of the storage rooms in the garage. I'm going to read to you from a report and see if it refreshes your recollection. And what I'm reading from is Special Agent Stacie Rhoads with the state police, remember her?
A I don't have that in front of me.

Q Let me read it and I'll give it to you too. She reported, there was an attached garage on the south side of the residence that contained several cars and motorcycles. There was a storage room on the back wall of the garage that was searched by Lieutenant Sweet. That's Rowdy Sweet, right?
A Yes, sir.
Q Investigator Pack, yes?
A I'm trying to -- I don't recognize that name, but I'm sure he was there, but I just can't put a face to a name.
Q And Special Agent Oliver.
A Yes, sir.
Q Correct. So you were involved in the search and physically went into that little storage room, right, that had all the boxes?
A Yes, sir, I did.
Q The room was filled with various types of ammunition?
A Correct.
Q Various sized ammo boxes and metal ammo containers?
A Yes, sir.
Q Documents relating to weaponry?
A Yes, sir.
Q And other miscellaneous car items. Correct?
A Correct.
Q The following items were photographed and recovered from the room. And of the 11, I'll note RSE is an evidence number,

right?
A I'm not sure what you're referring to.
Q That's state police actually. See what I'm saying?
A Yes, sir.
Q RSE 4 is document books with envelope marked class 3 in parentheses, *Grenades, Hand and Rifle*. That's the grenade manual we were talking about, right?
A Are you asking me about this one or this one?
Q I'm just saying read this. It says, recovered and photographed was RSE 4, document books with envelope marked class 3, in parentheses, *Grenades, Hand and Rifle*. And that says *Grenades, Hand and Rifle*, correct?
A Right. Then it says class 3, yes, sir.
Q So we got that one. Then RSE 11, also took 40-millimeter grenade launcher manual, correct?
A Yes, sir.
Q That's that document.
A Yes, sir.
Q I want to take another stab at this and ask you to look at these photographs again of these boxes that you've already testified to that contain weapons manuals. Does this refresh your memory? Is that what those are, is that a fair -- as we say, a fair and accurate depiction of those boxes that you saw on there?
A Sir, I don't have an independent recollection of where

this box came from. If you're saying it was in the room, I don't recall it.
Q Does it look like it from what you remember being in that storage room, and we now have refreshed your recollection, you saw boxes with documents relating to weaponry. Does that look like what you saw?
A It looks like a box that -- I can't say that for certain.
Q You cannot?
A No, sir, I can't.
Q All right. Did you go through those boxes when you were in the storage room?
A Not all of them, no, sir.
Q Well, somebody did because they took a grenade launcher manual and a grenade manual, right?
A Someone did, yes, sir.
Q Did you do it?
A No.
Q So it had to be either Rowdy Sweet or Investigator Pack then?
A It wasn't me.
Q Well, it had to be one of the three of you guys, right, because that's what Stacie Rhodes' report says, right?
A Again, that's not my report, but I didn't do that. It was -- they found that stuff in the room according to her report.

Q But you can say looking at these photographs that, one, they are boxes, these are documents in boxes?
A They are.
Q And those are boxes that were similar to the boxes that were in the storage room, correct?
A They are boxes, it's a box and there were boxes in the storage room, yes, sir.
Q I mean, same size; they're banker boxes, right?
A It's a box.
Q Looks like the same boxes, or the same type of boxes anyway, from the pictures from the storage room that you took?
A As I -- I recall boxes that looked similar to this. I also recall other boxes that contained guns and gun parts.
Q And Stacie Rhodes's report says boxes that contain documents relating to weaponry, right?
A Yes, sir, it did.
Q These are boxes that contain documents that relate to weaponry, right?
A Yes, sir.
Q We've got an *M16 Retrospective, Jane's Infantry Weapons,* correct? You've already seen that, correct? You with me?
A Yes, sir.
Q Okay. And those are the types of documents that a gun enthusiast would have, correct?
A Yes, sir.

Q I just want to make sure because do you think it's a fair inference for the jury to take from this that the only types of manuals that Dr. Mann had related to grenades?
A No, he had others.
Q So, right, that's important because the way I perceived this evidence laying down was I thought that an inference was trying to be made that these were the only manuals around and, therefore, it was somehow nefarious that he had a grenade manual when, in fact, he had many different types of manuals. Is that the inference you were trying to draw or not draw?
A I'm not sure I understand your question. He had other manuals, yes, sir.
Q Okay.
Judge, may I offer these now as defendant's -- do you have our list of what would be the next in sequential order? 21?
MR. GORDON: No objection to whatever numbers they are.
MR. HENDRIX: I'm marking 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32.
MR. GORDON: No objection.
THE COURT: They're received.
(Defendants' Exhibits 21 through 32 received in evidence.)
MR. HENDRIX: May I have just one second, Judge?

THE COURT: Yes.

MR. HENDRIX: I'll pass the witness.

THE COURT: Anything else, Mr. Gordon?

MR. GORDON: No, Your Honor.

THE COURT: Okay. You can stand down. That's going to be our last witness for today, and we will come back -- we will recess. I believe that's our last witness. We will recess until tomorrow at nine o'clock. You can take them out.

(Jury exits the courtroom.)

THE COURT: Was there something else we need to take up?

MR. GORDON: There is. Can we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MS. WHATLEY: Your Honor, our next witness is Steven Briscoe. Mr. Briscoe is an inmate and he was brought over to Pulaski County on the 22nd by the marshal service. Within an hour or less of him being taken to Pulaski County, he was assaulted by an associate of Dr. Mann. We're not going to bring that up in trial.

THE COURT: I know the issue. Hamis is an associate who is a person I sentenced probably two months ago maybe, was writing the Court saying that sometime ago -- he wasn't writing, but he was sending messages and I forget how it was done because I never read letters that come to me, I

immediately send the letters to whoever represents them, well, he's back to testify, I believe, for Dr. Mann and from what I understand, I got word the other day from the counsel for this person, this witness, that he had been threatened by Al-Sharequi and he wanted to talk to the prosecution or the government. And so we had to appoint new counsel for him today. I think that meeting took place today.

MR. HENDRIX: I'm sorry, Judge. Al-Sharequi or Briscoe?

THE COURT: I think Briscoe is alleging that Al-Sharequi threatened him.

MR. HENDRIX: Beat him up?

THE COURT: I didn't know he to have beaten him up.

MS. WHATLEY: He beat him up.

MS. CASSINELLI COUCH: I've heard both sides, one saying one, one saying the other.

MS. WHATLEY: Anyway, here's where I was going with all that. Due to safety concerns, we've not turned over Jencks of Mr. Briscoe because we have a lot -- we're concerned. Mr. Briscoe is obviously concerned. We anticipate him being our first witness tomorrow and we will turn over the Jencks in the morning before he testifies, but we wanted to go ahead and put it on the record what we were doing so there was no issues in that regard.

THE COURT: That's fine.

MS. CASSINELLI COUCH: If you wanted to give it to us tonight, we're not going to have access to our client so we're not going to be able to communicate that and we could say that we wouldn't communicate it to anybody.

MR. HENDRIX: Either way. Happy to enter into a protective order if you want to save it until in the morning. Just know that we'll be asking for a continuance at that point.

THE COURT: A break or --

MR. HENDRIX: A continuance, six or seven months should do it.

MS. CASSINELLI COUCH: We don't know what it is, but in the past it's been pretty important for the witness --

MS. WHATLEY: Our concern --

THE COURT: Is there a way to segregate Al-Sharequi from Briscoe?

MS. WHATLEY: It has been taken care of. Al-Sharequi is now at a separate pod at Pulaski County and Mr. Briscoe is in a --

THE COURT: Al-Sharequi is not necessarily needed -- well, he's going to be needed here pretty soon, I guess. I was going to say until the defense has decided whether it's going to put on a case or not. I guess that'll take place starting on Friday?

MS. WHATLEY: Yes, sir.

THE COURT: You think?

MS. WHATLEY: Or tomorrow. We'll rest tomorrow, Your Honor. Can I have a moment with Mr. Gordon?

THE COURT: Yes.

MS. WHATLEY: We'll give it to them in the morning, Your Honor.

THE COURT: Okay.

MR. GORDON: If y'all want, I mean, if we're going to start at nine, we're going to give it to you at eight.

MR. HENDRIX: If we started at ten, you can give it to me at nine.

THE COURT: Let me ask you this. How many witnesses do you have tomorrow?

MS. WHATLEY: Seven at the most.

THE COURT: So we need to start early. I was going to say if you had three or something, we could get started at ten.

MS. WHATLEY: Some of them will be short.

THE COURT: Let's get started at nine just to be safe.

MS. WHATLEY: You want it at seven, Mr. Hendrix?

MR. HENDRIX: Yeah, deliver it to me in bed.

MS. WHATLEY: Not on the record, Mr. Hendrix.

MS. CASSINELLI COUCH: I would like to ask a question about the Al-Sharequi matter. You mentioned that your office received some correspondence that you didn't read that

you mailed out to the lawyers. Would that have gone to the government lawyer and the defense already or just the defense lawyer?

THE COURT: Just defense lawyer. I get people who I sentence all the time who will write me and say my lawyer didn't do a good job or ineffective assistance or whatever, sometimes they just want to write me just to talk to me. I never read it and I immediately send it to the lawyer and if their lawyer wants to file it or something, sometimes I'll file it, but for the most part, I don't read anything.

MS. CASSINELLI COUCH: Some judges send it to both lawyers, some to one. I've spoken to his lawyer and he wasn't sure where it went.

THE COURT: In fact, I tell you what I will do. It's either filed in this case or it might be filed and sent to his lawyer, but we never sent it to the government, we just sent it to counsel. Because if somebody's writing me bashing the defense lawyer, there's no need to send it to anybody else, I might as well just send it to counsel, if they're writing me for any reason saying that they're not being treated well.

MS. CASSINELLI COUCH: They're, by definition, uncooperative at that point from our position.

THE COURT: I'll let defense counsel sort that out. I didn't send it to the government. Anything else we need to take up? Let's come back tomorrow at nine o'clock.

(Overnight recess at 5:02 p.m.)

C E R T I F I C A T E

I, Karen Baker, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Karen Baker, RMR, CRR, CCR
United States Court Reporter

Date: March 14, 2011

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and
SANGEETA MANN, a/k/a SUE MANN (2),

July 28, 2010
Little Rock, Arkansas
9:00 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 12
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

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[Continued]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - VOLUME 12 (July 28, 2010)

WITNESSES FOR THE GOVERNMENT:	Direct	Cross	Redirect	Recross
STEVEN BRISCOE	2356	2366	2427	2436
AMANDA CROW	2448	2465		
PAM FALKNER	2471	2476		
MELISSA PIERCE	2478	2501		
SUE RUDD	2502	2521	2525	
TRENT PIERCE	2527	2558	2575	2581

EXHIBITS: **RECEIVED**

Defendants' Exhibit 33.....2437

Defendants' Exhibit 33 withdrawn.....2446

Government's Exhibit 196.....2450

Government's Exhibits 198-A, 198-B, 198-C, and 198-D.....2455

Government's Exhibits 199-A, 199-B, and 199-C.....2458

Government's Exhibits 200-A through 200-L.....2463

Government's Exhibit 204-A and 204-B.....2473

Government's Exhibits 205-A through 205-D, 206-A through 206-D, 207-A, 207-B, 207-C, 208, 209, 210-A, 210-B, 210-C, 211-A, 211-B, 212, 213-A, 213-B, 214, 215-A, 215-B, 215-C, 216, 217-A through 217-D, 218-A, 218-B, 218-C, 219, 220-A through 220-G, 221-A through 221-D, and 222.....2481

Government's Exhibits 201-A through 201-E.....2505

Government's Exhibit 203 (under seal) 2508

Government's Exhibit 202-B.....2518

Government's Exhibit 237.....2552

Government's Exhibit 238.....2554

(Continuing at 9:00 a.m., jury not present.)

THE COURT: Did we have anything to take up before the jury comes in?

MR. HENDRIX: No, other than, Judge, Ms. Whatley got Mr. Briscoe's *Jencks* to Mr. Lassiter this morning, and he called me on the phone to give me the gist of it. But after Briscoe's direct, I'll ask for 30 minutes or so.

THE COURT: 30 minutes? We can do that.

And who all do we have to testify today that we can get sworn?

MS. WHATLEY: Mr. Briscoe is behind the door. And we have Amanda Crow and Matthew Briggs.

THE COURT: Bring him on in. And you can come forward. We just want to get you sworn in.

(Witnesses present sworn in.)

THE COURT: You can go back out. We'll call you in when we need you.

Bring the jury in.

(Jury entered the courtroom.)

THE COURT: Ms. Whatley, call your next.

MS. WHATLEY: United States calls Steven Briscoe.

STEVEN BRISCOE, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Would you please state your name.

A. Steven Briscoe.
Q. And are you currently incarcerated?
A. Yes, I am.
Q. Sit a little closer to the microphone for me.
A. Yes, I am.
Q. And what are you in prison for?
A. Felon in possession of a firearm.
Q. And if you've been convicted of being a felon in possession of a firearm, it means that you have a previous felony; right?
A. Yes, ma'am.
Q. And, in fact, you have more than one previous felony; correct?
A. Yes, I do.
Q. Tell the jury what you've been convicted of.
A. I've been convicted twice of felon in possession of a firearm and also convicted of attempt to commit a felony, which was a robbery charge.
Q. And the robbery charge was reduced?
A. To attempt to commit a felony.
Q. When was that robbery charge?
A. In 1987.
Q. So that was actually the attempt to commit a felony?
A. Yes, ma'am.
Q. And you said you have two felon in possessions, the one you currently have and an old one; right?

A. Yes.
Q. And I believe you've told me you don't like prison; right?
A. No, ma'am.
Q. So do you have some charges connected with that?
A. Yes. I have a failure to surrender, and I also have a -- some fleeing charges.
Q. You said you're currently in prison for felon in possession of a firearm.
A. Yes, that's correct.
Q. And you've already been sentenced for that; right?
A. Yes.
Q. What's your sentence?
A. 60 months.
Q. So you got a five-year sentence?
A. Yes, ma'am.
Q. And how long have you been incarcerated on that?
A. I've got a full year's total on it.
Q. So when do you think you'll be getting out?
A. I'll probably be going to the halfway house next month, but since I'm on a federal writ I got in February, six more months.
Q. Mr. Briscoe, where are you from?
A. West Memphis, Arkansas.
Q. Did you grow up there?
A. Yes. I graduated from high school there, too. Yes.
Q. During the period of time that you've been incarcerated on

your felon in possession charge, other than the federal institutions you've been in, have you been in any county jails here in Arkansas?

A. Yes, ma'am. I've been Dallas County -- not Dallas County. I mean Grant County, which is Sheridan, and I've also been Jefferson County, which is Pine Bluff, and I've been Pulaski County, Little Rock.

Q. And when were you at Pulaski County?

A. August of 2009.

Q. While you were there, did you meet the defendant Randeep Mann?

A. Yes, I did.

Q. And how did you meet him?

A. Started playing cards with him. I got introduced to Mr. Mann by an inmate by the name of Samuel Silva, and he wanted me to be his card partner to play against Mr. Mann and his card partner.

Q. What day did you get to Pulaski County? Do you remember?

A. August 20, '09.

Q. And what unit were you in?

A. P, cell block P.

Q. Is that the federal pod over there?

A. Yes, ma'am.

Q. Did you meet Dr. Mann on that day, on August 20?

A. I met him that day.

Q. Did you and Dr. Mann ever have any conversations while you were housed together at the Pulaski County Jail?
A. Yes, we did.
Q. How many conversations do you think you had?
A. We had several conversations.
Q. Okay. Well, let's start with the first one. Did you have a conversation on the day you met him, on August 20, 2009?
A. Yes.
Q. Tell us about that conversation.
A. When we were playing cards, he asked me where I was from, and I told him West Memphis, Arkansas. He asked me why I'm in the Pulaski County Jail, so --
Q. I'm sorry. Slow down a little bit.
A. He asked me where I'm from, I told him West Memphis, Arkansas. He asked me what I was in jail for. I told him felon in possession of a firearm. He asked me what I was going to court for. I told him to get sentenced August 28, and I told him hopefully I'd be out soon, like, February of 2010.

Then he said, "You're from West Memphis, huh?"

I said, "Yes."

He said, "How good do you know West Memphis?"

I said, "I know it real good. I grew up there. I know every bump in the road."

And he says later he wants to talk to me.

Q. So that was the first conversation, on the 20th?

A. Correct.
Q. Did you have a later conversation with him?
A. It was a couple days later.
Q. Okay. So tell us about that conversation.
A. He asked me -- it was on, like, two days later. So it was on the 22nd of August. So it was on a Saturday. And we was on the yard, and he asked me did I want to make some money, like, $50,000.

I said, "How can I make $50,000?"

He wanted me to do a job for him, to finish off Dr. Pierce, Dr. Trent Pierce.
Q. He wanted you to finish off Dr. Pierce?
A. Yeah. He wanted me to kill him.
Q. Did he say why he wanted Dr. Pierce killed?
A. Because Dr. Trent Pierce was messing up his life and suspended his right to prescribe prescription meds, and he said he made a lot of money by prescribing meds and Dr. Pierce was hating on him because he was Hindu and he wanted Dr. Trent Pierce dead.
Q. Any other reason why he wanted him dead?
A. One thing, he said that eventually he knew that he was going to be charged with a car bombing of Dr. Trent Pierce and that he didn't want Dr. Trent Pierce to be able to come to court because the jury was going to automatically feel sorry for Dr. Pierce because of his injuries and he didn't want him to be

able to come to court.
Q. Did he say how he wanted Dr. Pierce killed?
A. He wanted me to make it look like a drive-by.
Q. And how were you -- was he going to supply the gun?
A. Yes, ma'am.
Q. And what was the payment arrangement?
A. He said he was going to give me $50,000, and then he'd have the money, wherever I wanted it took to, he would have it delivered. And he said if I did a good job, he'll give me more, he'll make me a rich man.
Q. What did you tell him?
A. Told him, no, I don't want no part of that. He told me to think about it.
Q. After you thought about it, did he ask you about it again?
A. Yes, he did. I told him no again the second time and the third time. He asked me do I got any family -- "I don't mean to insult you, but do you got any family members like you?"
"What do you mean, like me?"
"Criminals who would be willing to make this money."
I said no.
Q. Did you have any more conversations with Dr. Mann?
A. Well, on the 22nd, Mann come to the station that day. We had quite a few conversations. As a matter of fact, he talked a lot.
Q. On each of those conversations, did you tell him you

weren't interested?
A. Yes, I did.
Q. He said he'd get you the gun; right?
A. Right.
Q. How was he going to get you the gun?
A. Somebody named Dan was going to -- supposed to bring the gun to me.
Q. Somebody named who?
A. Dan. He said Dan was gonna get the -- the kind of weapon that I needed, Dan can get it to me.
Q. Did he tell you who Dan was?
A. No, ma'am, he didn't.
Q. How were you supposed to get paid the $50,000?
A. Give him my name and address, and he was going to have it delivered.
Q. Who was going to deliver it?
A. Dan.
Q. During these conversations, in addition to what you've already said, did Dan -- I mean, did Dr. Mann ever say anything else about Dan?
A. He said that he really needed this done because Dan and them didn't do a good job the first time, that he really needed me to do the job on Dr. Trent Pierce.
Q. That Dan and them didn't do a good enough job the first time?

A. That's correct.
Q. Did he tell you who the "them" was?
A. No, he just said them.
Q. Did he ever tell you who Dan was?
A. No, ma'am, he didn't.
Q. At any point in time, did you agree to do this job for Dr. Mann?
A. I never did, no.
Q. At any point in time did he tell you who Dan was?
A. No, ma'am, he never did.
Q. And the job that was done the first time, was that all he said about it?
A. Yes, yes. He said a lot of things that didn't make sense. One time he said that he wished that Dr. Pierce would have died.
Q. When was the first time you came forward with this information?
A. On August 28 when I came to court, it was still bothering me so bad, when I walked into the courtroom, first thing I did was told my attorney, David Cannon, what happened. He asked me -- "Mr. Cannon, do you know a guy by the name of Dr. Mann?" I said, "The guy tried to solicitate [sic] me to commit murder of Dr. Trent Pierce."

He said he did. So he walked right across the courtroom and told a U. S. Attorney, John Ray White, what had happened.
Q. And after that, did agents come visit you?

A. Yes, ma'am, at Mason, Tennessee, about a week later.
Q. You said you've already been sentenced on your felon in possession; right?
A. That's correct.
Q. And at that point in time, you got a reduction in your sentence because you had previously cooperated with the government?
A. That's correct.
Q. What are you getting for being here today?
A. Nothing at all. Only thing I'm getting is to get it off my conscience because I don't want to be having knowledge that this guy wanted to kill Dr. Pierce and I didn't say nothing.
Q. When the agents came to see you in December 2009, what did they promise you?
A. He told me in the interview room, before we even sit down in the interview, David Oliver told me, "You know you're not getting nothing for this."

I said, "Yes, sir, understood."

He asked me why I wanted to do it, and I told him I didn't want it on my conscience that I had knowledge of this gonna take place and I never said nothing. Plus, Dr. Pierce, he from my hometown. I'm like, we home boys, we from the same town.
Q. Do you know Dr. Pierce?
A. My family does.
Q. Have you ever met him?

A. No, ma'am.
Q. Did it bother you that he's from your hometown?
A. Yes, it did.
MS. WHATLEY: May I have a moment, your Honor?
THE COURT: You may.
MS. WHATLEY: Pass the witness.
THE COURT: Okay. Ladies and gentlemen of the jury, normally we would push on, but we have a matter to take up. So we will recess for about 30 minutes, and so I'm going to let you go out and we'll call you back in at about 9:45.
Okay. We'll be in recess until 9:45.
(Recess from 9:17 a.m. until 9:53 a.m.; jury present.)
THE COURT: You may be seated.
Mr. Hendrix, cross?

CROSS-EXAMINATION

BY MR. HENDRIX:
Q. Mr. Briscoe, this is not the first time you've offered your services to the government, is it?
A. That's correct.
Q. Who is Michael Cox?
A. A guy I testified against. We were cellmates in Pulaski County.
Q. So he was a jail cellmate of yours, and you ended up testifying against him?
A. That's correct.

Q. So he allegedly confessed his sins to you?
A. Yes, he did.
Q. All right. Who did you testify against in Tennessee?
A. A guy named Timothy Diggs. He killed his stepson.
Q. When was that testimony?
A. '08, August of '08.
Q. When was the testimony against Mr. Cox?
A. I think it was in '07. '07, that's correct.
Q. So you testified against, what, Cox in '07, and what's the guy's name in Tennessee?
A. Timothy Diggs.
Q. Diggs, D-i-g-g-s?
A. Yes, sir.
Q. In 2008?
A. That's correct.
Q. And you were indicted in this case which you're serving for in 2005; correct?
A. Yes.
Q. All right. Let's talk about your Michael Cox testimony. Did you tell your lawyer that you were wanting to testify against Mr. Cox?
A. I wrote the U. S. Attorney John Ray White.
Q. Yeah. You went around your attorney and offered your services to the government in that case, didn't you?
A. Yes, sir.

Q. In fact, you completely ignored the advice of your attorney and went around him. He didn't even know what you were doing; is that correct?
A. Well, something like that. I went from one attorney to another attorney. I have Bruce Eddy, and he was getting transferred to the Fayetteville Federal Defender's Office, so I didn't have an attorney at the time, and I wanted to get the information to the U. S. Attorney's Office as quick as possible, so I wrote John Ray White myself.
Q. So in your haste to be able to provide testimony against Mr. Cox to assist yourself, you went behind your attorney's back and you went directly to the prosecutors over at the U. S. Attorney's Office and offered up your services to them; is that correct?
A. That's correct, sir.
Q. And then you complained about your attorney for not doing enough for you, didn't you?
A. Yes, sir, that's correct.
Q. Yeah. You filed a motion against your attorney alleging that he was ineffective for not getting you enough of a sentencing break; is that right, Mr. Briscoe?
A. That's correct, sir.
Q. Okay. Let's talk about your prior convictions. In 2005, you were indicted in this case for the time that you're serving right now; is that right?

A. That's correct.
Q. And in that indictment, you were charged with being a felon in possession of a firearm; correct?
A. Yes, sir, correct.
Q. And that indictment listed two prior convictions to establish the felon component of being a felon in possession of a firearm; correct?
A. Correct.
Q. And it listed a 1994 conviction from the Western District of Tennessee. That's federal court in Tennessee; right?
A. Correct.
Q. For being a felon in possession of a firearm; right?
A. Correct.
Q. And it listed another conviction from 1998, also a federal case from the Western District of Tennessee, for failure to surrender for service of sentence; is that right?
A. That's correct, sir.
Q. All right. Let's talk about the 1994 case. A federal case from Memphis; right?
A. Correct, yes, sir.
Q. You were arrested January 4 of 1993 by the U. S. Marshals Service in Memphis; is that right?
A. Yes, that's correct.
Q. In 1994 then, did you plead guilty or did you go to trial on that case?

A. I plead guilty.
Q. And you got 30 months' imprisonment and two years of probation; is that right?
A. Yes, sir.
Q. All right. Then the second conviction, prior conviction that's listed in this indictment that you're serving your sentence for was a 1998 failure to surrender for service of sentence; right?
A. That's correct, sir.
Q. And that's because you didn't go to the pen like you were told to on that first Memphis felon in possession case that you got 30 months on; right?
A. That's correct.
Q. You finally get arrested on May 23, 1997, for failure to go serve your sentence on that felon in possession case; right?
A. That's correct.
Q. And you got 20 months' prison time and two years of supervised release; right?
A. That's correct.
Q. So in 1997 then, because you didn't go as you were told to do to report your service of sentence on 30 months, you got an additional 20 months three years later. So now you owe the feds 50 months; right?
A. That's correct.
Q. And four years of supervised release; right?

A. No, sir. Two years.
Q. You have two years of probation from the original Memphis felon in possession; right?
A. Right.
Q. And then you got two additional years of supervised release on the failure to serve your sentence; correct?
A. I thought they ran it concurrent, made it two years, only serve two years on supervised release.
Q. Fair enough. You owe the government 50 months of your prison time; right?
A. That's correct.
Q. You were on the lam for three years?
A. That's correct.
Q. What did you do for three years?
A. I ran.
Q. How many other crimes did you commit during those three years, Mr. Briscoe?
A. None.
Q. None?
A. None.
Q. Led the clean and straight life for those three years while you were on the lam not wanting to serve your federal sentence. Is that right, Mr. Briscoe?
A. Yes, sir.
Q. Went to church, you were a good, law-abiding citizen?

A. No, that's not true.
Q. You were a fugitive, Mr. Briscoe.
A. I was a fugitive.
Q. You didn't want to go do your time for what you -- the crimes you had committed; is that right?
A. That's correct.
Q. You don't want to do time. You want to commit crimes and you don't want to serve your time; is that right, Mr. Briscoe?
A. That's not correct.
Q. It's not?
A. No.
Q. All right. Let's go back and find out what else you've been convicted of. Well, we know that the indictment, the time that you're serving right now says your first -- lists a first conviction being a felon in possession, as Ms. Whatley noted. Well, that means there was a prior conviction before that; right?
A. Yes, there was.
Q. All right. Let's go through it. I've got you arrested in 1987 in Memphis for assault with intent to commit robbery with a deadly weapon. Did you get convicted of that?
A. Yes, to a lesser offense, to attempt to commit a felony.
Q. All right. So you were charged with assault with intent to commit robbery with a deadly weapon, but you negotiated a favorable resolution to your case and you pled guilty to what?

A. Attempt to commit a felony.
Q. Attempt to commit a felony.
A. Yes.
Q. What is that?
A. Only as a layperson, that's what they got it reduced to, criminal mischief.
Q. Was it attempt to commit robbery with a deadly weapon?
A. No, sir.
Q. All right. Let's work this out. The charge, assault with intent to commit robbery with a deadly weapon. That means you shoved a gun in somebody's face and tried to take their money. What did you plead guilty to?
A. I guess he said attempt to commit felony. I know it got reduced. It wasn't a robbery charge.
Q. You got convicted. You negotiated a favorable resolution to your case by saying, I tried to commit the crime; right?
A. I guess you could say that's correct, yes, sir.
Q. Okay. How much time did you get on that?
A. I think, like, two years probation, three years probation, something like that.
Q. You got probation on that in Memphis?
A. That's correct.
Q. In 1987, how old you were?
A. 18.
Q. You were 18 years old in 1987?

A. 18, yes, sir.
Q. Were you convicted of anything prior to being 18?
A. No.
Q. All right. So your first conviction is in 1987 in Memphis; correct?
A. That's correct, sir.
Q. All right. December 24, Christmas Eve of 1991, you were arrested in West Memphis for possession of a controlled substance. Did you get convicted of that?
A. Yes, sir. Marijuana joint. I had a joint in my ashtray.
Q. You had a joint in your ashtray, so you got convicted of possessing marijuana?
A. Right.
Q. How old were you in 1991?
A. Like, 22.
Q. Okay. So in 1987, you're shoving guns in people's face, you get some probation. In 1991, you're possessing marijuana.
A. Yes, sir.
Q. All right. Let's see. Now we've -- we're doing our timeline. That's 1987. 1991. We got those prior convictions. Then we've got the felon in possession case out of Memphis we've already talked about of 1994?
A. Correct.
Q. You got 30 months on that, but you didn't want to serve it, so you ran?

A. The reason I ran, my daughter being born, and I didn't want my daughter to know me from prison. I wasn't afraid of doing time; I didn't want to leave my daughter.
Q. You wanted to spend time with your daughter, because you're a conscientious man?
A. I've got a conscience.
Q. That's why you're here?
A. That's why I came forward with the information.
Q. You're here today to offer your services to this jury because you're a kind and conscientious man; right?
A. Yes, I have a conscious, sir.
Q. And you don't want anything in return? That's your testimony?
A. That's true.
Q. Let's move forward with your convictions because I'm not done. 1994 felon in possession. You run. 1997, you get arrested, you get convicted for failing to serve your sentence on that. Now you owe the federal government 50 months. How much time of that 50 months do you do?
A. I think, like, about 24 months, 20-something months.
Q. 24, 20-something months on the 50?
A. Yes.
Q. Did you cooperate to try to get that reduced?
A. Yes, I cooperated.
Q. So you cooperated in that case, too?

A. Yes.
Q. Who did you cooperate against on that?
A. A guy named Mario Wallace.
Q. This is somebody else? So now we know three other times that you've gone to the government to sell your services to them; right?
A. I cooperated three --
Q. You've got Michael Cox, you've got Diggs in Tennessee, and now this guy?
A. Yes, sir.
Q. And so that reduces your 50-year sentence down to, what, 20? Oh, pardon me, 50 year. 50-month sentence down to 20 months?
A. Yes, sir.
Q. Oh, okay. It doesn't end there, does it? March of 2000, after you've cooperated, after you've gotten your sentence reduced over there in Memphis for testifying against this third guy, March of 2000, you get arrested for violating the conditions of your probation; right?
A. Correct.
Q. You get a four-month sentence on that and more supervised release; right?
A. No, sir. Not more. Just four months.
Q. You get a four-month sentence?
A. Yes, sir.

Q. The documents say and one year of supervised release. Not that it's important.
A. That's the year remaining I had to do. I had one year left, so I had to do the remaining year.
Q. You got released from that on June 28 of 2000; right?
A. That's correct.
Q. Next thing I've got is, you were arrested January 23 of 2003 in West Memphis for aggravated robbery and being a felon in possession of a firearm. Did you get convicted of that?
A. That's the one we're here for now, sir.
Q. All right. So that's what results then in the 2005 federal indictment against you?
A. Correct.
Q. For which you're serving a time of imprisonment right now; is that right?
A. That's correct. Yes, sir.
Q. You got charged here on January 4 of 2005; right?
A. Yes, sir.
Q. On August 28 of 2009, you were sentenced to 60 months, to five years for that crime; is that right?
A. That's correct.
Q. Three years of supervised release; right?
A. That's correct.
Q. The judge, I believe you were sentenced in front of Judge Wright. Judge Wright also ordered you into substance abuse

treatment programs; is that right?
A. That's correct.
Q. I'm going to look at the judgment in this case and go over it with you, Mr. Briscoe. Judgment was dated September 1, 2009. That's the date the formal judgment was entered against you. Sentence was imposed on August 28, 2009. You were given 60 months' imprisonment; correct?
A. That's correct.
Q. And you're well experienced in the federal system to know that there is no parole in the federal system; right?
A. That's correct.
Q. It's realtime sentencing; correct?
A. Correct.
Q. You were given three years of supervised release, which is the time after you get out of the pen that you're going to be supervised by the United States Probation Office; right?
A. That's correct.
Q. Additional supervised release terms: Defendant shall participate under the guidance and supervision of the U. S. Probation Office in a substance abuse treatment program, which may include testing, outpatient counseling, and/or residential treatment. Further, defendant shall abstain from the use of alcohol throughout the course of any treatment.
Did you have a drug problem?
A. Yes, sir.

Q. Defendant shall participate in mental health counseling under the guidance and supervision of the United States Probation Office.

What is your mental health concern?

A. Depression, anxiety. That come from being incarcerated, sir.

Q. You're just depressed because you're in the pen?

A. A lot of people be depressed because they in the pen.

Q. You've not been diagnosed with antisocial personality disorder or bipolar disorder or anything like that?

A. No, sir.

Q. Okay. How much time did you do in Crittenden County?

A. A year.

Q. A year?

A. Yes, sir.

Q. What you're saying is, you've got arrested for being a felon in possession, and it was originally a state court charge in Crittenden County, your home in West Memphis; right?

A. That's correct.

Q. You stayed in state custody; is that right?

A. I stayed in state custody, and then I escaped. And when I was on the run, the federal feds picked it up.

Q. Wait a minute. Wait a minute. I didn't know that. Say that one more time.

A. I did a year in Crittenden County Jail. Then I escaped

from the Crittenden County Jail. I stayed gone from, like, 2004 to 2007. I got arrested in 2007, March 30, 2007, in Clarksville, Tennessee.

Q. Well, and that actually explains some confusion I had.

A. Yes, sir.

Q. Because I know that you were indicted here -- so we know you were arrested in Crittenden County, what, 2003, 2004?

A. Yes, 2003 to 2004.

Q. Okay. I know you're not indicted federally here until 2005, and then I saw that you don't come up for plea and arraignment here until 2007, so I'm going, what's going on for all those years? Why does it take --

A. I escaped.

Q. You were on the lam again?

A. Yes, sir.

Q. You had run again.

A. Yes, sir.

Q. I got you. Prison is just not your thing. You just don't want to be there, do you?

A. I can't think of nobody that do.

Q. Say it again.

A. I can't think of nobody that do.

Q. And you're willing to escape and commit other crimes. You don't want to go serve your federal sentence, and so you get charged with failure to surrender for service of sentence, and

you escape from the Crittenden County Jail. That's how bad you don't want to; right?
A. Yes, that's correct.
Q. And so you're going to do anything you can, Mr. Briscoe, to minimize the time you've got to spend in the pen; right?
A. That's not correct right there.
Q. It's not correct?
A. No. If somebody come to me confessing some crimes to me, yeah, I'm going to report it. You can call me an informant or snitch or whatever you want to. I've got a conscience and I've got a heart, and I can tell what he said to me.
Q. And so when you testified against Mr. Cox, when you testified against Mr. Diggs, when you testified against this third guy, it was out of the goodness of your heart, and you didn't expect anything in return; right?
A. No, sir. The reason --
Q. You didn't --
A. The reason I testified against Timothy Diggs, because he was a baby killer, and I don't take kindly to people hurting kids or women or old people, so I testified against him. I testified against Michael Cox because the guy that he stole the gun from, he died, and he came back to the cell, he was happy because the guy died and the guy couldn't testify against him because he done passed. And then I felt that kind of wasn't right, so I took up for the guy that passed.

Q. I got you.
A. I spoke for a dead man.
Q. Sure. You spoke for a dead man?
A. I did.
Q. Out of the goodness and kindness of your heart.
A. I got a heart. I got a conscience.
Q. And you say you don't want anything in return for all of the good things that you've done out of the goodness of your heart; right? Right?
A. That's correct.
Q. And so you're telling this jury and you told them on direct examination you want them to believe you're here out of the goodness of your heart, and you don't want anything in return for it?
A. Sir, I've been told so many times from when the agent came -- the testimony, before I even gave my statement, that I'm not getting nothing for this. I've been told this many times, that I'm not getting nothing for this. As a matter of fact, I extended my prison stay to testify here. I could be getting out of jail next month. While I'm testifying, I can't go because I can't file an interstate agreement on detainers, which would have expired at the time, mean I'd be released next month. But since I'm being out on a writ, I can't file for it, so they extended my stay. Instead of getting out in August, next month, I got to stay until February just because I'm testifying in this

trial.
Q. What's Supermax?
A. That's in Florence, Colorado. It's a maximum security prison you can get in in the United States.
Q. It's called ADX Florence; correct?
A. Right.
Q. Also known as Supermax?
A. Right.
Q. Also known as the Alcatraz of the Rockies; right?
A. That's correct.
Q. And that's where you've been incarcerated, right?
A. Yes, I've been there.
Q. And in exchange for your testimony, you've gotten out of ADX Florence; right?
A. Well, the U. S. Attorney's Office don't want to see me killed, you know.
Q. Well, let's talk about that.
A. Because you can't be a snitch and be around people that know it. They'll kill you.
Q. Sure. You've been involved in the federal pen now and the federal system for quite some time; right?
A. Repeat.
Q. Is that right?
A. Repeat.
Q. You've been involved in the federal criminal system for

quite some time; right?
A. Yes, sir.
Q. You're familiar with the federal criminal process; right?
A. Yes, sir.
Q. I know you've got state court convictions, too, but just to focus on the federal system for a little bit, we know that there are different types of institutions that people get imprisoned to in the federal system; right?
A. That's correct.
Q. And we know on the low end, we have camps, federal prison camps; right?
A. That's correct.
Q. And that's low security. No barbed wire, almost college campus; right?
A. That's correct.
Q. Then you've got medium security facilities, like you have over at Forrest City; right?
A. That's correct.
Q. A little bit of barbed wire, but it's medium security; right?
A. That's correct.
Q. And then you've got high security; correct?
A. That's correct.
Q. And then on top of that, you've got United States penitentiaries; right?

A. That's correct.
Q. And United States penitentiaries, I can't remember, I want to say there are 17 in the country, but it's like U. S. pen in Leavenworth; right?
A. That's correct.
Q. And they're high security prisons; right?
A. That's correct.
Q. And then there's one more right on top of that, the only one in the nation, the most secure federal pen in the entire nation, ADX Florence; correct?
A. That's correct.
Q. And the Bureau of Prisons sent you to ADX Florence, the most secure, singularly most secure federal facility in this entire country; right?
A. That's not correct.
Q. Why did you end up at ADX?
A. I didn't go to ADX Florence. I went to USP Florence. That's a high --
Q. That's high security?
A. But ADX is super high. That's the worst of the worse.
Q. Super high. And you got sent to Florence, Colorado?
A. Not to ADX.
Q. I'm hearing what you're saying. You say, oh, I don't have to go all the way to Supermax, Supermax that houses Moussaoui, Terry Nichols, had Tim McVeigh; right?

A. Right.
Q. I didn't have to go there. I only had to go to the United States pen, Florence, Colorado. Right?
A. Yes, sir.
Q. And the United States pen, again, is, outside of the singular Supermax, the most secure federal prison system -- federal prison in the country; right?
A. Yes, sir.
Q. And you wanted out of there, didn't you?
A. No, sir, I just -- I couldn't be there if people knowing that I'm cooperating with the government.
Q. Well --
A. I was fine.
Q. The benefit that you got, Mr. Briscoe, is the government made a special phone call for you and got you out of Florence, didn't they?
A. This is correct.
Q. You asked them to do that. Right?
A. That's correct.
Q. Now, I'm just trying to get to this point. You're saying you're here out of the goodness of your heart and you don't have any expectations and you don't want anything in return, but, one, you've already been moved out of the United States penitentiary, Florence, Colorado; right?
A. Yes, sir.

Q. The next thing you've been asking these folks for, you want a year credit against your 60-month sentence, don't you?
A. That is not true. They haven't promised me anything. They haven't forced me, they haven't coerced me. I'm doing this on my own free will because Dr. Trent Pierce be from the same town, and that touched a nerve. That's my hometown. And I haven't been promised anything.
Q. I think you called him your home boy; right?
A. Home boy. We're from the same hometown.
Q. Do you remember writing a letter to Mr. Gordon dated November 15, 2009?
A. Yes, sir.
Q. Do you remember saying, Mr. Gordon, after you've gone through getting me out of USP --
A. Yes, sir.
Q. Then you say, Mr. Gordon, I know that I was not promised anything for my substantial assistance to the government, but I'm seeking your help to obtain jail credit for one year, the one year that I served in the Crittenden County, Arkansas, Detention Center where my federal case originated.
A. Right.
Q. My case was a state case prior to the federal government picking up my state case. I served one year in the Crittenden County Detention Center for the offense that the federal court picked up from the state court. Give me one year jail credit

against this sentence.
A. That's the year that I already done.
Q. Uh-huh.
A. And I had -- my lawyer wasn't working on it, so I asked Mr. Gordon would he help me get that year that I already got credit for, that I already done that year before the feds picked my case up. Mr. Gordon told me he couldn't do that. But, anyway, the BOP give me the credit for it because that's the year I already done.
Q. And you were asking for the government's assistance in making sure you got a year credit off this sentence that you're serving right now; right?
A. Well, it's a year I already done, sir. I done a year.
Q. This is a year that you served in Crittenden County, but then you ran, you escaped from?
A. Yes, sir.
Q. Did you get an escape charge on that?
A. Yes, sir.
Q. Did the federal government help you get out of that?
A. It's pending now.
Q. It's pending now?
A. Yes, yes, sir.
Q. So now we know you have charges pending against you?
A. Yes, sir.
Q. But you don't want any help?

A. No, sir, I got --
Q. You're here out of the goodness and kindness of your heart?
A. That's correct. That's correct. The escape charge I got pending, Crittenden County, the statute of limitations going to expire, so they've got to drop it anyway.
Q. So you're just lucky on that one?
A. I don't need no help on that. I've been told many times that they wasn't going to do anything for me for my testimony. I've been told that so many times. I'm not getting nothing for this. Nothing.
Q. You've already gotten it.
A. Well, they're going to protect, U. S. Marshals Service, they're going to protect you, you a witness. They don't want to see you killed, so they move me. This is all there was.
Q. Okay. Let's move on.
You say that you got into the Pulaski County Jail on August 20 of 2009; is that right?
A. That's correct.
Q. You get assigned to P pod?
A. That's correct.
Q. Pulaski County Jail has many different pods, I think A through U, or something like that; is that right?
A. That's correct.
Q. And you got put in P pod; right?
A. That's correct.

Q. And Dr. Mann was in P pod at the time; is that right?
A. That's correct.
Q. And you said then it was two days later, on August 22, that he came to you and said, hey, I'll give you $50,000 to kill Trent Pierce; is that right?
A. That's correct.
Q. Did you know the man before this?
A. Who?
Q. Had you ever met Dr. Mann before August 22 of 2009?
A. No, I hadn't.
Q. But you read about him in the newspapers?
A. No.
Q. You knew who he was?
A. No.
Q. You already said to this jury he was known as Dr. Death, that's how everybody knew about him, because people read the newspapers?
A. Once I got to Pulaski County, they were calling him Dr. Death in the cellblock P.
Q. Are you telling this jury that you had never heard of Dr. Mann before August 20 of 2009?
A. Until I got to Pulaski County.
Q. You'd never heard the name? You didn't know anything about a car bombing in West Memphis, you ignored all the news and all the police reports in this case?

A. When I was in the Sheridan County Jail before I came to the Pulaski County Jail, they didn't watch the news. They watched videos.
Q. In Crittenden County?
A. Sheridan, Grant County. They watch videos. They don't watch much news down there.
Q. So you were completely isolated from, gee --
A. I heard about the car bombing.
Q. -- March of 2009 from all media, all newspapers? You didn't watch the local news, didn't watch the national news, didn't read the local paper, didn't read the national papers, and never heard the name Dr. Mann?
A. That's correct.
Q. Okay. So two days after you meet him on August 20, 2009, he comes up to you and says, hey, I'll give you fifty grand to kill somebody?
A. Yes.
Q. Is that right?
A. Yes, sir. That's correct.
Q. In two days, you were able to develop that sort of trusting and confidential relationship with Dr. Mann; is that right?
A. The guy was desperate. He was so desperate, he'll wake up in the morning and he'll be like, "I'm fucked, I'm fucked." He was desperate, very desperate.
Q. What cell did you all share?

A. The same unit. Didn't share the same cell.
Q. You're not even in the same cell?
A. Yes, sir.
Q. And that's the way these pods work; right? There's common area and then cells, two-man cells; right?
A. Yes, sir.
Q. You didn't even share the same cell with him?
A. Yes, sir.
Q. So the only time you saw him was basically in the general population of P unit?
A. Right.
Q. You didn't go and share the same cell and so you sat around at nights talking or anything?
A. Yeah, we sat around, once we was outside our cells, we did.
Q. Uh-huh. In fact, your cell was not even on the same floor as Dr. Mann's cell; is that right?
A. That's correct.
Q. Okay. And so how many people, can you tell me, were in the P pod at any given day; do you know?
A. 79.
Q. There are 79 inmates on any given day in P pod alone; is that right?
A. That's correct.
Q. And of those other 78 inmates, Dr. Mann picked you after knowing you for two days to solicit a murder?

A. I'm not the only one he talked to. I don't know if I'm the only one that came forward or not.
Q. My question is, after knowing a man for two days out of 78 other inmates, he chose Steven Shaun Briscoe --
A. Right.
Q. -- to confide in.
A. That's correct.
Q. And to solicit a murder?
A. Once he found out I was from West Memphis.
Q. West Memphis was apparently the key; right?
A. Yes, sir, I believe it was.
Q. Yeah, sure. I just found it also interesting that your story is that Dr. Mann would supply the gun. But you seem to have a history of not having any problem finding guns, do you, Mr. Briscoe?
A. That's correct.
Q. I think you also told the ladies and gentlemen of the jury that Dan, whoever Dan is, didn't do a good job with the bombing, and that's why Dr. Pierce -- Dr. Mann solicited you to finish the job; is that right?
A. That's correct.
Q. How many times did you testify in front of the grand jury?
A. Twice.
Q. First time was November 3 of 2009; right?
A. The second time was January 5.

Q. All right. Let's go back to the very first time. What was it, November 3 of 2009? Is that right?
A. That's correct.
MR. HENDRIX: May I approach?
THE COURT: You may.
BY MR. HENDRIX:
Q. Here's your grand jury testimony from November 3 of 2009. Why don't you tell us where in there you told the grand jury on November 3, 2009, the story that you're telling today. Look through there and tell me if you can find where you told the grand jury November 3, 2009, that Dr. Mann solicited you to kill Dr. Pierce because Dan had failed to do a good job the first time.
A. It's in here somewhere. I don't know whether it's the first testimony or the second testimony, but it's in one of them.
Q. In your second grand jury testimony dated January 5 of 2010, that's the first time you supplied the information about Dan not doing a good job. And you were asked about that; correct?
A. That's correct.
Q. And why didn't you tell it the first time?
A. The first time I came forward with the information, I just wanted to protect Dr. Trent Pierce by giving them a heads-up what Dr. Mann was planning, is all I wanted to do. And then

after I got interviewed about my conversation with Dr. Mann, I was brought aware that I needed to bring it to the grand jury hearing, so --

Q. I guess. I guess the question that I've got for you is, in August of 2009, you're pending sentencing in federal court; right?

A. Right.

Q. And before your sentencing in federal court, suddenly you say, hey, Dr. Randeep Mann has confessed to me and solicited me to kill somebody; right?

A. That's correct.

Q. Okay. Then you get sentenced; right?

A. Right.

Q. Then you go to a grand jury in November and you tell them one story; right?

A. Right.

Q. And then in January, you go back and you supply more information; is that right?

A. Right.

Q. Okay. And you're telling us you don't want any benefit for that?

A. Sir, I'm not getting nothing for this.

Q. How much time did you have left in January 2010?

A. I thought I had, like, it was six more months, but I don't get out until February 2011.

Q. Say it again.
A. I thought I was getting out in a few more months from that date, but I don't get out until February of 2011.
Q. Well, let's explore that and make sure that we're all on the same page. You were indicted in this case in 2005. You were on the run. You didn't get here, I guess, until 2007; right?
A. That's correct.
Q. August 28 of 2009, you get sentenced; right?
A. That's correct.
Q. Okay. And at that time pending sentencing is when you're saying all this conversation was going on with Dr. Mann. You're facing a ten-year, possible ten-year sentence; right? Felon in possession, what's the maximum sentence?
A. Got a range and got guidelines. You can get up to ten years, but I wasn't facing that much.
Q. You can get up to ten years on a felon in possession charge under the statute; correct, Mr. Briscoe?
A. That's correct. Yes, sir.
Q. Right?
A. Depending on your criminal history and your points and --
Q. Sure. And I think at one point you said somewhere, like, you were thinking you were going to get, like, a six-month sentence out of this thing?
A. No, I thought I had six months remaining. That's what I

said, with my jail credits and all that, that I had, like, only six months left.
Q. Okay.
A. Within a year.
Q. Let's stick with August of 2009 when all this was going on and you're pending sentencing. You know that the statute says up to ten years. So you could get ten years; right?
A. Depending on your criminal history, depending on your points, depending on a lot of different things.
Q. And let's talk about your criminal history again. You had a bunch of criminal history points, did you not?
A. Yes, but I wasn't facing no ten years.
Q. You don't think you did?
A. I wasn't facing ten years, sir.
Q. Because how we do the guideline range is, there's a certain point system for the type of offense, and then there's a certain point system for your criminal history; right?
A. That's correct.
Q. And your criminal history is just obviously bad; right?
A. It's bad, but I've seen worse. I wasn't facing ten years, sir.
Q. It's bad enough that they send you to a United States pen, don't they?
A. Because of the detainers I had. It wasn't because of my --
Q. It wasn't because of your violent past with guns and all

your prior convictions and the fact that you've escaped and you didn't show up to serve your sentence?
A. It wasn't because I was a bad criminal. Because of the escape charge and the detainers that I had, I got sent to a USP.
Q. And so what happened is, you're pending sentencing, you know you're facing the maximum of ten years, you know you've got a United States pen-worthy criminal history that's going to count against you; right? And then you start cooperating; right? And you testified against Michael Cox and you testified against Diggs over in Tennessee. And so you show up and you ask the Court, give me a break. I don't want ten years. And the judge gives you five years; right?
A. The judge already done knocked a year off my sentence for cooperating on the murder trial, cooperating on federal possession of a firearms trial. The judge knocked a year off my sentence. That's correct.
Q. Right. You cooperated and you got five years.
A. Yes, sir. I wasn't facing no more than 70-something months in the first place.
Q. Okay. Now, let me -- another thing that just struck me as very curious. I heard your testimony to be that Dr. Mann solicited you to kill Dr. Pierce because Dr. Mann didn't want Dr. Pierce -- for the jury to be able to look at Dr. Pierce and feel sorry for him, and Dr. Mann thought that would get me convicted, so the best way to handle this is kill Dr. Pierce so

he can't be at trial.
A. That's correct.
Q. Okay. That's right?
A. Yes, sir.
Q. Okay. You just got five years in the pen. When did you think this trial was going to happen?
A. I thought it was probably going to be when I was out of prison.
Q. What?
A. I probably been out of prison. I thought I was going to get out in March of this year, April this year. But I calculated wrong.
Q. August 28, 2009, you got sentenced to five years. You're telling this jury that a few days before, Dr. Mann solicited you to kill Dr. Pierce because you're saying that Dr. Mann didn't want Dr. Pierce here in front of this jury so they'd have sympathy for him and convict Dr. Mann; right?
A. That's true.
Q. When did you think this trial was going to happen, Mr. Briscoe? Five years from now?
A. The reason I wasn't thinking about no trial, just coming forward with my information to save Dr. Trent Pierce from any more harm. I wasn't thinking about no trial. Wasn't at all.
MR. HENDRIX: I don't have anything further.
THE COURT: Mr. Dudley?

CROSS-EXAMINATION

BY MR. DUDLEY:

Q. Let's talk about whether or not you want something for your testimony, Mr. Briscoe. Let me back up. You told this jury you were sentenced on August 28?

A. That's correct.

Q. 2009; correct?

A. That's correct, sir.

Q. And it was after the sentencing hearing on August 28 when you told your lawyer, David Cannon, that Dr. Mann had solicited?

A. That's correct.

Q. And you told this jury that David Cannon then walked across the courtroom and told John Ray White what you'd told him.

A. That's correct.

Q. And John Ray White is an Assistant U. S. Attorney.

A. That's correct.

Q. Okay. So on August 28, you had reported the solicitation and you had seen your lawyer report that solicitation to the authorities?

A. That's right.

Q. Correct? And that's your testimony to this jury?

A. That's my testimony.

Q. Okay. You wrote your lawyer a letter two days later, on August 30; correct?

A. I don't recall.

MR. DUDLEY: May I approach, your Honor?

THE COURT: You may.

A. Yes, sir.

Q. That your letter?

A. Uh-huh.

Q. Letter to Mr. Cannon?

A. Uh-huh.

Q. Dated August 30?

A. That's correct.

Q. Okay. And I'm going to read this. You read it with me and make sure that I don't read it incorrectly.

You say, "This letter is to thank you for representing me in said legal matter. I'm very happy with the outcome of my sentencing hearing."

Correct?

A. That's correct.

Q. Then you say, "This letter is also to inform you of Dr. Randeep Mann's attempt to solicit me to help him get rid of Dr. Trent Pierce."

A. That's correct.

Q. Correct?

A. Correct.

Q. So you're informing your lawyer, who you said you'd already told on August 28, you're telling him I'm writing you to inform you of this. On August 30; right?

A. Right.
Q. Right?
A. Right.
Q. Okay. And then you say, on August 30 in your letter, "I'm wishing for you to notify the proper authorities."
Correct?
A. Correct.
Q. But the proper authorities --
A. Read it all.
Q. Okay. We'll read whatever you want.
A. Read this whole paragraph.
Q. Okay. "I'm wishing for you to notify the proper authorities so they can warn Dr. Pierce of the threats against his life because I'm not the only one to whom Dr. Mann is talking to about this matter."
A. Correct.
Q. Is that good?
A. Yes. Thank you.
Q. So on August 30, you say to your lawyer, "I'm wishing for you to notify the property authorities."
A. That's correct, sir.
Q. Is an Assistant U. S. Attorney not a proper authority?
A. I'm thinking, like, the ATF or the FBI or somebody or the West Memphis Police Department so Dr. Trent Pierce will know what's going on.

Q. Okay. But your testimony is, you told your lawyer on the 28th, the lawyer told the Assistant U. S. Attorney, and then you write your lawyer on the 30th saying I'm writing to inform you of Dr. Randeep Mann's attempt to solicit.
A. That's correct.
Q. Okay. Now, on whether or not you expect anything for your testimony today, let's run through that. You write this letter to your lawyer, and eventually does an ATF agent come talk to you?
A. That's correct.
Q. And then you testify before the grand jury?
A. That's correct.
Q. And you were told you're not going to get anything for this; right?
A. Many times.
Q. Okay. And your testimony before the jury was, I'm not expecting anything?
A. I'm not.
Q. I don't want anything for it?
A. I'm going home soon.
Q. Okay. You testify to the grand jury the first time on November 3; right?
A. That's correct.
Q. And right after you testify -- or not right after. You testify on November 3, and on November 15, you write a letter to

Mr. Gordon.
A. That's true.
Q. And you say I want credit for a year that I did in Crittenden County; right?
A. That's right.
Q. But that's not all you told him. You actually threatened not to assist any more if you didn't get what you wanted; isn't that right?
A. I didn't threaten.
Q. Isn't that right? Let's see.

MR. DUDLEY: May I approach, your Honor?

THE COURT: You may.

BY MR. DUDLEY:
Q. Is that your letter, sir?
A. Yes, sir.
Q. November 15, 2009?
A. That's correct.
Q. All right. And this whole thing is in your handwriting?
A. That's correct.
Q. Okay. Did you say in the letter, "If the government is unwilling to assist me with these matters" -- and these matters, when you go back and read it, is mainly you getting credit for jail time; right?
A. The time that I do, owed to me anyway. The time I done.
Q. Okay. All right.

A. I asked them to do nothing special, no special favors for me. This time I already done. My time anyway.
Q. But you asked the government in this letter to help you get credit for a year's jail time; right?
A. Help me straighten it out.
Q. Okay. And then you say, "If the government is unwilling to assist me with these matters that I have stated in this letter, then I'm unwilling to further assist the government."
Is that what you said?
A. Yes.
Q. So you're saying give me something or I ain't gonna help you anymore; isn't that right?
A. I wanted to -- the time that I done down in Crittenden County to be straightened out.
Q. I understand. But what you're telling the government in that letter is, give me what I'm asking for or I'm not willing to help you anymore; right?
A. You know what the government told me? No.
Q. I don't care what the government told you. I'm interested in what you wanted. You told the jury you didn't want anything.
A. I owed that year anyway, and I didn't need anybody to speak up for me to straighten it out.
Q. You know what? You may be exactly right. I'm not arguing with you about that.
A. All right.

Q. I'm saying, though, you told the government you wanted something for your cooperation, and if you didn't get it, you weren't going to cooperate anymore. Isn't that what you told them?
A. That's correct.
Q. And then you testified before the grand jury again on January 5, 2010; correct?
A. Yes, that's correct.
Q. Then you wrote Ms. Whatley a letter; correct? After that testimony?
A. That's correct.
Q. Okay. And you told them again, I ain't gonna testify unless you help me. You told them you weren't going to testify in this trial unless you got some help, didn't you?
A. No. I wanted credit for the year I done, sir. I had done that year that was owed to me anyway.
Q. Okay.
A. I just wanted somebody to make a phone call, you know, see what's going on with that year.
Q. I understand what you want. My question is not what you wanted. All right?
A. Okay.
Q. My question is, after you testified the second time, you told the government again, I choose not to testify unless you help me. Didn't you?

A. I can't recall the second time.
Q. Okay. Let's --
MR. DUDLEY: May I approach, your Honor?
THE COURT: You may.
MS. WHATLEY: Mr. Dudley, can you tell me what page you're looking at?
MR. DUDLEY: I'm going to read from the last page, the last page of his letter to you.
BY MR. DUDLEY:
Q. Is this your letter?
A. Yes, sir.
Q. Okay. It's your signature on the last page?
A. Yes, sir.
Q. Okay. Let's go -- I'm actually going to go to the last paragraph on the second page to start. You say, last paragraph, "Dr. Mann is a very dangerous person and I'm afraid for my life, and I choose" -- or choose or chose -- "not to testify."
Do you see that?
A. Uh-huh. I do.
Q. And you say, "Please forgive me for being afraid."
A. That's correct.
Q. Right?
A. Right.
Q. You say, "I'm willing to go forth with my testimony against Dr. Mann if" -- if -- "you will assure me that the U. S.

Attorney's Office won't forget about me when this trial is over and disregard me like a used Kleenex."

A. That's correct.

Q. So you told the jury -- I mean, you told Ms. Whatley in your letter, even after you testified the second time, I choose not to testify, but I'll go on if you'll assure me you'll take care of me when the trial is over. Right?

A. Not get me in a position when I can get killed. Because I know my name is going to be all over the media, Steven Briscoe is a government informant, and I don't want to be in a position where I can get assaulted. I already got jumped on the other day for --

MR. DUDLEY: Your Honor, I ask that he be responsive to the question.

THE COURT: You'll have an opportunity on redirect to explain. Just answer the question that's asked.

BY MR. DUDLEY:

Q. You know, I don't doubt that you have fears for your life. I mean, snitches in prison don't get treated very well, do they?

A. No, sir, they don't.

Q. All right. But that's regardless of whether -- doesn't matter who you testify against. A snitch generally doesn't get treated very well in prison, do they?

A. That's correct.

Q. But my point is, you told this jury you didn't want

anything, you weren't expecting anything out of this, and yet twice you've said to the government, I ain't gonna keep cooperating unless you give me some help; isn't that right?
A. That's right, to protect me.
Q. So you were looking for something out of this.
A. For protection.
Q. What?
A. From protection from getting assaulted, or even killed. Everybody understood that I wasn't getting no time cut or anything for this.
Q. Actually, in your letter to Mr. Gordon, after you testified the first time, you said, "I want credit for my jail time, and if you're not willing to assist me, then I'm not willing to help you any more." And you also said, and by the way, I got more information to give you if you'll help me. Didn't you tell Mr. Gordon that?
A. No, sir.
Q. You didn't? Okay. You didn't tell the grand jury everything you claim you know the first time you testified, did you?
A. Sir, I came forward just to warn Dr. Pierce.
Q. Okay. I understand that. I'm asking you, did you tell the grand jury everything you knew the first time you testified?
A. No, sir.
Q. You didn't?

A. No, sir.
Q. Okay. And when you wrote the letter to Mr. Gordon, we've already read this, you said if the government is unwilling to assist me with these matters that I've stated in this letter, then I'm unwilling to further assist the government; right?
A. Correct.
Q. Then you come down here, you say, you say, "I'm not asking the government to give me anything. I'm only asking for credit for the jail time."
That's a year, right?
A. Uh-huh.
Q. "That I earned while in the Crittenden County Jail. Then I'll be willing to tell you about Dan."
Is that what you said?
A. That's correct.
Q. So you're saying give me my year of credit, and then I'm going to tell you about Dan that I didn't tell you about before now; right?
A. Right.
Q. So you're giving the government some incentive to help you out by saying I got more information if I get my year of credit; right? Is that right?
A. That's correct.
Q. Okay. You told -- let's talk about the conversation you had with Dr. Mann. The first time you talked to Dr. Mann or he

solicited you to commit a murder, what date was that?
A. It was August 22 of '09. 22 of '09.
Q. August 22 of '09?
A. Yes, sir.
Q. Where did this conversation occur?
A. On the rec yard in P pod, Pulaski County Jail.
Q. The rec yard?
A. Yes, sir.
Q. What is the rec yard?
A. When you go out, like, the outdoor area.
Q. Is that something you get to go out, when you get to go out there every day?
A. Every day, yes, sir.
Q. For how long?
A. At different times, like, in the morning time, morning time, after lunch, in the evening time, anytime that we're not in our cells, we go outside in the yard.
Q. Let's explain to the jury the setup out there. The pod is a -- has a big open area in the middle; right?
A. Right.
Q. And the cells are around to the side?
A. Correct.
Q. And it's two story?
A. That's correct.
Q. So there's cells on the bottom and cells on the top and a

big open area in the middle; right?
A. That's correct.
Q. And in the open area in the middle, there are picnic tables or tables?
A. Correct.
Q. Now, you said you played cards with Dr. Mann?
A. That's correct.
Q. Where did y'all play cards?
A. In the common area, the day room.
Q. And that's in the pod?
A. Yes, big open area you're talking about.
Q. Okay. And it was while you were playing cards with Dr. Mann that he first solicited you to commit this murder?
A. No. We went out on the yard, and then we talked, just me and him.
Q. So the first time, on August 22 when he asked you, when he solicited you for murder, you were out in the yard. You weren't playing cards. Is that right?
A. That's right.

MR. DUDLEY: May I approach, your Honor?

THE COURT: You may.

BY MR. DUDLEY:
Q. Did you tell the first grand jury that this conversation occurred out in the yard?
A. Yes, sir.

Q. Pardon?
A. Half of it happened on the yard and half of it happened on the card table, when he said he needed to talk to me.
Q. And did you tell the first grand jury that half of this conversation happened on the yard and half of it happened at the card table?
A. That's correct.
Q. You did? Okay. Let's see. This is your grand jury testimony, November 3. Correct?
A. Correct.
Q. On page 6, I'm going to begin at line 17. You were asked, "Do you remember the date that you met" -- you're asked, "So you met Dr. Mann."

"Yes, sir."

"Do you remember the date?"

You say, "I met him in August, talked to him. I met him on the 20th, and the first conversation that I had with him was on August 27." And then you changed that to 22.
A. Yes.
Q. And you're asked, "22nd of '09?

"Yes, sir, August 22."

"How did you meet Dr. Mann?"

"We played cards together."
A. Right.
Q. "While y'all were locked up?"

"Yes, sir. We loved playing spades."

Question: "All right. So you said you met him on August 20?"

Answer: "On the 20th, yes, sir. And our first conversation was August 22, like, two days later. We started playing cards and talking."

Right?

A. Uh-huh.

Q. And then you say what the conversation was; correct?

A. That's correct.

Q. So didn't you tell the first grand jury this conversation occurred while y'all were playing cards?

A. We started conversating when we started playing cards. But the conversation about killing Dr. Trent Pierce was on the yard.

Q. You didn't tell the grand jury it was on the yard, did you?

A. It's in one of them.

Q. Oh, okay. Well, let's see if you said that in the second one.

MR. DUDLEY: May I approach again, your Honor?

THE COURT: You may.

BY MR. DUDLEY:

Q. Here's your second grand jury testimony. Steven Briscoe, 5th of January, 2010; correct?

A. Correct.

Q. According to page 5, I'm going to start on line 5, the

question was: "How -- was there something that led up to him befriending you?"

Answer: "We played spades, a card game, together."

"Spades, called spades?" Answer.

"Did he find out where you lived?"

"Yeah, during our spades game. He asked me where I was from and what I was in jail for, and I told him I was from West Memphis and I was in jail for possession of a firearm. Told him I should be out of jail soon, and then from there, the conversation went on, and he asked me could I help him out, and that's when he started talking about Dr. Trent Pierce."

"What did he want you to do to Dr. Pierce?"

Answer: "He wanted me to kill Dr. Pierce."

Right?

A. That's right.

Q. So you told the second grand jury during our spade game, while you were playing cards; right?

A. That's correct.

Q. So today is the first day that you've said this conversation occurred out in the yard; right?

A. Not the first day, no, sir.

Q. Well, it's not in your grand jury testimony, is it?

A. I didn't see it, no, sir.

Q. Okay. So today is the first day you've testified under oath that this conversation occurred out in the yard.

A. Yes, sir.
Q. Let me see if we can figure out why today would be the first day you said that. You've already told the jury that when you played spades, you had partners; right?
A. That's correct.
Q. Dr. Mann would have a partner and you would have a partner; correct?
A. That's correct.
Q. So there would be four of you playing spades; right?
A. That's correct.
Q. And if Dr. Mann related or had this conversation with you while you were playing spades, there would be two other people there that heard it; right?
A. That's correct.
Q. So those two other people could come testify to it; right?
A. That's correct.
Q. But if it happened out in the yard, then those people might not have heard what's said. Right?
A. Another guy, he heard part of the conversation, Samuel Silva. I told the government about Samuel Silva.
Q. But if you're out in the yard, you don't have partners there with you playing spades; right?
A. That's correct.
Q. Did somebody from the government bring that to your attention before you testified today?

A. Repeat the question.
Q. Did somebody from the government bring it to your attention that if you had this conversation while you were playing spades, there would be two other folks who heard it?
A. That's correct. They didn't bring it to my attention.
Q. They did or didn't?
A. Didn't.
Q. You figured that out on your own?
A. Figured --
Q. Okay. I'll withdraw that question.
A. Okay. Okay.
Q. Did you tell the government the names of your partners in the spades game?
A. That's correct.
Q. Okay. So those folks would have heard the conversation then; right?
A. They heard part of it.
Q. All right. So those folks could come testify that this conversation occurred because they would have heard Dr. Mann soliciting you to commit murder; right?
A. They didn't hear the whole conversation, sir, because half of it was at the card table. The most important part was on the yard.
Q. Okay. But today is the first day you've said that.
A. No, sir.

Q. Under oath.
A. As I recall --
Q. You didn't tell it to the grand jury the first time or the second time?
A. I don't know if it was the grand jury, but I told somebody that we were out in the yard when we talked.
Q. You told somebody, but it wasn't the grand jury?
A. I thought I did.
Q. You also told the grand jury that Dr. Mann would contact this Dan fellow who was going to bring you the gun and the money; right?
A. Right.
Q. And he would do it on the Pulaski County Jail phone; right?
A. He didn't state how he was going to do it, but he said he would have Dan take the money wherever I wanted it to be taken to. He didn't say how he was going to do it.
Q. Well, weren't you asked how would Dr. Mann contact Dan? Weren't you asked that in the grand jury?
A. I can't recall.
Q. You can't? Well, if Dr. Mann was going to get Dan to bring you the gun and the money, he'd have to have some way to tell him that; right?
A. There are a few ways. Telephone, a letter, or a visit. It don't --
MR. DUDLEY: May I approach, your Honor?

THE COURT: You may.

BY MR. DUDLEY:

Q. Let's look at your grand jury testimony, January 5, 2010. Right?

A. Right.

Q. The bottom of page 11, actually, a member of the grand jury asked you, "How did Dr. Dan" -- and that's apparently a mistake, but, "How did Dr. Dan contact Dan?"

Do you see that?

A. Uh-huh.

Q. Answer: "I think he was calling him from the phone."

Is that what you said?

A. Yeah, I think. Uh-huh.

Q. And the grand juror asked you, "On the phone?"

You said, "Yes, sir. His first time being in jail, he not familiar that how the phone calls being recorded and stuff like this."

A. That's correct.

Q. So he talked freely on the phone. Right?

A. That's correct.

Q. Okay. So if he was talking to Dan on the phone and telling Dan to bring you the money and the gun, there ought to be a tape-recording of that. Right, sir?

A. He wasn't aware of that. He did a lot of talking.

Q. That's right. So if he's talking to Dan on the phone

telling him that, that would have been recorded; right?
A. Yes, if I would have agreed to it. But I never did agree to it, sir. So never was any reason for him to call Dan.
Q. You also testified that you know two other guys in jail with you that Dr. Mann solicited to kill Dr. Pierce; right?
A. I said he was talking to other people.
Q. Didn't you say there were two other guys that Dr. Mann solicited to kill Dr. Pierce?
A. That's correct.
Q. And you gave the government the names of those fellows, right?
A. I can't recall.
Q. Well, you told the grand jurors their names, didn't you?
A. I can't recall.
Q. Can't recall? Can you recall today who it was, who those other two guys were who were solicited?
A. No, sir.
Q. The first time that you testified in the grand jury, did you say anything about grenades?
A. Yes, I did.
Q. You did?
A. Yes.
Q. Wait a minute. The first time you testified to the grand jury, on November 3 of 2009, did you say anything about grenades?

A. I think I did, the first time or the second time. I think one time I did.

MR. DUDLEY: May I approach, your Honor?

BY MR. DUDLEY:

Q. Let me hand you your testimony, unless Mr. Gordon and Ms. Whatley are willing to stipulate to this, and you find in your testimony of November 3 where you said anything about any grenades.

A. (Document review.)

MS. WHATLEY: Your Honor, we will stipulate it's not in the first one.

MR. DUDLEY: Thank you.

BY MR. DUDLEY:

Q. So you agree the first time you testified, you never mentioned any grenades to the grand jury?

A. I can't recall whether it was the first time or the second time, but I told them about some grenades.

Q. You said that Dr. Pierce -- excuse me, that Dr. Mann wanted Dr. Pierce killed?

A. That's correct.

Q. Okay. So Dr. Mann wasn't talking to you about maybe this whole thing was set up just so Dr. Pierce would have to suffer for the rest of his life?

A. No.

Q. He wanted him dead.

A. He wanted him dead.
Q. He didn't want him suffering; he wanted him dead.
A. Correct.
Q. Did you learn any additional information that you didn't know before after you testified in the grand jury the first time?
A. No, sir.
MR. DUDLEY: That's all I have, your Honor.
MS. WHATLEY: May we approach?
THE COURT: Okay.
[Bench conference reported as follows:]
MS. WHATLEY: Your Honor, I wasn't going there, but I think Mr. Dudley opened the door wide open for me to walk through about the assault that he suffered last week.
THE COURT: What does that have to do -- what did he say that opens that up?
MS. WHATLEY: Mr. Dudley -- I don't have it written down word for word. Mr. Dudley was talking to him about why he was doing this and that he actually -- he was making all this up, and he starts saying, no, he was scared for his life, and Mr. Dudley asked another question which elicited the response of I've actually been assaulted for my testimony. And I believe that that opens the door.
MR. HENDRIX: The witness offered that without question.

THE COURT: What is the objection? And we didn't discuss it before he testified. I thought you were going to go into it on direct. What is the objection to that coming in anyway, that he claims he was beat up by Alshareqi for testifying.

MR. HENDRIX: Relevance. 404(b), two. That's prejudicial, and there's certainly no proof of it.

MS. WHATLEY: There's certainly what?

MR. HENDRIX: No proof of it.

MR. DUDLEY: The problem, your Honor, the jury might infer that that came from Dr. Mann, and there's just no proof of that. That's why it's prejudicial.

THE COURT: It's prejudicial, but I was -- does it have probative value? I don't know what probative value it has, if it has any.

MR. HENDRIX: I don't see it. The inference would be that Dr. Mann did this, but that's --

MS. WHATLEY: Mr. Gordon just reminded me, he was crossing him about the last letter. The last letter was written after he was assaulted, which was the basis for him writing me the letter, because he had just been assaulted and he is scared to death to testify.

MR. GORDON: Where he is saying don't forget about me. That's why he's saying it, because he just got whooped.

MS. WHATLEY: He got whooped pretty hard.

THE COURT: This assault didn't occur here in the last few days.

MS. WHATLEY: Yes, sir, it occurred on the 22nd of this month.

THE COURT: So he wrote this letter.

MS. WHATLEY: Yes, sir.

THE COURT: So it happened in the last month.

MS. CASSINELLI COUCH: We didn't know that.

THE COURT: His testimony as far as the last letter, I guess -- I don't want to say that the cross was ineffective, but --

MR. DUDLEY: That's all right, Judge.

THE COURT: No, no, I didn't -- I didn't get that inference. I don't think the cross was such that getting into him being beaten was really relevant. I think his testimony is what it is: Look, this guy's my home boy. I wanted to protect him. The cross, you know, got into the reasons why he came in here and what he said at the different stages, which has been, you know, to see if he's been consistent. I don't know that you need to get into that and I don't know that it's relevant. I mean, how do you show that Dr. Mann --

MS. WHATLEY: The whole reason I didn't get into it on direct is because the only way I can link it to Dr. Mann is through hearsay, and I can't use hearsay to do it.

THE COURT: And from Alshareqi, who says, don't jump

on my -- or don't jump on my --

MS. WHATLEY: Something to the effect of, I'm taking care of things for my uncle, and it's at Dr. Mann's request.

THE COURT: Now, he doesn't say this is at Dr. Mann's request, does he?

MS. WHATLEY: Pretty much.

MS. CASSINELLI COUCH: We don't know anything about this.

MS. WHATLEY: Your Honor, I wasn't going there. I do think he should be able to say he's been recently assaulted.

THE COURT: This is what I'm going to do. I'm going to overrule. You can keep him for rebuttal, depending on if Alshareqi testifies, because you'll definitely be able to cross Alshareqi on whether he did this, and if Alshareqi says, no, he didn't, whatever, then you can bring this guy back in.

MS. WHATLEY: Okay.

THE COURT: And you put him on, you go through that line of testimony with him and you get into all of it.

MS. WHATLEY: Okay. Right now, can I at least get him to say this last four-page letter was handed to me yesterday?

THE COURT: Okay.

MS. WHATLEY: And that he's from the beginning been afraid for his life, in fear for his family?

THE COURT: Yes, of course.

MR. DUDLEY: I think he's already said that.

THE COURT: You can do that.

MS. WHATLEY: Okay.

THE COURT: I don't want you to start getting into the whole Alshareqi told me this.

MS. WHATLEY: No, and I don't want him to get into that. And can I also lead him a little bit so he doesn't walk down a path we don't want him to go down?

MR. DUDLEY: That's fine with me.

MS. WHATLEY: Okay.

MR. HENDRIX: Are we going to take a break after this?

THE COURT: I've got a hearing at 12.

MS. WHATLEY: I have one more witness before lunch.

MR. HENDRIX: Who is it?

MS. WHATLEY: It's going to be Amanda Crow, the bank lady.

MR. HENDRIX: Oh, got you.

THE COURT: How long is she going to be on?

MS. WHATLEY: Ten minutes, maybe.

MR. HENDRIX: Do you want to work through her?

THE COURT: Are you going to do the cross of her?

MR. HENDRIX: Yeah, I'm sure, but I can't imagine this being very --

THE COURT: I hate to --

MR. HENDRIX: No, no.

MS. WHATLEY: He'll be strong.

THE COURT: Okay.

[Continuing in open court:]

REDIRECT EXAMINATION

BY MS. WHATLEY:

Q. Hi, Mr. Briscoe.

A. How are you doing?

Q. I'm good. How are you?

A. All right.

Q. Let's clear up a couple of things, and I'm going to let you go. How about that?

A. Okay.

Q. Did you just have one conversation with Dr. Mann?

A. No. We had several conversations.

Q. And they -- so you had several conversations over a period of days?

A. Yes, that's correct.

Q. I just want to make it real clear. Have I promised you anything?

A. Not a thing.

Q. Has my main concern been to make sure that you were safe?

A. Yes, ma'am.

Q. Let's talk about how BOP works for a minute, just so that everybody kind of gets the feel for it. When you go into BOP, isn't it true that they take all sorts of information, compile it, and get you some points?

A. That's correct.
Q. And then the points decide actually where you get sent to at BOP.
A. That's correct.
Q. So you can get sent to a camp like Mr. Hendrix was talking about, I think he called it a college dormitory. Okay. And then he talks about the different levels, you can go to a medium, you can go to a high, you can go to a pen, things like that. And I think Mr. Hendrix said that there's a little bit of barbed wire. Isn't there a whole lot of razor wire going on at those places?
A. Yes, ma'am, a lot of barbed wire.
Q. Even at a medium security unit?
A. Low, medium, and high. Yes, sir. Everything but a camp.
Q. Everything but a camp has strings and strings and strings and strings of razor wire on it?
A. That's correct.
Q. But you did get sent to the federal pen in Florence.
A. That's correct.
Q. You were not at the Supermax?
A. No, I wasn't.
Q. And I think you testified that the reason that you had all -- that you were at the pen was because you had detainers on you?
A. That's correct.

Q. And because you escaped.
A. That's correct.
Q. Now, you were here in November to testify in grand jury; correct?
A. That's correct.
Q. Then you wrote us a letter, and we'll get to that letter in a minute. Okay? Then we brought you back and you testified before the grand jury in January.
A. That's correct.
Q. Do people at the pen like it when people testify?
A. Not at all.
Q. And were you threatened before you came here that if you didn't have certain documents when you came back, you were going to get beat up?
A. That's correct.
Q. Now, it had nothing to do with Dr. Mann out at the pen; right?
A. No, ma'am, it didn't.
Q. But just people in the pen don't like snitches?
A. At all, no.
Q. And so you just asked, can you try to get me redesignated?
A. That's correct.
Q. But do you understand that it has to do with your numbers that gets you redesignated, nothing that I can do?
A. That's correct.

Q. And you did get moved?
A. Yes, that's correct.
Q. But that was done through BOP?
A. That's correct.
Q. Let's talk about this year jail credit thing. How many times did we tell you we're not helping you get your year of jail credit?
A. Oh, several times.
Q. Didn't we tell you you've got to do it yourself or get you a lawyer?
A. That's correct.
Q. Is the only promise I ever made you that you're not getting anything from me?
A. That's correct.
Q. Okay. Explain this interstate detainer thing that you said you increased your time because you didn't get to file an interstate detainer. Can you tell the jury what that means.
A. Interstate detainer agreement is like when you've got detainers in other jurisdictions, like courts and stuff, and I had a pending case in Crittenden County, Arkansas, and I needed to file the interstate agreement with a detainer. Gives six months to come get you, or, you know, come get you in these six months or they've got to drop their charges. If I would have filed an interstate agreement of detainer which would have expired in time for me to be released next month in August. By

me being out on a federal writ testifying in grand jury here, two grand jury proceedings and this trial, I was unable to file the interstate agreement of detainer, which would have expired in time for me to get released next month. So by me testifying two grand jury proceedings, I extended my stay in prison. I could have been going home next month. But I have to stay longer to assist in this trial.

Q. We'll talk about something else Mr. Hendrix talked to you about. I just need it to be clear because I don't think it was real clear. When you were sentenced in 2009, August 28, 2009, Judge Wright sentenced you to five years; right?

A. That's correct.

Q. At that point in time, you had already been in jail for a little while.

A. Oh, almost three and a half years.

Q. Not counting your -- let's not count that Crittenden jail time because I know you always want to count it, but I always tell you you can't. You've been in jail since 2007?

A. That's correct.

Q. When were you arrested in 2007?

A. March 30.

Q. So you had already been in jail March 30, 2007, to August 28, of 2009?

A. Almost two and a half years.

Q. Almost two and a half years at that point in time.

A. That's correct.
Q. And since then you've been in jail up until today, which is July 28 of 2010.
A. That's correct.
Q. So you've done almost another year?
A. That's correct.
Q. So let's say three and a half years.
A. That's correct.
Q. You're scheduled to get out in February of 2011.
A. That's correct.
Q. So that will take it up to a little over four years.
A. That's correct.
Q. Okay. Now, there is no parole in the federal system; right?
A. That's correct.
Q. Don't you get good time?
A. Yes, ma'am, you do.
Q. How many days a year of good time do you get?
A. 54 days a year.
Q. So 54 days a year good time. So between your good time and all the time you've served in jail, you will have done five years.
A. That's correct.
Q. And you're doing that five years and you're not getting anything for cooperating in this case?

A. That's correct.
Q. Any cooperation you got was for other cases.
A. That's correct.
Q. Mr. Dudley and Mr. Hendrix wanted to read some of your letters that you wrote me. Right?
A. That's correct. That's correct.
Q. They didn't read all of it, though, did they?
A. No, they did not.
Q. In fact, they left some important stuff out, didn't they?
A. Yes, ma'am, they did.
Q. Between me and Mr. Gordon, you've written us a few letters?
A. That's correct.
Q. And each of those letters, you've been hesitant to come forward; correct?
A. That's correct.
Q. Are you scared?
A. Yes, ma'am, I am.
Q. Are you scared for your family?
A. Yes, ma'am, I am.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I want to look at your November 15, 2009, letter. You wrote this one to Mr. Gordon, not me; right?
A. That's correct.

Q. And this is page 3. I believe that Mr. Dudley may have read part of this, but I think that he didn't read all of it, did he?
A. He didn't.
Q. You didn't make him read all this one, though.
A. No, I didn't.
Q. You made him read all of another one. Okay.
A. Right.
Q. You said, "If the government is unwilling to assist me with these matters that I have stated in this letter, then I'm unwilling to further assist the government."
That's where Mr. Dudley stopped, didn't he?
A. That's where he stopped, didn't he?
Q. There's a comma after that, isn't there?
A. Yes, it is.
Q. Didn't you finish it and you said, "because I don't want whoever Dan is to place a bomb under my mother's car like he did Dr. Pierce"?
A. That's correct.
Q. So you're scared for your mom.
A. Yes, I am.
Q. Now let's talk about your first letter that -- is this your first one? Yeah, August 30, 2009. You didn't write that to me, you didn't write it to Mr. Gordon, and you didn't write it to Mr. White, did you?

A. No, ma'am, I didn't.
Q. You wrote it to your lawyer?
A. Yes, ma'am.
Q. You went through your lawyer on this.
A. That's correct.
Q. And this is the one I think you made him read the whole thing.
A. That's correct.
Q. So you said, "I'm wishing to notify the proper authorities so they can warn Dr. Pierce of the threats against his life."
A. That's correct.
Q. And then down here, the last thing you said is, "Most importantly, notify the proper authorities, because Dr. Pierce's life is in serious danger."
A. That's correct.
Q. Nowhere in this letter does it say, get me some time off?
A. No, ma'am, it doesn't.
Q. In fact, you started the letter saying you were very happy with the outcome of your sentencing hearing.
A. Yes, ma'am.
Q. Mr. Briscoe, when all this started in August of 2009, was it ever your intention to be sitting in that chair?
A. No, ma'am, it wasn't. I just wanted to warn the proper authorities so they could warn Dr. Pierce. That's all I wanted to do.

Q. Did you have any idea you'd end up before two grand juries?
A. No, ma'am, I didn't.
Q. Did you have any idea you'd be before this jury today?
A. No, ma'am, I didn't.
Q. Are you still scared?
A. Yes, ma'am.
Q. Scared for your mama?
A. Yes, ma'am.
Q. Scared for your daughters?
A. Yes, I am.
Q. And I believe you said because Dr. Mann is dangerous?
A. He's a very dangerous person.

MS. WHATLEY: No further questions.

THE COURT: Anything else?

MR. HENDRIX: Yes, sir.

I think the government is insinuating that we don't want this letter in, Judge. I'd move to --

RECROSS-EXAMINATION

BY MR. HENDRIX:

Q. This is your November 15, '09 letter; is that right?
A. Yes, sir.

MR. HENDRIX: I'd move to introduce the whole thing, Judge.

THE COURT: Is that 33?

MR. HENDRIX: That's correct. May I have a sticker,

please?

THE COURT: Is there any objection to that?

MS. WHATLEY: No, your Honor. In fact, we would like all of his letters and his grand jury testimony to be admitted into evidence.

THE COURT: We can have them marked.

MS. CASSINELLI COUCH: I'm a little confused about that. I think he is moving to admit one and she is going to admit the other one?

THE COURT: We'll receive 33 right now. If the government moves the others in, you can move them.

(Defendant's Exhibit 33 received in evidence.)

MR. HENDRIX: So that was 33, Judge?

THE COURT: It is.

BY MR. HENDRIX:

Q. Let's make sure we're clear.

November 15, 2009. "When I was offered to be relocated to another prison, at that moment I wasn't thinking too clearly about the danger that I was facing due to my cooperation with the government and the fact that I'm at one of the most deadliest penitentiaries in the country."

You wanted out of that deadly penitentiary; right?

A. After I came forward with my information, I couldn't be there because I was labeled as a snitch and I couldn't --

Q. Well, here's why you didn't want to go back to it: You

say, "If I wait to notify the officials at the USP Florence, then I'll be placed in segregation, which is the hole, and subjected to the same treatment as an inmate who has broken the rules of the BOP and being punished for disciplinary reasons. I would also have to remain in the hole for three to four months waiting to be relocated, which would be getting extra punishment due to my cooperation with the government."

You wanted to avoid all that; right?

A. That's correct.

Q. Okay. Where are you presently incarcerated?

A. FCI Memphis.

Q. FCI Memphis is not a United States pen, is it?

A. It's one step level down.

Q. It is not a United States pen, is it?

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

Q. So you were able to get relocated from a United States pen, the most secure type of facility in the country, and now you're in a medium facility; right?

A. That's correct.

Q. Do you have any idea what the Interstate Agreement on Detainers Act is?

A. Yes, I do.

Q. You do?

A. Yes, sir.

Q. And is your explanation legally correct?

A. It give -- the court that has the detainer against me, it gives them six months, 190 days, six months to take them to trial.
Q. And let's talk about the Interstate Agreement on Detainers Act because apparently you've read the thing. The Interstate Agreement on Detainers Act is a cooperative agreement among all the states and the United States Government in order to how to bring prisoners to trial when they are charged in one jurisdiction and another jurisdiction. All right. So now I know, since you're bringing up the Interstate Agreement on Detainers Act, that at some point, you had two different charges going on in two different jurisdictions. Likely the state and the federal government; is that right?
A. That's not right. I had only one jurisdiction. Crittenden County, Arkansas.
Q. The Interstate Agreement on Detainers Act, Mr. Briscoe, only applies when you are in custody in one jurisdiction and something pending in another?
A. That's correct right there.
Q. Okay. So we're on the same page then; right?
A. That's correct.
Q. And so explain to us what the two jurisdictions are and what was going on with them.
A. When I was in federal custody, where I am now, in federal custody and they had pending detainers in state, Crittenden

County, Arkansas.
Q. And so what the Interstate Agreement on Detainers Act says is, if you file the request that I want to go to the other jurisdiction to be tried and you go, they've got to try you within six months? Is that what you're talking about?
A. Yes, within 180 days, which is six months.
Q. 180 days, which is six months?
A. If they don't, they've got to drop the charges.
Q. Again, I just don't get -- were you trying some legal maneuvering to get something dismissed on a technicality under the Interstate Agreement on Detainers Act? Is that what I'm hearing?
A. Yes, sir.
Q. You wanted to take advantage of another technicality in the law and get out from under --
A. It's the law, sir.
Q. Get out from -- sure. And you wanted to get out from under the crimes that you committed; right?
A. I filed one motion for pro se to dismiss due to a lack of a speedy trial, and they dropped it due to a lack of a speedy trial.
Q. Did you commit that crime?
A. Huh?
Q. Did you commit that crime?
A. I confessed to it, too.

Q. You committed to it, you confessed to it.
A. Yes, sir.
Q. And you got out from under it.
A. Due to a technicality, statute.
Q. Exactly what you're trying to do here today.
A. They've got statutes on how long to take me to trial, and they didn't.
Q. Mr. Briscoe, you have been involved in the criminal justice system since you were 18 in 1987, and you clearly have a track record of committing crimes and doing your best to get out of it. Do you agree with that or not?
A. That's correct, sir.

MR. HENDRIX: Fair enough.

THE COURT: Anything else?

MR. HENDRIX: Your Honor, may we approach?

THE COURT: Yes.

[Bench conference reported as follows:]

MR. HENDRIX: I'm assuming the Assistant U. S. Attorney is not going to suggest something so ridiculous as to try to get his grand jury testimony in.

THE COURT: She can move it and you can object and we'll --

MR. HENDRIX: Since it's hearsay.

THE COURT: We can rule on it.

MS. CASSINELLI COUCH: It contains hearsay within

hearsay.

MR. HENDRIX: And the problem is, she's going to try to do it in front of jury and then I'm going to object, and it's going to give the inference that I'm trying to hide. And that's not a fair inference for them to do that in front of jury.

MS. WHATLEY: We can do it right here, Mr. Hendrix.

MR. HENDRIX: Let's do it.

MS. WHATLEY: Your Honor, they have read some of the grand jury testimony, put pieces of his grand jury testimony in, put pieces of the letters in, and they wanted to move one of the whole letters in, so I think that all of the rest of the letters should come in in addition to his grand jury testimony.

THE COURT: What is the relevance? You know, letters and testimony are always used on cross-examination to try to see if a person is inconsistent. What is the purpose of moving in the entire letter or the entire grand jury testimony? What does that really add to this case?

MR. GORDON: May I be heard on that, your Honor?

THE COURT: Yes.

MR. GORDON: Their theory is that he's cooperating with us to change his -- change his designation from the USP, at the Florence USP. He testified in front of the grand jury before he was designated, before he got to Florence. So this this is one of those instances where it's a prior -- if he makes a statement, if they're saying he's lying because of a certain

reason and he makes a prior statement that was made before his motive to fabricate, then it's admissible.

THE COURT: It can't be -- if you're trying to show that the person -- well, you've crossed him on one issue saying that he gave testimony that was different here than there. I have discretion. I could admit it. But the question is, at what point are they reading the statements and reading the letters and reading the grand jury testimony, and instead of remembering what he said on the stand, they're reading, the jury is sitting there reading this? Which -- I mean, does my letting this in outweigh the fact that they could end up going back there and just reading his statements, okay, this is what his testimony was, when there are distinctions between what he has said and what he said here today.

MR. HENDRIX: If I might, your Honor, this is what the Federal Rules of Evidence are designed to protect against. I can guarantee you that the U. S. Attorneys cannot cite you a rule right now for a theory of admissibility on this, and because it's not, it's Rule 613, prior inconsistent statements. They do not come in as substantive evidence. They can be cross-examined, they're not substantive evidence, and you don't admit the entire -- and then go for a theory of, well, that opens up the door to allow all kinds of inadmissible hearsay.

MS. WHATLEY: If they don't want the rest of letters in --

THE COURT: Hold on. So, Mr. Hendrix, okay, what I see is that you read the government's redirect as though they were trying to say that you were only wanting to get into certain areas and not others.

MR. HENDRIX: Uh-huh.

THE COURT: You and Mr. Dudley. To overcome that inference, you then have moved in one of the letters that shouldn't have been admitted either. I received it because, you know, because what you're doing, you're combating their inference that they were trying to give the jury that you're being selective in your cross, and what you're using and you just want to show, I want in the whole thing. But if I let in one, why don't I let it all in? If I'm letting in your statements -- not your statement, but his statement for the purpose of showing you're not trying to hide anything, wouldn't that be the same reason of letting it all in?

MR. HENDRIX: Because you're going way beyond that. That letter in its entirety is a prior inconsistent statement. It shows here's what I'm wanting from you, government, in exchange for this testimony. That is entirely inconsistent with this guy's testimony.

MS. WHATLEY: But --

MR. HENDRIX: Now, I agree, I don't think the thing was admissible, but the government agreed to it, and I don't agree to that.

THE COURT: I don't think the whole letter is inconsistent. I think there are certain areas where he said the same thing. If you get into why he is giving the statement, that's the part that's inconsistent.

MR. HENDRIX: I understand, and if you want to remove Exhibit 33, I personally don't think that it's legally admissible. The government didn't have an objection. Again, I strenuously -- that's like from that movie: I not only object, but strenuously object to what is just hearsay.

THE COURT: You're looking at rules. What is your basis for attempting to admit this into evidence? I'll let both of you speak. I'll let both of you speak. I don't mind.

MS. WHATLEY: No, I'm making sure we're on the same page before we speak.

THE COURT: I don't think that Exhibit 33 is admissible.

MR. HENDRIX: I don't either.

THE COURT: Normally.

MS. WHATLEY: And, your Honor --

THE COURT: But if both sides say we have no objection to it, I'll receive it.

MS. WHATLEY: If --

THE COURT: I think the government's position more is that we have no objection, however --

MR. HENDRIX: We've set a trap for you, so now we want

it all in.

THE COURT: Okay.

MS. WHATLEY: If the August 30 letter and the undated letter which was given to me yesterday is not admitted, then we would object to the admission of Defense Exhibit 33.

MR. HENDRIX: Withdraw it.

THE COURT: I think the point -- okay. Now, question, and I'll throw this out, the point that you were trying to make, I'm not trying to hide anything here, what need is there to put everything in here when on cross what you do is point up inconsistencies? You don't go through all the consistencies. That's fine. Your point, I'm not trying to hide anything. Now, if we go back on the record with the jury right now and we state openly the withdrawn Exhibit 33, what effect could this have? Or does it have any effect at all?

MS. CASSINELLI COUCH: Why don't we just not tell them?

MS. WHATLEY: I'll just go sit down so I can put my next witness on and I can get the other four on this afternoon.

MS. CASSINELLI COUCH: If we don't tell them, we don't send it back, they're not going to know the difference.

MR. HENDRIX: Just show that the defense withdraws it.

THE COURT: Show for the record that the defense withdraws Defense Exhibit 33.

(Defendant's Exhibit 33 withdrawn.)

MR. HENDRIX: Just as long as I'm not accused of being selective and taking stuff out of context. That's my main goal in that whole endeavor.

THE COURT: Here's the thing: In cross -- and we don't need lectures because you all have been practicing longer than I did, or whatever. In cross, that's what you do, point out the parts that are inconsistent, and you show the consistencies.

MS. WHATLEY: Then on redirect, I show --

THE COURT: On redirect, you say you've shown inconsistencies, but you're not showing --

MS. WHATLEY: That's how we do the job.

THE COURT: Let's go. And I know you need to go to the restroom, but let's try to get on this next witness and get on with it.

MR. HENDRIX: Got it.

[Continuing in open court:]

THE COURT: Is there anything else for Mr. Briscoe?

MS. WHATLEY: No, your Honor.

THE COURT: Mr. Briscoe, you may stand down.

Call your next.

MS. WHATLEY: Amanda Crow.

THE COURT: Ladies and gentlemen of the jury, I have a hearing at 12. I didn't give you a real morning break, so some of us may be ready to take one, but we're going to go up until

12.

Come and have a seat right here on the witness stand.

AMANDA CROW, GOVERNMENT'S WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:

Q. Good morning.

A. Good morning.

Q. Would you please state your name.

A. Amanda Crow.

Q. Talk into that microphone.

A. Okay. Amanda Crow.

Q. You can pull it to you. You don't have to lean forward.

A. Oh, okay.

Q. Ms. Crow, where are you employed?

A. Simmons First Bank.

Q. Which branch?

A. The West Main location in Russellville, Arkansas.

Q. You said Russellville?

A. Uh-huh.

Q. What is your position there?

A. I'm the branch manager.

Q. How long have you been the branch manager?

A. About ten, 11 years.

Q. Are Dr. and Mrs. Mann customers at the bank?

A. Yes, ma'am.

Q. And how long have they been customers?
A. A long time.
Q. A long time?
A. I don't know exactly the date.
Q. Okay. In August of 2009, did they still have an account at the bank?
A. Yes, ma'am.
Q. And do they still have an account at the bank?
A. Yes, ma'am.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. What is that?
A. It's a signature card.
Q. And I don't know if I put that on the record. It's Government Exhibit 196; correct?
A. Yes, ma'am.
Q. And is this a document that is kept with the bank, in the normal course of business?
A. Yes, ma'am.
Q. And is it a signature card for the Manns' account?
A. Yes, ma'am.

MS. WHATLEY: At this time we move for the admission of Government Exhibit 196.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 196 received in evidence.)

BY MS. WHATLEY:

Q. Should pop up on the screen in front of you.

Okay. Do you have it on the screen there? What is the account number?

A. 9723072.

Q. Who is the account owner?

A. Randeep Mann.

Q. What is the address?

A. 111 Skyline Drive, Russellville, Arkansas, 72801.

Q. And going to the left-hand side of this column, when was the account opened?

A. April 25, 2000.

Q. How many signatories are there on this account?

A. Two.

Q. And who are the signatories?

A. Randeep Mann and Sangeeta Mann.

Q. Were you working at the bank on August 21, 2009?

A. Yes, ma'am.

Q. And do you recall Mrs. Mann coming into the bank that day?

A. Yes, ma'am.

Q. Was there anyone with her?

A. No.

Q. Is there any reason why that day stands out to you?

A. Yes, ma'am.
Q. What was that reason?
A. Because she brought a large amount of money in a bag.
Q. What kind of bag?
A. A plastic bag.
Q. You said you're the branch manager.
A. Yes, ma'am.
Q. Your office, where is your office located in the bank?
A. In the front of the branch.
Q. Did you see her come in that day?
A. Yes.
Q. Did you see her with the bag?
A. Yes.
Q. What did you do when you saw that?
A. Well, I seen her come up to one of my new tellers.
Q. What did you do when you saw her come up to one of your new tellers?
A. I walked over there.
Q. Why?
A. And -- well, because that was unusual with that much money in a bag, cash.
Q. Describe the money. Let me -- I'm sorry. Let me back up.
A. Okay.
Q. So you go over to the teller window.
A. Uh-huh.

Q. Did you tell the teller that you'd take care of it?
A. Uh-huh.
Q. So you took care of going through the process with Mrs. Mann?
A. Uh-huh.
Q. Is that a yes?
A. Yes, ma'am.
THE COURT: That's what I was about to say.
THE WITNESS: I'm sorry.
THE COURT: Ms. Crow, we have a court reporter, and she has a hard time picking up uh-huh or huh-uh. So please say yes or no.
BY MS. WHATLEY:
Q. Take a deep breath.
A. Okay.
Q. Did you see the money that day?
A. Yes, ma'am.
Q. What kind of bag was it in?
A. A plastic bag.
Q. What color? Do you remember?
A. Not exactly.
Q. Describe the money.
A. The main thing that stuck out to me was the smell, the odor.
Q. What did it smell like?

A. Musky.
Q. Was it just a whole bunch of bills thrown in a bag together?
A. No, it was strapped.
Q. And describe the straps.
A. Well, in the straps, there were hundreds, 20s, some even had 50s, and they were mixed. So I had to separate in denomination.
Q. Now, when you get money from a bank, usually are all -- in money strapped together, is it all hundreds together, all 20s together, and all 50s together?
A. Yes, ma'am.
Q. And this was not that way?
A. No.
Q. Describe the straps. Were they Simmons Bank straps?
A. No, they weren't.
Q. Were they all the same kind of straps?
A. No, they were brown, actually. I don't know where they came from.
Q. What did she want to do with the money?
A. Deposit it.
Q. Did she tell you how much money she expected it to be?
A. I don't remember her telling me that. She may have.
Q. Does the bank have security cameras over the teller stations?

A. Yes, ma'am.
Q. What is the purpose of that?
A. Well, so that it can identify the customer that's in your window and also to see what's going on and the whole transaction.
Q. Also kind of, you're checking on the customer, but you're also checking on your employees?
A. Uh-huh.
Q. Is that a yes?
A. Yes, ma'am.
Q. And is that recorded? The security cameras, do they record what happens?
A. Yes, ma'am.
Q. And did you find the recording from that date and turn it over to the United States?
A. Yes, ma'am.
Q. And did you also turn over images that were printed off of that recording to the United States?
A. Yes, ma'am.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:
Q. I've just handed you Government Exhibit 197 and 198-A through D. Have you seen those before?
A. Yes, ma'am.

Q. Let's look at Government Exhibit 197. What is that?
A. I had this tape printed off the whole transaction, and we had made -- or that she had done that day of me and her with the money.
Q. So that's the entire transaction.
A. Yes, ma'am.
Q. Did you -- Government Exhibits 198-A, B, C, and D, are those pictures from that tape?
A. Yes, ma'am.
Q. And do the Government Exhibits 198-A, B, C, and D fairly and accurately represent images from the security video that was taken on August 21, 2009?
A. Yes, ma'am.

MS. WHATLEY: Your Honor, at this time we move to admit Government's Exhibits 198-A through D.

MR. HENDRIX: No objection.

THE COURT: Received.

(Government's Exhibits 198-A, 198-B, 198-C, and 198-D received in evidence.)

BY MS. WHATLEY:
Q. Let's look at Government 198-A, please. Who is in this picture?
A. That is me and Ms. Mann.
Q. You had longer hair then.
A. Yeah, I did.

Q. And is the money on the counter?
A. Yes, ma'am.
Q. Can you touch the screen and circle, kind of a big circle, where the money is?
A. Do I need to touch it with something?
(Witness complies.)
Q. And if we can go down farther on this document, what was the date and time of the event?
A. August 21, 2009.
Q. At what time?
A. At 12.
Q. It says a.m. Y'all aren't open at a.m., are you?
A. Huh-uh.
Q. Was it about noon that day?
A. Uh-huh.
Q. Is that a yes?
A. Yes, ma'am.
Q. You're going to get us both in trouble.
A. I know. I'm sorry.
Q. Let's go to 198-B. Is this just another picture from the same transaction?
A. Yes, ma'am.
Q. And 198-C. Is this another picture?
A. Yes, ma'am.
Q. Did you try to zoom in on the money in one of the pictures?

A. I did.
Q. Let's look at 198-D. Is that the zoomed-in picture?
A. Yes, ma'am.
Q. There appears to be someone else behind the counter with you at this point in time. Who was that and why was that person there?
A. I had asked someone else to come over with me because she had walked away.
Q. Who is "she"?
A. Ms. Mann.
Q. So she didn't stay at the teller counter the whole time?
A. No, ma'am.
Q. Did you count the money?
A. Yes, ma'am.
Q. How many times?
A. Probably about three.
Q. How much money was it?
A. 50,000.
Q. Did Mrs. Mann disagree with that amount?
A. No, ma'am.
Q. Did she say where the money had come from?
A. Her house.
Q. What did you do with the cash?
A. I deposited it in their checking account.
MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification as Government Exhibits 199-A through C. Have you seen these before?

A. Yes, ma'am.

Q. And what are they?

A. It's a copy of the transaction that we made for the 50,000: Deposit slip.

Q. And what is 199-B?

A. It's the cash in that went with the deposit slip.

Q. And 199-C?

A. This is a copy of their statement showing where the deposit did go in.

Q. And are all of these documents kept in the normal course of business at Simmons First Bank in Russellville?

A. Yes, ma'am.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 199-A through C.

THE COURT: Received.

(Government's Exhibits 199-A, 199-B, and 199-C received in evidence.)

BY MS. WHATLEY:

Q. Let's look at 199-A. What is this?

A. A deposit slip.

Q. It shows cash in the amount of $50,000?
A. Yes, ma'am.
Q. And the date of the transaction?
A. 8/21/09.
Q. And let's go through these pretty quickly. 199-B. Is that just the cash in?
A. That's the cash in.
Q. What is a cash-in ticket?
A. Showing that we took cash in other than a check. It shows the amount and the time and date.
Q. The transaction ended at 12:27?
A. Yes, ma'am.
Q. Let's look at 199-C. What is this?
A. A statement.
Q. What's the date on the statement?
A. 9/01/09.
Q. We can go down to the deposit section. Does this show the $50,000 deposit?
A. Yes, ma'am.

MS. WHATLEY: Your Honor, may I have one moment?

THE COURT: You may.

BY MS. WHATLEY:

Q. If we can look at Government Exhibit 186-A, please. Is this the type of bag she came in with?
A. The plastic one, yes.

Q. Is it the same one or a similar one, or do you know?
A. It's similar.
Q. Let's look at 186-B. Is this how the money was packaged when it got to the bank?
A. Yes, ma'am.
Q. The same straps utilized?
A. The brown straps, yes. I do not remember writing on them.
Q. What about the yellow straps?
A. There may have been some of those.
Q. But the straps you looked at, you don't recall there being writing on them?
A. Huh-uh. No, ma'am.
Q. And let's look at 186-D. Do you recall straps like that with writing on them?
A. No writing, but I do recall straps like that.
Q. The account that we're talking about, 9723072, have you reviewed the activity on this account?
A. Yes, ma'am.
Q. And are there any regular large deposits that go into this account?
A. Yes, ma'am.
Q. And what is the amount of that deposit?
A. Around 18,000.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government's Exhibit 200-A through L. Have you seen these before?

A. Yes, ma'am.

Q. What are they?

A. They're bank statements.

Q. For what time period, starting date and ending date? Starting date for the first one, ending date for the last one.

A. August 01, '08. And then August 3, '09.

Q. So for a year?

A. Yes, ma'am.

Q. And are these account statements kept in the normal course of business at Simmons Bank?

A. Yes, ma'am.

Q. And have they actually been certified as such?

A. Yes, ma'am.

MS. WHATLEY: Your Honor, at this time we move for the admission of Government Exhibits 200-A through L.

MR. HENDRIX: No objection.

MR. DUDLEY: I do. May I approach, your Honor?

THE COURT: You may.

[Bench conference reported as follows:]

MR. DUDLEY: I object on relevance grounds. I mean, they've gone everywhere in this case, and now it looks to me

like they're trying to show these are rich folks. What's the relevance of how much money they have in the bank?

MS. WHATLEY: A couple of things make this relevant, your Honor. Number one, it shows that they have more than $50,000 available to them in August of '09. And, secondly, it shows -- I believe Mr. Hendrix's cross the other day was regarding telephone calls, that they're disposing of assets because they don't have any money coming in, and this shows that they have $18,000 coming in on a regular basis. So that's the relevance. And it also shows the $50,000 was above and beyond.

MR. DUDLEY: She's already got the 50,000 through the other exhibits. I don't remember the -- she said it was you that did that one.

MS. WHATLEY: He did, I promise.

MS. CASSINELLI COUCH: But that was in some of the phone calls that the government presented. But, I mean, this is -- this doesn't -- this is the money that they found in the house. They're proving that. So I don't know why going through bank statements makes that any more or less what happened when they did the search.

THE COURT: Her position on the bank statements is that that shows that they had a routine deposit of 18,000 or something which would indicate that they were not suffering, didn't need to sell off assets, which means that the phone calls could not have been made for that purpose. I think that's what

she is saying.

MS. WHATLEY: Right. Contrary to the inference that Mr. Hendrix gave the jury the other day.

MR. HENDRIX: Oh, there's got to be more than an inference. You've got the phone calls where he is disposing of his assets. No inference. I just don't get it.

MS. WHATLEY: But Mr. Hendrix stated because the clinic was shut down, they had no money coming in.

MR. HENDRIX: I didn't say that.

MS. WHATLEY: You did.

MS. CASSINELLI COUCH: That was from the defendants' position, and they've presented that and they've presented letters to the board and the theory that he was losing money and that's why he would have done that. This is turning their theory around, and they're introducing bank statements that contradict how they started out.

THE COURT: I think if it's offered for the purpose that she says that it goes to show that they had money coming in, therefore, they didn't need to dispose of assets, I think it may cut against the idea that they needed the license back. But that's for argument. I think it's relevant. Overruled.

[Continuing in open court:]

THE COURT: They're received over the objections of the defendant.

(Government's Exhibits 200-A through 200-L received in

evidence.)

BY MS. WHATLEY:

Q. How often does this deposit occur?

A. This one? Every month.

Q. And do you know what it's for?

A. New York Life, I think. No. No, no. I'm sorry.

Q. If we can look at Government Exhibit 200-A.

A. Yes, I think I'm correct.

Q. And let's just look at the date on this is what?

A. On this statement?

Q. Yes.

A. On that one, it is August 1, '08.

Q. Let's go to the deposit section. And what is the date of the deposit?

A. 07/07.

Q. And it's --

A. And it's $18,603.50, and in the description, you can see where it says NL, NYL, which I think is short for New York Life.

Q. And just to kind of hurry things along, each one of these, 200-A through 200-L, does it have at least one deposit in excess of $18,000 referencing for NYL?

A. Yes, ma'am.

Q. So they have money coming in every month.

A. Yes, ma'am.

Q. And the $50,000 was above and beyond that?

A. Yes, ma'am.

MS. WHATLEY: No further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q. Ms. Crow, how are you?

A. I'm good.

Q. Just a few quick, quick areas. How long have you been branch manager?

A. About ten, 11 years.

Q. So you've known the Manns for a good, long time; is that right?

A. Yes. I wouldn't say I really knew them, no.

Q. And I guess -- well, as customers; right?

A. Right.

Q. And just so we're clear, I guess Ms. Whatley was asking you about a reoccurring $18,000 deposit into this Simmons account.

A. Yes.

Q. Correct?

A. Uh-huh.

Q. And it's from New York Life?

A. Yes.

Q. Which is an insurance company?

A. Yes.

Q. Which could very possibly be a disability insurance policy

paying off on a reoccurring basis, $18,000 a month?
A. I have no idea.
Q. Understood. I think your direct testimony was is that this transaction with Ms. Mann you found unusual? Was that the right word?
A. Yes.
Q. And why was it unusual? Because of the amount?
A. Yes.
Q. Okay. Did you go back and do any -- looking into the past to see if there had been any similar transactions involving either Dr. Mann or Mrs. Mann?
A. Did I go back on that day?
Q. Since now have you gone back and looked prior to August of '09 when this $50,000 transaction occurred to see if there had been any similar types of transactions that the Manns conducted with the bank?
A. In cash?
Q. Yes.
A. No.
Q. You have not?
A. No.

MR. HENDRIX: May I approach?

THE COURT: You may.

BY MR. HENDRIX:
Q. You're familiar with a CTR, a Currency Transaction Report

form?
A. Yes, I am.
Q. Could you explain to the ladies and gentlemen of the jury what a CTR, a Currency Transaction Report, is.
A. What that is is if it's reported anything that's over 10,000.
Q. In cash.
A. In cash money.
Q. A CTR is if I take $10,000 or more cash to the bank, the bank has to report that to the IRS; right?
A. Yes.
Q. So sort of like we've learned in this trial about firearms, it's so the government can keep track of large deposits of cash; right?
A. Yes.
Q. So they make sure that they're getting their tax money; right?
A. Right.
Q. Gotcha. Would you look at the first one, and I've highlighted the date on that. Would you tell us the date?
A. The date is 09/08/2005.
Q. So --
A. September 8, 2005.
Q. 2005. And that is a cash transaction with the bank?
A. It is.

Q. And it's your bank, Simmons; right?
A. Yes.
Q. And how much is that cash transaction?
A. 50,000.
Q. And is that a cash in or a cash out?
A. That's a cash out.
Q. That's a cash out.
A. Uh-huh.
Q. So we know because for IRS purposes the Manns reported that somebody -- and I've forgotten the date again already. September of '07?
A. September 08, '05.
Q. September 8 of '05?
A. Uh-huh.
Q. Looks like either Dr. or Mrs. Mann came in and withdrew $50,000 in cash out of the bank account; right?
A. Mr. Mann, yes.
Q. Dr. Mann did?
A. Uh-huh.
Q. Okay. So putting that into perspective of Mrs. Mann coming in with $50,000, it becomes less unusual; right?
A. Not necessarily.
Q. Uncommon. Yeah, it's uncommon that you see a $50,000 cash transaction, but we know it's not the first time; right?
A. Right.

Q. Would you look at the second page, please. Is that another CTR?
A. Yes.
Q. And what's the date on that?
A. July 30, 2007.
Q. And it is a cash transaction with your bank?
A. It is a cash-out.
Q. For?
A. 55,000.
Q. 55,000. And is there a final one?
A. Yes.
Q. And how much is it for?
A. 30,000.
Q. And that looks like to me a cash in and a cash out.
A. A cash in and an out, yes.
Q. So Dr. Mann is coming in with 30,000 in cash and depositing it into the bank; right?
A. Yes.
Q. And there's a corresponding cash out; is that right?
A. Yes.
Q. And, again, do you know -- I gather you really didn't know the Manns, but did you hear about them? They have lots of cars and property and they, you know, would go to shows and --
A. No.
Q. -- use cash?

A. Huh-uh.
Q. You don't know that part about their lives?
A. Huh-uh. No, I don't. I'm sorry.
Q. No, that's quite all right. That's quite all right. Ms. Crow, thank you. That's all I've got.
A. Okay.

THE COURT: Any redirect?

MS. WHATLEY: No, your Honor.

THE COURT: Okay. Ms. Crow, you can stand down.

Ladies and gentlemen, we're going to take our morning break. Like I said, I have a hearing at 12, so I'm going to give you a few extra minutes for lunch. Let's reconvene at 1:15. We'll be in recess until 1:15.

(Recess at 11:51 a.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: March 14, 2011

/s/ Christa R. Newburg, RDR, CRR, CCR
United States Court Reporter

(Proceedings continuing at 1:18 p.m.; jury not present.)

THE COURT: Bring the jury in.

We have two that need to be sworn in?

MR. GORDON: Yes, Your Honor.

(Jury present.)

(Witnesses sworn.)

THE COURT: Call your next.

MR. GORDON: United States calls Pam Falkner.

PAM FALKNER, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. Please state your name for the record.

A. Pam Falkner.

Q. How do you spell your last name?

A. F-a-l-k-n-e-r.

Q. What do you do for a living?

A. I'm a certified public accountant.

Q. How long have you been a CPA?

A. Thirty years.

Q. And do you own your own business?

A. Yes, sir.

Q. What's the name of it?

A. Pam Falkner, CPA.

Q. Makes sense. Where is your business located?
A. I'm at 1310 South Avalon in West Memphis, Arkansas.
Q. Do you live in West Memphis as well?
A. Yes, sir.
Q. How many employees do you have on your payroll?
A. I have five paid employees, and my husband works in the business.
Q. Do you know Dr. Trent Pierce?
A. Yes, sir.
Q. How do you know him?
A. He's a client.
Q. How long has he been a client?
A. Since he opened his practice in 1983.
Q. And what sort of services do you provide for Dr. Pierce?
A. We keep his books monthly. We actually do his payroll and deliver the payroll checks, file his tax return. Over the course of the years, we've done college savings planning for his kids, who are now grown; retirement planning; estate planning.
Q. Did I ask you to provide me with financial information about Dr. Pierce's medical clinic?
A. Yes, sir.
Q. Did you do so?
A. Yes, sir.
Q. Did you provide me with a couple of charts?
A. Yes, sir.

Q. And how was the information in those charts compiled?
A. It was just the numbers exactly from Dr. Pierce's clinic schedule out of his Form 1040 that he filed with the IRS.
Q. Over the past ten years?
A. I think there's 11.
Q. Since 1999?
A. Yes, sir.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to show you what's been marked as Government Exhibit 204-A and 204-B. Are those the charts that you provided?
A. Yes, sir.
Q. And do they fairly and accurately detail Dr. Trent Pierce's medical clinic's finances since 1999?
A. Yes, sir.
MR. GORDON: Your Honor, I would offer Government Exhibit 204-A and 204-B.
MR. HENDRIX: I don't have an objection.
THE COURT: They are received.
(Government's Exhibits 204-A and 204-B received in evidence.)
BY MR. GORDON:
Q. Ms. Falkner, let's look at 204-A, please. What I would

like you to do, first of all, on the top it says "Family Practice Center Schedule C Analysis." What does that mean?
A. These are the numbers from Dr. Pierce's clinic schedule that's part of his 1040 that he files with the Internal Revenue Service on an annual basis.
Q. And for the numbers underneath "gross medical fees," what do those numbers mean?
A. Those are the monies generated and actually deposited into the bank account, the clinic bank account, from his practice of medicine.
Q. And how about operating expenses?
A. Those are the deductible tax expenses that were paid by his clinic, including cash and noncash, I put on his tax return.
Q. How about net income of clinic?
A. That's the difference between the gross medical fees and the operating expenses.
Q. Then the pretax contribution?
A. Those are funds that are not reported on his tax return. They are similar in character to what most people would think of as a 401k. It has to do with Medicaid reimbursement from the State of Arkansas. Dr. Pierce earns that money, but he puts it in what's a deferred compensation plan. So it's funds he's earned, but they are not taxed at that point in time.
Q. Total earnings?
A. Would be the total of the net income of the clinic and the

deferred comp.
Q. So gross medical fees, that's the amount of money that the clinic is bringing in?
A. Actual deposits into the bank, yes, sir.
Q. Let's look at Government Exhibit 204-B. Does this bar graph show the trends over the past 11 years for the clinic's gross medical fees?
A. Yes, it does.
Q. It shows there was a decline between 2008 and 2009. What was the difference there?
A. The ability of Dr. Pierce to practice medicine after the bombing.
Q. Okay. Can you tell us the exact dollar figure?
A. The dollar figure, if you go back to the first chart, the deposits in 2008 were $1,098,073. And in 2009, they were $828,729.
Q. What's the difference there?
A. That difference is $269,343, for a 24.53 percent drop.
Q. Between 2008 and 2009, did the net income of the clinic also drop?
A. Yes, sir.
Q. By how much and by what percentage?
A. $155,695. And that was a drop of 28.81 percent.
Q. How about the total earnings?
A. Oh, I'm sorry. That's the number I just gave you, the

total earnings. The net income actually dropped from 519,901 to 362,705, for a difference of 157,195. And that's a 30 percent drop. I'm sorry.

Q. Down at the bottom of 204-A, there's a line with double asterisks. It says "Clinic without fees or salary of Dr. C.W. Peeples." Who is Dr. Peeples?

A. Dr. Peeples is a physician that was hired in August of 2009 as an employee of Dr. Pierce's clinic who saw patients and was paid a salary. So if you subtract the fees that he generated and you subtract his correlated salary, that bottom line with two asterisks would be what Dr. Pierce's clinic without that employee generated.

Q. Okay. And why was Dr. Peeples brought into the clinic?

A. Because of Dr. Pierce's inability to see all of his patients.

Q. Before Dr. Peeples being hired as part of the clinic, was Dr. Pierce the only doctor that ever worked in the clinic?

A. Occasionally when Dr. Pierce would go on vacation, he would pay a physician to fill in for a week or so. But other than that, yes.

Q. Okay.

MR. GORDON: No further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Hi, Ms. Falkner.
A. Hello.
Q. I just want to go back over this to make sure I understand your testimony. In the chart that you are reviewing --
A. Uh-huh.
Q. Where you have your gross medical fees, operating expenses, net income of clinic?
A. Right.
Q. The first column, gross medical fees, did you testify that those were all the deposits for the whole clinic regardless of what the item was? That's not just Dr. Pierce's income generated. It's all the deposits. Right?
A. Dr. Pierce is the only doctor in the clinic.
Q. But you counted all deposits for the clinic. Is that right?
A. Generated from medical fees. Dr. Pierce would be the only source.
Q. But, I mean, you included all deposits for the clinic. I ask this, because down below, where you have the fees without Peeples, I just want to be sure we have all the deposits. Correct? Then you drop down, and you've got where you have taken Dr. Peeples' deposits out.
A. Correct.
Q. Is that right?
A. Yes.

Q. The same for operating expenses. All expenses of the clinic would have been listed in that column?
A. Yes.
Q. And these numbers would have been taken off the tax returns. Is that correct?
A. Yes.
Q. And just so I'm clear, Dr. Peeples would be included in the number for 2009 with one asterisk?
A. Correct.
Q. Okay. Thank you.

THE COURT: Anything else?

MR. GORDON: No, Your Honor.

THE COURT: You can stand down.

THE WITNESS: Thank you.

THE COURT: Call your next.

MS. WHATLEY: Melissa Pierce. She's previously been sworn, Your Honor.

MELISSA PIERCE, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. WHATLEY:
A. Hi.
Q. Good afternoon.
A. Good afternoon.
Q. Pull that mike to you.
A. There we go.

Q. Please state your name.
A. I'm Melissa Pierce.
Q. For the record, are you the same Melissa Pierce that testified a little over two weeks ago?
A. I am.
Q. And you understand you are still under oath?
A. I do.
Q. Please remind us where you work.
A. Family Practice Center of West Memphis.
Q. And what is your role at the Family Practice Center of West Memphis?
A. I'm the office manager, nurse manager.
Q. Slow down.
A. Okay.
Q. And when you are the office manager and nurse manager, what does that entail?
A. Supervising employees, ordering supplies, working in patient care day to day. I've been on the business side and clinical side.
Q. You said you order supplies. Are you responsible for the medical supplies that are ordered for the office?
A. Yes.
Q. And what is included when we're talking about medical supplies?
A. Everything that it takes to run the clinic: Injectable

medicines, paper products, laboratory products. I order everything.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. I've just handed you what's been marked for identification purposes as Government Exhibits 205-A through -D, 206-A through -D, 207-A through -C, 208, 209, 210-A through -C, 211-A and -B, 212, 213-A and -B, 214, 215-A through -C, 216, 217-A through -D, 218-A through -C, 219, 220-A through -G, 221-A through -D, and 222. Can you verify that?

A. Yes, ma'am.

Q. Okay. And what are these? Just in bulk, what are they?

A. In bulk, these are invoices where I have ordered supplies and paid for supplies for the clinic.

Q. And do you maintain these invoices in the normal course of business of the clinic?

A. Yes.

Q. And do they fairly and accurately show how much you were billed by the various entities and the time period?

A. Absolutely.

MS. WHATLEY: Your Honor, at this time we move for admission of all those exhibits I just read.

MS. CASSINELLI COUCH: No objection.

THE COURT: They are received.

(Government's Exhibits 205-A through 205-D, 206-A through 206-D, 207-A through 207-C, 208, 209, 210-A through 210-C, 211-A, 211-B, 212, 213-A, 213-B, 214, 215-A through 215-C, 216, 217-A through 217-D, 218-A through 218-C, 219, 220-A through 220-G, 221-A through 221-D and 222 received in evidence.)

BY MS. WHATLEY:

Q. We'll try to do this as quickly and painlessly as we can with this many.

A. Sure.

Q. Where do you get your vaccines from?

A. I order vaccines from Sanofi Pasteur. I order them from Anda.

Q. And where is Sanofi Pasteur located?

A. Pennsylvania.

Q. Let's look at Government Exhibits 205-A. This is the packet for 205-A through -D. Correct?

A. Yes. That's a Sanofi Pasteur vaccine invoice.

Q. And if we can go to 205-B.

A. Sanofi Pasteur invoice for vaccine. Well, actually that's a blood-drawing chair. I ordered a blood-drawing chair.

Q. You ordered it from Sanofi Pasteur?

A. Yes, uh-huh.

Q. And they are located in Pennsylvania?

A. Yes.

Q. If we can go to the invoice date.

A. The invoice date, 12/12 of 2008.
Q. Have you been doing business with Sanofi Pasteur for a while?
A. Oh, years.
Q. If we can go to 205-C, is this just another --
A. Vaccine.
Q. And how is the vaccine sent to you? What's the shipping method?
A. It's sent in a Styrofoam cooler with dry ice.
Q. And at the very top of this document, how did Sanofi Pasteur send it to you?
A. Fed Ex. They have to send it Fed Ex.
Q. Why do they have to send it Fed Ex?
A. Well, because it is temperature controlled. And it even has a temperature unit inside it that lets you know the integrity of the vaccine has not been compromised by environmental conditions.
Q. And going to 205-D.
A. It's a monthly statement from Sanofi Pasteur.
Q. It's actually sent to the medical clinic. Correct?
A. Yes.
Q. That's the address for the clinic?
A. Right, right.
Q. And going down to the very bottom of this document?
A. Well, obviously they changed their payment place to

Chicago, Illinois. But they are located in Swiftwater, Pennsylvania. This is just about where do you want me to send the money.

Q. At the very bottom of this document, it actually says "Swiftwater, Pennsylvania"?

A. Swiftwater, Pennsylvania, yes.

Q. How do you pay your bills for the clinic, Mrs. Pierce?

A. By check.

Q. Do you send them through the mail?

A. Yes.

Q. Do you purchase any items from a company called Henry Schein?

A. Yes. I've done business with Henry Schein for over 20 years.

Q. What is Henry Schein?

A. It's a huge medical supply house. They provide, you know, tables, paper. They provide hemoglobin A1c cartridges for my machine. I get syringes, needles, Kling to wrap up, Band-Aids, cotton balls, alcohol preps.

Q. Where is Henry Schein located?

A. Port Washington, New York.

Q. If we can look quickly at 206-A, is this an invoice from Henry Schein?

A. It is.

Q. What's the statement date on this?

A. The statement date is 12/20/08.
Q. And where do you have to send your payments to?
A. Melville.
Q. Over on the right-hand side of the document, do you see where it says --
A. Oh, Palestine, Illinois. Remit to. Okay.
Q. Then up at the top, is that where you were reading Melville?
A. Right.
Q. 206-B?
A. B. Yeah, I'm with you.
Q. What is this?
A. It's a statement from Henry Schein. I ordered something that cost $92.87.
Q. Usually your payments to Henry Schein are quite larger than $92.87. Correct?
A. Yes, ma'am.
Q. How much would you say you spend monthly with Henry Schein?
A. Oh, probably about $2,000 a month if you average it up.
Q. You've been doing business with them for how long?
A. Over 20 years.
Q. Going to 206-C, is that just another statement?
A. It is, yeah.
Q. The same for 206-D. Correct?
A. D, yes.

Q. You mentioned a company called Anda. What is Anda?
A. It's an injectable health warehouse. They provide injectables. I actually get a good price on products from them.
Q. Are you talking about a shot?
A. Yes, injectables, uh-huh, like antibiotic, Rocephin. I order a lot of Rocephin injections, injectable medicine from them. I get the tetanus-diphtheria vaccine from them. I get the hepatitis B vaccine from them.
Q. How long have you been doing business with Anda?
A. Ten, 11, 12 years, something like that, over ten years.
Q. And let's look briefly at 207-A.
A. It's an invoice where I've ordered Rocephin from Anda. I can see that on the back.
Q. Let's go to 207-B.
A. Rocephin and Phenergan. It's injectable medicine. Rocephin is an antibiotic. Phenergan is for nausea and vomiting.
Q. At the top of that page, where is Anda located?
A. Weston, Florida.
Q. Going to the bottom of that page --
A. I mail the checks to Atlanta, Georgia. That's where you remit to.
Q. Yes. Is that what's shown on the bottom left-hand corner of the document?
A. Yes.

Q. Just for the record, is 207-C just another invoice from Anda?
A. It is.
Q. What is Primary Care Diagnostics?
A. Primary Care Diagnostics is the people that my EKG machine came from. It's a laptop EKG. I buy the little leads that go on somebody when you do an EKG. I bought the machine and the leads. And she -- I talk to them if I have problems with my machine.
Q. Let's look at Government Exhibit 208. Where is this company located?
A. They are over in McKenzie, Tennessee.
Q. And you said you bought the EKG machine from them?
A. Yes.
Q. When did you buy it from them?
A. Probably maybe two and a half, three years ago.
Q. You still do business with them?
A. Yes.
Q. Does your clinic treat children?
A. Yes, we treat children.
Q. Do you give them anything after their appointments or at the time of their appointments --
A. Stickers.
Q. -- to make them happy?
A. Stickers.

Q. Where do you buy your stickers from?
A. Spartanburg, South Carolina.
Q. What's the company?
A. Smilemakers.
Q. Let's look at Government Exhibit 209. Is this an invoice for that company?
A. It is.
Q. What's the date on it?
A. 1/27/09.
Q. Do you have medical equipment in the office?
A. Yes.
Q. Like what?
A. We have an EKG machine. We have an x-ray machine. We have -- how technical do you want? We have exam tables. We have lamps. We have scissors, forceps, sutures.
Q. Where did you get your x-ray machine from?
A. Our x-ray machine is serviced by folks out of Memphis. This is actually a servicing for our processor. We have an x-ray processor too.
Q. And what company do you use to service your x-ray processor?
A. Quality Control Consultants. They come from Memphis over once a month to service the processor. You change the chemicals out, make sure that the pH is correct in it so that the films develop correctly.

Q. And do you get billed for that?
A. Yes.
Q. So you get billed for the processor servicing fee above and beyond what you pay for the x-ray machine?
A. Oh, yes, uh-huh. This is a monthly thing. They come once a month and do it for me.
Q. Government Exhibit 210-A, is this one of the invoices?
A. It is.
Q. And the same for 210-B and 210 -- I guess 210-B is also just an invoice. Correct?
A. It is.
Q. How long have you been doing business with Quality Control Consultants?
A. Ever since we got our x-ray machine, so 15 years, 16 years.
Q. 210-C is also an invoice for Quality Control Consultants. Correct?
A. It is.
Q. What is an x-ray badge?
A. Trent wears it clipped to his lab coat. It measures to make certain that our x-ray machine does not emit radiation that is above and beyond what is allowed. And it's clipped to his lab coat.
Q. Just for the record, you said "Trent." You are talking about Dr. Trent Pierce, your husband?
A. Yes.

Q. And does the x-ray badge have to be serviced and monitored?
A. Yes. We -- yes. It's required, yes. And you want to do that.
Q. And what is the company that does the monitoring of the radiation?
A. Landauer. They mail you the badge, and they mail a control badge. Trent wears it. Then at the end of the quarter, you take it off and you mail it back to them. And they read the amount of radiation measured against the control badge. It's a little dosimeter kind of thing.
Q. If we can look at Government Exhibit 211-A, is this an invoice for the company?
A. It is.
Q. And where is the company located?
A. Glenwood, Illinois.
Q. How often -- how many times a year do you get billed by Landauer?
A. They bill you by the month. But they send you a badge each quarter.
Q. Does Dr. Pierce ever have to take proficiency tests?
A. Yes. He's board certified by the American Academy of Family Physicians.
Q. What's the purpose of taking the proficiency test?
A. It is -- it's to make certain that the -- this one is for proficiency testing, for lab proficiency testing. This is to

make certain that all of the in-house laboratory that's done in our office meets a CLIA standard. It's quality control.
Q. Okay. And who administers these tests?
A. Trent completes these tests. The American Academy of Family Physicians, their proficiency testing division does this. Trent completes these and answers the questions and does the actual -- they send you a sample. You look at it, and then you mail it in to make sure that you are getting the correct answer. It's just a way of making sure that the doctor is actually performing the test correctly.
Q. And you are actually billed for that. Correct?
A. Yes, yes.
Q. Let's look at Government Exhibit 212. Is this an invoice for the lab proficiency test?
A. It is.
Q. I'm not proficient at saying "proficiency."
A. It is.
Q. Does the clinic ever have biohazard trash?
A. Yes, ma'am.
Q. And what is that?
A. Every syringe, every bloody bandage, any kind of anything that touches a patient that has any kind of secretion or potential for infection is considered biohazard trash, and you put it in red bin containers. I'm sure you've seen it in hospitals. And you appropriately dispose of it so that no one

is harmed or the environment is not harmed.
Q. How do you dispose of your biohazard trash?
A. We use red biohazard bags, and we use large red biohazard containers. We -- I have a contract with Stericycle to pick up our biohazard trash.
Q. Do you know where they take that trash?
A. They actually pick it up. They take it to Memphis, Tennessee.
Q. Let's look at Government Exhibit 213-A. Where is Stericycle located?
A. Their home office is in Louisville, Kentucky.
Q. How often do they come by and get your trash?
A. About every six weeks, maybe eight, just depends. I'm on a rotating schedule with them.
Q. Is 213-B just another invoice?
A. It is.
Q. Do you also have to purchase office supplies separate and apart from medical supplies?
A. Yes.
Q. Have you ever heard of a company called Quill?
A. Yes.
Q. And what is Quill?
A. It's a large office supply house that handles things in bulk that they will drop-ship to you. Obviously, this exhibit that I'm holding is for copy paper and paper towels, hand towels

in the room.
Q. How long have you been doing business with Quill?
A. Years.
Q. Let's look at Government Exhibit 214. Going to the top of the page, where is Quill located?
A. Philadelphia, Pennsylvania.
Q. You said you've been doing business with them for years?
A. Yes. At least ten.
Q. We talked about some medical equipment that you have in the office.
A. Right.
Q. Do you also have office equipment in the office?
A. I do. We have a copy machine that's on lease.
Q. Where did you lease that copy machine from?
A. Well, it's a two-part thing. Part of the machine, the machine is leased out of Atlanta. The supplies are leased out of Memphis.
Q. Look at Government Exhibit 215-A. What is this?
A. This is the -- this is the lease payment, an invoice showing the lease payment for the copy machine. It's done monthly.
Q. How long have you been leasing a copy machine from GE Capital out of Atlanta?
A. This is my third copy machine. This one is going on three years.

Q. Let's look at Government Exhibit 215-C. I believe you said you also have it serviced?
A. Yes.
Q. And where is it serviced out of?
A. That would be XMC provides the supplies. But the actual machine is -- 215-B is, again, showing the actual machine out of Atlanta.
Q. Then 215-C is the supplies?
A. Is the supplies, the toner, the drum. They count the copies. I'm on a contract for so many copies. If you do one too many, they charge you.
Q. Tell us again where the clinic is located.
A. 301 West Polk, West Memphis, Arkansas.
Q. Is that a stand-alone building?
A. It is.
Q. And does that building have an alarm system attached to it?
A. It does.
Q. And which company monitors that system for you?
A. Protections Unlimited out of Cordova, Tennessee.
Q. Let's look at Government Exhibit 216. Is this an invoice from --
A. Protections Unlimited, yes, for the monthly monitoring fee.
Q. About how often are you billed for this service?
A. We are billed monthly. I pay it once a year.
Q. How long have you been doing business with Protections

Unlimited?
A. Ever since we built the building.
Q. Still doing business with them?
A. Yes.
Q. Does the clinic have an answering service?
A. We do.
Q. How long have you been using that answering service?
A. We've used Answering Memphis -- I think the first two or three years Trent was in practice he used Answering West Memphis, and we switched to Answering Memphis. We've been in practice 27 years, so probably 25 years roughly.
Q. Let's look at 217-A. Where is Answering Memphis located?
A. It's in Germantown, Tennessee.
Q. Is that a suburb of Memphis?
A. It is.
Q. Looking at quickly 217-B, -C and -D, are those also invoices from Answering Memphis?
A. Yes.
Q. Do any pharmaceutical reps ever come to the office?
A. Yes.
Q. And where are they out of?
A. Depends on the pharmaceutical company. Because we live next to the bridge, most of our pharmaceutical reps come out of Memphis or northern Mississippi. We have a very few that come from Jonesboro, Arkansas.

Q. Does Dr. Pierce or one of his nurses, I guess even you when you are having to step in in that role, do you ever have to take specimens from patients for analysis?
A. Yes, ma'am. We draw blood on patients and send it out.
Q. Which entity does the lab analysis?
A. American Esoteric Laboratory in Memphis.
Q. And you said it's in Memphis?
A. It is.
Q. How do the specimens get from your office in West Memphis to their office in Memphis?
A. We draw a patient's lab. And we have two pickups a day from AEL, which is American Esoteric Lab. They come at 1 o'clock and pick up our laboratory. And they come at the end of the day, usually about 7:30, 8 o'clock, and pick up our lab.
Q. Let's look at Government Exhibit 218-A. Is this a redacted invoice?
A. It is.
Q. And what has been redacted? Just the patient names?
A. Yes.
Q. How do you pay --
A. AEL? I pay them by check.
Q. And how long have you been doing business with AEL?
A. Oh, it's a match made in heaven. Forever. At least 20 years.
Q. How do you receive the reports from AEL telling you what

the diagnosis is or what the lab --
A. The results of the laboratory, they send it back over our printer in the clinic lab, so we get 24-hour turnaround. If we draw your lab today, they send us the result on the printer the next morning.
Q. Do you have a computer system at the medical clinic?
A. Yes, ma'am, we do.
Q. And what entity provides you with the support for that system?
A. I use Sage out of Tampa, Florida.
Q. Is that both hardware and software support?
A. It is both hardware and software support.
Q. And does Sage bill you for its services?
A. Yes, ma'am.
Q. Let's look at Government Exhibit 219. Is this one of those bills?
A. It is.
Q. They are located in Tampa?
A. They are.
Q. It's not a small bill, Mrs. Pierce.
A. No. But it's a necessary bill, because they are available, you know, to talk to you on the telephone if you have a problem with the software or the hardware.
Q. Do you ever have trouble with your computers?
A. Yes, we do sometimes.

Q. Apart from user error?
A. Occasionally.
Q. When that happens, does Sage actually send someone in to help?
A. Yes, yes. They send a person onsite.
Q. Where does that person come from?
A. Usually from Memphis.
Q. And do they ever provide you support over the phone?
A. Yes.
Q. Where do you call for that support?
A. We call Tampa.
Q. Is Dr. Pierce a provider for insurance companies?
A. Yes.
Q. Are some of those from outside the state of Arkansas?
A. Yes.
Q. How did he become a provider for them?
A. The insurance companies contract with you. You submit an application to be a provider for that particular insurance. They review your credentials, make sure that you are -- you are qualified to provide to their insured folks. And then you are included in their list of providers if you meet their criteria.
Q. What are some of the companies that Dr. Pierce is a provider for?
A. Well, we provide services for people that are insured with Aetna, with UnitedHealthcare, Humana. We participate in lots of

Blue Cross Blue Shield plans. We see patients that are insured with Medicare, Medicaid, Novus. There's many insurance companies.

Q. And are some of those located outside of Arkansas?

A. Yes.

Q. What percentage of Dr. Pierce's practice do you think involves private insurance?

A. We're probably -- we probably see about 15 percent Medicaid, 10 to 15 percent Medicare, maybe about 10 percent self-pay. The rest of our patients have commercial insurance.

Q. And how are claims made to the insurance companies from your office?

A. We file claims electronically.

Q. What about for the federal healthcare companies as well like Medicare?

A. Medicare, Medicaid, we file them electronically. We file all our claims electronically as much as we can.

Q. Is there a company that you use to file those electronically?

A. I use Emdeon as a clearinghouse. All our claims go through the Emdeon clearinghouse.

Q. And where is Emdeon located?

A. They clear in Nashville, Tennessee.

Q. Let's look at Government Exhibit 220-A. What is this?

A. This is just an electronic claims journal that says that

these were the electronic claims sent on the 14th day of January. And you can see the number of claims, and you can see the charges of those claims and the payments that are made. Do you want me to be specific about this? For this particular day that these claims were sent -- and this was probably, you know, I don't know how many days of office visits this included. We do not send electronic claims every day. We send claims usually two times a week. At this particular time we were sending claims on Wednesdays, so we sent 85 Medicare claims, 44 Medicaid claims, 110 commercial claims. And we break our Blue Cross out at 130 claims as well. Commercial claims and Blue Cross claims, they are all commercial claims.

Q. Just so the record is clear, that is 220-A through 220-G are the summaries of your Emdeon claim journals. Correct?

A. Yes.

Q. And those dates are January 14th, '09, through February 11th, 2009. Correct?

A. Yes.

Q. We talked about Sage earlier for the computer work. Do they also have anything to do with the claim payments or claim -- the claims that are made electronically?

A. Yes. I pay -- I pay a flat fee for them to receive my claims and then fan them out to each of the commercial carriers. So 221-A is a statement that shows their fee for my commercial claims and their fee for my government claims, which would be

Medicare and Medicaid. Okay. And then this also happens to show -- I send statements electronically, bills to patients. I sent these through Emdeon, and then Emdeon fans them out to the patient's mailbox. That's what this one was an invoice for.

Q. Tell us again where Sage is located.

A. Sage is in Tampa, Florida.

Q. Now, if a patient is self-pay or has a copay, how are those payments made in the office?

A. We take cash, check, Visa, MasterCard.

Q. And how are your credit card payments processed?

A. I use Lynx, uh-huh, Credit Corp.

Q. And where is that located out of?

A. Lynx is in Atlanta, I believe. I am not holding an invoice for Lynx. But we have their machine, and I pay a monthly fee to them to process -- to do credit card processing.

Q. Does Dr. Pierce have to maintain medical malpractice insurance?

A. Yes, he does.

Q. What company do you use for that?

A. We use State Volunteer.

Q. Let's look at Government Exhibit 222. What is this?

A. This is an invoice for Trent's medical malpractice insurance.

Q. Where is this company located?

A. They are in Brentwood, Tennessee.

Q. Is this paid every year?
A. Yes.
Q. Ms. Pierce, I just have one more question for you. Do you do any business in the state of Arkansas?
A. We do a lot of business out of the state of Arkansas.
Q. No further questions.
THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:
Q. Hi, Mrs. Pierce.
A. Hello.
Q. I think you do some business in the state of Arkansas.
A. Some.
Q. You testified, gosh, three weeks ago now, or awhile back, about, I believe, someone, maybe Dr. Robert Shull, that stood in for your husband when he went to medical board meetings?
A. Yes.
Q. Is that right?
A. Yes.
Q. That's been going on for a long time. Right?
A. Yes.
Q. Then there was also another doctor who served at the clinic during '09 to cover for your husband as well; is that right, Dr. Peeples?
A. Yes.

Q. And I assume that you continue to do business with all these companies that you've just gone through these invoices. Is that right?
A. Yes, yes.
MS. CASSINELLI COUCH: May I have just a moment, Your Honor?
No further questions.
THE COURT: Any redirect?
MS. WHATLEY: No, Your Honor.
THE COURT: You can stand down.
Call your next.
MR. GORDON: United States calls Sue Rudd.

SUE RUDD, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. GORDON:
Q. Good afternoon, ma'am.
A. Hi.
Q. Can you state your name for the record.
A. Mary Sue Rudd.
Q. Spell your last name for us.
A. R-u-d-d.
Q. Where do you work, ma'am?
A. Dr. Trent Pierce's office.
Q. What's the name of his office?
A. Family Practice Center of West Memphis.

Q. How long have you worked there?
A. Twenty-two years.
Q. What do you do at the clinic?
A. I'm the office manager for the business section.
Q. Ms. Rudd, do me a favor. Either scoot up or pull that microphone a little bit closer. What do you do as the office manager?
A. I buy office supplies and manage the girls in the office and make sure that everything is running smoothly for Dr. Pierce and Melissa.
Q. How many employees are there at the clinic?
A. Ten.
Q. And when did you join the clinic?
A. In 1987.
Q. How many employees were there then?
A. Four.
Q. Will you give us the address of the office?
A. 301 West Polk, West Memphis, Arkansas.
Q. Where in Arkansas is that?
A. It's on the border of Memphis, Tennessee, about six miles before you get to the Mississippi River to cross Tennessee, into Tennessee.
Q. What is the largest big city near West Memphis?
A. Memphis, Tennessee.
Q. How far away is the state of Mississippi from West Memphis?

A. About 30 minutes.
Q. How about the state of Missouri?
A. About 60 minutes away.
Q. As the office manager, are you in charge of the office supplies?
A. Yes.
Q. Where do you buy those from?
A. In Memphis. I go to Office Depot, OfficeMax and Sam's.
Q. Why do you go to Memphis?
A. Because the supplies that we need are more accessible for me in Memphis, and they are cheaper.
Q. How often do you go buy business supplies?
A. About once a week.
Q. Is there a particular day?
A. On Wednesday afternoons.
Q. What are some of the things that you buy in Memphis?
A. I buy anything from copy paper, printer paper, toners for the fax machines and the computers and paper towels, all the way down to paper clips.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:
Q. Ms. Rudd, I'm going to show you what's been marked as Government Exhibits 201-A through 201-E. Did you look at those before testifying? Did you look at those before testifying?

A. No.
Q. Do you recognize those as receipts from items that you purchased in Memphis for the office?
A. Yes.
MR. GORDON: May I approach the witness again, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Let me take those back from you if you don't mind.
Thank you.
MR. GORDON: Your Honor, the United States offers Government Exhibits 201-A through 201-E.
MS. CASSINELLI COUCH: No objection.
THE COURT: They are received.
(Government's Exhibits 201-A through 201-E received in evidence.)
BY MR. GORDON:
Q. Ms. Rudd, if you would look at your computer screen there, and let's look at Exhibit 201-A. I'm not sure how well this scanned, so we'll find out here.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to hand you 201-A in case you can read that better. Is this a receipt from some business supplies that you

bought for the clinic?
A. Yes.
Q. Where did you buy them from?
A. Office Depot.
Q. In Memphis, Tennessee?
A. In Memphis, Tennessee.
Q. Can you tell the date on the receipt at all?
A. I'm not sure I can.
Q. Can you tell what you bought? I tell you what --
A. I'm sorry. I can't.
Q. Let's not prolong this. Let's look at 201-B.
A. That one is from Sam's.
Q. In Memphis, Tennessee?
A. Yes.
Q. Is the Sam's Club membership in the clinic's name?
A. Yes, it is.
Q. What was the date of this purchase?
A. January the 10th of '09.
Q. And were these all items that you bought for the clinic?
A. Yes.
Q. Let's look at 201-C. Is this also a receipt from Office Depot in Memphis, Tennessee?
A. It is, yes.
Q. Was this a purchase of office supplies?
A. It is, yes.

Q. On what date?
A. 1/12 of '09.
Q. Let's look at 201-D, please. More office supplies from Sam's Club in Memphis?
A. Yes.
Q. 201-E, was this the purchase from OfficeMax in Memphis for your office?
A. Yes, yes.
Q. Can you tell what it was you were buying?
A. I bought a cartridge for the postage meter.
Q. Because of your location on the border of Arkansas and Tennessee, do you have patients that come from outside of the state of Arkansas?
A. Yes.
Q. Are patients required to provide information about themselves when they come to the office for a visit?
A. Yes, sir.
Q. What sort of information?
A. When they come in, they have to sign a sign-in sheet. They are required to give us their name, address and their insurance information and their birthday.
Q. Does the office maintain that information?
A. Yes.
Q. Is that in sign-in sheets?
A. On sign-in sheets, yes.

Q. Was that information loaded into your computer system in 1992?
A. Yes.
Q. Then as new patients have come in, are they also added to the computer system?
A. Yes.
Q. Did I give you a subpoena back in July of 2009 and ask you to provide me with the names and addresses of all your patients who reside outside of the state of Arkansas?
A. Yes.
Q. Did you provide me with that information?
A. I did.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to hand you what's been marked as Government Exhibit 203. Is that the information on out-of-state patients that you gave me?
A. Yes, sir.

MR. GORDON: Your Honor, at this time I would like to offer Government Exhibit 203. However, it does contain patient information, and I would like to offer it under seal.

MS. CASSINELLI COUCH: I would like to see it.

No objection. I agree it should be under seal.

THE COURT: It's received under seal.

(Government's Exhibit 203 received in evidence under seal.)
BY MR. GORDON:
Q. Ms. Rudd, did you go through that list and count up patients from each state?
A. I did.
Q. Are there any patients from Tennessee?
A. Yes.
Q. How many?
A. 1,949 patients.
Q. How about from Mississippi?
A. 404 patients.
Q. Missouri?
A. Two.
Q. Alabama?
A. Thirty-four.
Q. Louisiana?
A. Forty-seven.
Q. Did you total all that up for me?
A. Yes.
Q. What's the total?
A. 2,436.
Q. Just for clarification purposes, if I were one of your patients and I was from Tennessee, and say I came into your clinic ten times for a visit, would I be on this list ten times or just one time?

A. Just one time.
Q. Okay. So it's by patient, not by visits?
A. Right.
Q. Before February 4th of 2009, what were Dr. Pierce's office hours?
A. The office hours were from -- we opened at 8 o'clock in the morning until 12 o'clock. We closed for lunch, opened again at one. And the normal office hour was to 5 o'clock, except on Wednesdays. And on Wednesdays we were there from eight to twelve.
Q. Okay. Now, you mentioned normal office hours ended at five. Would y'all stop booking patients at 5 o'clock?
A. No. We --
Q. Go ahead.
A. We normally scheduled in -- if patients needed to be seen, Dr. Pierce was in the business to take care of patients. He would stay there and let us book him to 6 o'clock, 6:30.
Q. What percentage of the time would you say that patients were scheduled until 6:30?
A. Probably 80, 85 percent of the time.
Q. And that's just when the patients were scheduled. That doesn't account for their treatment and how late you had to stay. Correct?
A. No.
Q. Did you work on the morning of February 4th, 2009?

A. Yes.
Q. Do you remember what time you got to work?
A. I was there at 6:30.
Q. Do you remember hearing an explosion while you were at work?
A. I did, around a little after eight.
Q. How far is the clinic from Dr. Pierce's home?
A. About two and a half to three blocks.
Q. Did Dr. Pierce come in that morning?
A. No.
Q. How did you find out he wasn't coming in?
A. Melissa called the office. And one of the girls answered the phone. And I was on the phone with an insurance company. And Belinda walked over to me and said, Sue, that Melissa wants you to meet her at the hospital. There's been an explosion at their house, and she's going to have to take Trent to the hospital. And I got in the car, and I went to the emergency room. And I stood there until the ambulance got there. And when they brought Dr. Pierce, they rolled him out of the ambulance on a gurney.
Q. Did you see him?
A. I did.
Q. What did he look like?
A. He was charred from head to feet. He was just totally pretty much charred with black. His legs, I just remember

seeing like his pant legs were blown off.
Q. Do you remember him being transferred to a hospital in Memphis?
A. Yes.
Q. Was the whole office there?
A. Yes.
Q. Do you remember what day of the week the bombing occurred?
A. On a Wednesday. Just a minute.
Q. Was the office shut down that day?
A. Yes. We canceled all the patients.
Q. Was it also closed on Thursday, February 5th?
A. Yes.
Q. And Friday, February 6th?
A. Yes.
Q. Because Dr. Pierce was unavailable?
A. Yes.
Q. When did the clinic reopen?
A. On the following Monday.
Q. February 9th?
A. February the 9th, yes.
Q. Did Dr. Pierce come in?
A. No.
Q. Was he still in the hospital?
A. Yes.
Q. How was the clinic able to open that Monday then?

A. Dr. Tommy Wagner came in and saw people, Dr. Pierce's patients, that day.
Q. For the time that Dr. Pierce was in the hospital, did other doctors step up and fill in for him?
A. Yes, sir.
Q. How many doctors?
A. A total of 33 over the period of the time that Dr. Pierce was out of the office.
Q. Where did those doctors come from?
A. All over the state of Arkansas and Tennessee.
Q. And how did that happen? How did the doctors come in to volunteer?
A. Well, several of the local doctors helped me find doctors to come in. They just stepped up to the plate because of what had happened to Dr. Pierce. It was just -- it was just kind of like a miracle that doctors would call the office and want to volunteer their help. It was just amazing, you know, what these people in Arkansas, the doctors in Arkansas, volunteered to do.
Q. Did a local business provide a place for the doctors to eat and stay?
A. They did.
Q. Where was that?
A. At the Holiday Inn in West Memphis. Buddy House owned the Holiday Inn. And he provided housing and food for these doctors that came in that wanted to -- if they came in and had to spend

the night, that he took care of them. He reserved a room especially for the doctors for the duration of the time that Dr. Pierce was in the hospital.

Q. Did the clinic have to close any days because no doctors were available to fill in?

A. Yes.

Q. Can you tell us what days those were, please?

A. We had a Monday afternoon on May the 4th and a May the 7th in the afternoon. And then there was a Tuesday, May the 12th, and we didn't have a doctor scheduled for that day. That was we were closed all day on that day.

Q. During the period that Dr. Pierce was unable to work, did another doctor join the clinic?

A. Yes.

Q. Who was that?

A. Dr. Chester Peeples.

Q. Why was he brought in to the clinic?

A. To help with the overload of the patients because Dr. Pierce couldn't see patients -- as many patients.

Q. Can you tell us when Dr. Peeples started to work full time in the clinic?

A. Dr. Peeples started working on a regular basis July the -- Monday, July the 27th.

Q. Of 2009?

A. 2009, yes.

Q. Is he still employed there now?
A. Yes, he is.
Q. Why?
A. To help Dr. Pierce with the overload so he doesn't have to work as many hours, and he can go ahead and maintain the healthcare of his patients.
Q. When did Dr. Pierce return to work?
A. On September the 1st. It was on a Tuesday, September the 1st, 2009.
Q. How was it having Dr. Pierce back?
A. Excuse me?
Q. How was it to have Dr. Pierce back?
A. Well, it was wonderful. It was just great. But Dr. Pierce, of course, didn't have the stamina to work as long, the long hours that he had prior to the explosion.
Q. Okay. So things have been different since he's been back?
A. Very much.
Q. Tell us how.
A. Well, as I said, Dr. Pierce didn't have -- sometimes he would get really tired by the end of the day or by noon, and then he would have to rest. And it just -- we had a decrease in patients. Of course, even with Dr. Peeples trying to pick up the overflow, it still was not the same because the patient load was down.
Q. Are patients still seen past 5 o'clock?

A. Now we are, yes.
Q. For a while, no?
A. For a while, right. Sometimes we would quit at 4 o'clock so Dr. Pierce could get some rest.
Q. Has Dr. Pierce still had to miss work for surgeries and treatment?
A. Yes.
Q. Has the level of care that Dr. Pierce provides changed at all?
A. No, no.
Q. Just the hours?
A. Just the hours.
Q. Okay. And you mentioned that the number of patients has dropped. When a patient comes in for an appointment, does he or she have to sign in?
A. Yes.
Q. Are the names checked off as they go back and see the doctor?
A. Yes.
Q. Does the office keep those sign-in sheets?
A. Yes.
Q. Did I ask you to provide me with copies of the sign-in sheets from 2008, 2009 and 2010?
A. Yes, you did.
Q. Based upon those sign-in sheets, was a summary of the

sign-in sheets created?
A. Yes.
Q. Did you verify the information contained in that summary is accurate?
A. I did, yes.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Ms. Rudd, I'm going to show you what's been marked as Government Exhibit 202-B. Is that the summary of the patient sign-in sheets from 2008 through 2010?
A. Yes.
MR. GORDON: Your Honor, I would offer Government Exhibit 202-B.
MS. CASSINELLI COUCH: May we approach?
THE COURT: Yes.
(Proceedings at the bench as follows:)
MS. CASSINELLI COUCH: If I understand, this is the chart -- I think it's going to outline the patients that signed in, how many patients signed in, I guess. I would just object to relevance. I mean, I think the clinic is in West Memphis, so how many patients come in and out of the door is not relevant.
THE COURT: What's the relevance of it?
MR. GORDON: Your Honor, for Count 1 we have to show an effect on interstate commerce. We're not only showing an

effect financially but also the effect on the patient, on the patient load, which affects the clinic.

THE COURT: Remind me. I know the interstate commerce element, I know that's why you put on Ms. Pierce and the witness before that to show all that. Is there a financial element to the crime itself? Are you just trying to show the injury to Dr. Pierce or to the victim?

MR. GORDON: Our theory on interstate commerce is that the clinic engages in interstate commerce. And we're showing how the bombing affected the practice of the clinic. We've also shown financially. Now we want to show the actual practice of medicine within the clinic.

MS. CASSINELLI COUCH: I think our position would be, the number of patients that come in and out of the door of the clinic in West Memphis, it can't contribute to interstate commerce. The state is a state. There's no tie-in as far as who entered and exited the door affected interstate commerce. I understood the financial aspect.

THE COURT: I'll overrule it, let you. It's received.

(Proceedings continuing in open court as follows:)

THE COURT: It's received.

(Government's Exhibit 202-B received in evidence.)

MR. GORDON: Thank you.

BY MR. GORDON:

Q. Ms. Rudd, look at your screen again. Let's look at

Government Exhibit 202-B. Is this the summary of the patient sign-in sheets for 2008?
A. Yes.
Q. Broken down by month?
A. Yes.
Q. And number of days worked, what does that mean?
A. Like in January?
Q. Yes, ma'am.
A. We worked 18 days.
Q. Because of the weekends and holidays?
A. Correct.
Q. Okay. Number of patients seen?
A. That's the number of patients we saw during the 18 days that we worked in January.
Q. Then the average number of patients seen per day for the month of January 2008 was?
A. 66.5 patients.
Q. Then what was the total average number of patients seen per day for 2008?
A. Two hundred and thirty-seven.
Q. That's the number of days worked.
A. Worked, yes.
Q. How many patients were seen?
A. 14,299.
Q. For an average of how many patients per day?

A. Sixty.
Q. Let's look at the next page, please. Is this the same information for 2009?
A. Yes.
Q. On the left, February, March, April, May, June, July and August, that is underlined and italicized. Is that because that's the period when Dr. Pierce was not working in the clinic?
A. Correct.
Q. Does it show that despite the efforts of the people that filled in the average number of patients seen per day decreased quite a bit?
A. Yes.
Q. Then July of 2009, there's an asterisk. Is that the month when Dr. Peeples started to work full time in the clinic?
A. Yes.
Q. Despite the addition of Dr. Peeples at that time and his continued employment, the numbers still did not return to the prebombing numbers. Correct?
A. Correct.
Q. What was the average number of patients seen per day for the entire year of 2009?
A. 233.
Q. What was the average number of patients seen for the year?
A. 11,217.
Q. What was the average number of patients seen per day?

A. 44.
Q. 48?
A. I'm sorry. 48.
Q. That's okay. Down from 60 the previous year?
A. Yes.
Q. Let's look at 2010. At the time that you had -- at some point I had to stop asking you for information. Right?
A. (Witness nods head.)
Q. So this reflects the information you gave me up to a certain point. Correct?
A. Uh-huh. Through April, yes.
Q. For these 2010 numbers on page 3, those reflect the number of patients seen for both Dr. Pierce and Dr. Peeples?
A. Yes.
Q. And by these numbers, it's now taking two people to do the work of what Dr. Pierce used to do by himself.
A. Yes.
Q. Is that correct?
A. Yes.
Q. Thank you, ma'am.

MR. GORDON: Pass the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Hi, Ms. Rudd.

A. Hey.
Q. How long did you tell us that you've worked for Dr. Pierce?
A. Twenty-two years.
Q. Twenty-two years. And I believe Mr. Gordon asked you to produce a set of documents reflecting patients that came from out of state?
A. Yes.
Q. Is that right?
A. Yes.
Q. When you ran it, it looks like you ran maybe a search through a computer of some sort?
A. Yes.
Q. And we don't have to get into detail on that. I just am wondering how far back this goes. Are these current patients or --
A. No. These are patients that go back to 1992 in our computer.
Q. Okay. So prior to 1992, were patients input into the computer?
A. They were.
Q. So then would it really go back to the beginning of the clinic?
A. Yes, yes.
Q. What year would that be?
A. I --

Q. Give me a guess.
A. Gosh, probably -- honestly, since --
Q. Years and years and years?
A. Years and years, yes.
Q. I'll take that.
A. Okay.
Q. All right. So these aren't necessarily current patients.
A. Yes.
Q. This is every patient that's come to the clinic --
A. Yes. Pretty much.
Q. -- whenever?
A. Yes.
Q. And I take it from your testimony and other testimony that we've had that maintaining patient care is a priority for all of you and for Dr. Pierce.
A. Yes.
Q. And you managed to stay open with the exception of six days between February and the middle of May?
A. We were -- on the day of the bombing, we closed that day. It was our half-day. We canceled all those appointments. We closed on Thursday, Friday. We opened back on Monday.
Q. So you had two and a half days there.
A. Yes.
Q. I think you told us -- I actually overestimated. You had two and a half days that week, and I think you had maybe two

afternoons and one full day?
A. Yes. On May the 4th, a half-day; May the 7th, a half a day; and on May the 12th we were closed all day because we didn't have doctors -- didn't have a doctor to see the patients.
Q. So about four days roughly?
A. Oh, okay.
Q. I take it you rescheduled those patients?
A. Yes.
Q. And you are not aware of any patients who didn't receive any medical care as a result of this?
A. No.
Q. And Ms. Rudd, I think you testified that you are the one who went to Office Depot and Sam's and all those places. Is that right?
A. Yes. That's right.
Q. I take it you continue to do that?
A. I still do, yes.
Q. And you went through a government exhibit, I think, showing your receipts. It looked like these had when your check cleared written on them too, so you were sure of the dates?
A. Yes.
Q. Is that right?
A. Yes.
Q. And there was -- let's see. And you continued to make these trips in February of '09. Is that right?

A. I did, yes.
Q. In fact, one of these receipts is from February 15th. Would you like to look at it?
May I approach?
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. This is kind of hard to read. That's Government's Exhibit 201-E. Is there a date on that?
A. Yes. 2/15/09.
Q. You carried on the best you could?
A. I did, tried.
Q. And just from having an office myself, I assume that this is not all the receipts that show the purchases that you made.
A. Right. No.
Q. This is just an example?
A. Exactly.
Q. Isn't that right?
A. That's right.
MS. CASSINELLI COUCH: May I have just a moment?
THE COURT: Yes.
MS. CASSINELLI COUCH: No further questions. Thank you very much.
THE COURT: Any redirect?
REDIRECT EXAMINATION
BY MR. GORDON:

Q. Ms. Rudd, after the bombing, had these other 33 doctors not filled in for Dr. Pierce, what would have happened to the clinic?

A. It would have had to have closed.

MR. GORDON: Thank you.

THE COURT: Anything?

MS. CASSINELLI COUCH: No further questions.

THE COURT: You can stand down, Ms. Rudd.

How many witnesses do we have left? Do we have two, or is it one?

MR. GORDON: One or two, Your Honor.

THE COURT: That's fair.

MR. DUDLEY: That's an evasive answer.

MR. GORDON: That's a lawyer's answer.

THE COURT: That's fair. We have been going -- what is it -- an hour -- when did we come back? 1:15. We haven't been going an hour and a half yet. Let's keep going. Call your next.

MR. GORDON: I think the direct of my next witness will at least be an hour, and I would rather not --

THE COURT: Well, the problem with that is, we'll go late into the evening if you have to call your second witness. We probably need to push on.

Ms. Rudd, you can stand down, though. Ms. Rudd, you can stand down. You don't have to stay up there.

I say call your next. We'll just take a break at about 3:15. That will mean we will have gone two hours.

MR. GORDON: Very well. United States calls Dr. Trent Pierce. Your Honor, this witness has not been sworn.

TRENT PIERCE, GOVERNMENT'S WITNESS, DULY SWORN

THE COURT: Can I have the lawyers come up to the bench, please.

(Proceedings at the bench as follows:)

THE COURT: I just want to say this on the record. During our breaks and when we come back, please ask the marshals -- we had like five of them hanging out in the witness area, then walking in with Dr. Pierce, the implication being that things are very unsafe. The jury didn't pick up on it. I wouldn't want them to see Dr. Pierce moving with an entourage of people. They don't know who the people were. Like four or five of them came and sat on the front row with him when he came in. They were hanging out around the door during the last witness. You know, I would rather they not. I don't want to say anything. Just let them know to be a little more inconspicuous with how they handle that. Can you do that for me?

MR. GORDON: Yes, sir.

(Proceedings continuing in open court as follows:)

DIRECT EXAMINATION

BY MR. GORDON:

Q. Please state your name for the record.

A. Trent Pierce.
Q. Where have you lived for the last 27 years, Dr. Pierce?
A. West Memphis, Arkansas.
Q. What do you do for a living?
A. I'm a physician.
Q. What kind of medicine do you practice?
A. Family medicine.
Q. Do you have a clinic?
A. I do.
Q. What's it called?
A. Family Practice Center of West Memphis.
Q. How long have you owned and ran that clinic?
A. Twenty-seven years.
Q. Where did you go to medical school?
A. University of Arkansas for Medical Sciences.
Q. Are you married?
A. Yes.
Q. What's your wife's name?
A. Melissa.
Q. Is she your high school sweetheart?
A. She is.
Q. How long have y'all been married?
A. Thirty-two years.
Q. Do you have any children?
A. Yes.

Q. Are they grown up and moved away?
A. They are.
Q. Where did you grow up?
A. Melissa and I both grew up in Leachville, Arkansas, which is between Jonesboro and Blytheville.
Q. How is it that you came to practice medicine in West Memphis?
A. I did my residency in family medicine in Charleston, South Carolina. And we desired to move back to Arkansas and be close to home but not quite at home. So West Memphis offered opportunities for us. It was close to Memphis. And we have been very happy there. It's been a wonderful experience in West Memphis for us.
Q. Before February 4th of 2009, will you tell the jury what a typical day was for you?
A. I'm kind of a workaholic. And I would go into the office at about 8:00 a.m., see patients in the morning until about 12:15, 12:30, take about a 30-to-45-minute lunch break, probably until about 1:15, and then would work from approximately 1:15 to 6:30, 7 o'clock in the evening.
Q. Then after that?
A. After that we would -- I would go home. I did not do my dictation during the day. I would do my dictation in the evening when I got home, so I would do dictation for 45 minutes to an hour after I went home.

Q. How far is your clinic from home?
A. About four blocks.
Q. Do you travel the same way to and from work, or did you travel the same way to and from work each day?
A. Yes, I did.
Q. Other than work, what other things did you do?
A. I'm active in my church. I sing in my choir. My organist is back in the audience, and I appreciate her being here. My son and I like to fish. And we would go fishing in Heber Springs. Working the hours that I worked didn't really leave a lot of extra time to do things. But I was lucky enough to be appointed to the state medical board by Governor Mike Huckabee, and I've enjoyed serving on the state medical board for about 13 years.
Q. Were you the member of any other boards?
A. I am a member of Fidelity National Bank board.
Q. What do you do on that board?
A. I am a director of that board.
Q. How long have you been on that board?
A. I don't know the exact date. I would think 18 or 20 years.
Q. How often does that board meet?
A. Monthly.
Q. What are some of the things that the board does?
A. Well, the board reviews loans that have already been bidded by a loan committee and approves those loans at the

recommendation of the loan committee and the bank executive committee.

Q. Okay. Anything controversial about the bank board?

A. No.

Q. Do you recall ever disapproving any loans?

A. No.

Q. You are also a member of the Arkansas State Medical Board?

A. Yes.

Q. Do you recall when you were appointed?

A. I first started serving, I believe, January of '97.

Q. Did you later become the chairman of that board?

A. I did.

Q. When did that happen?

A. I was elected in October of 26 -- pardon me -- of 2006 and began serving as chairman at the December meeting in December of 2006.

Q. As the chairman of the medical board, what are your responsibilities? What do you do?

A. Well, they are varied. The chairman, obviously, directs the meetings when the board is in session. The board meets two and a half days every two months. The board chairman, in addition to the executive secretary of the board, helps to kind of manage the day-to-day activities that would come up regarding business of the board between board meetings.

The board chairman acts to kind of set the agenda of

important topics for the board to address. And there are a number of things that are important involving legislative issues that the board will also help to address with the state legislature. The board chairman kind of acts as the face and the voice of the board. And in that role, the board chairman at times summarizes discussions and thoughts that have occurred at the board level. And at times the board chairman is responsible for being kind of the good parent and the bad parent for physicians that sometimes appear before the board in summarizing thoughts that need to be communicated to those physicians that are having disciplinary hearings.

Q. Are members of the board salaried?

A. No.

Q. Do you receive any pay?

A. We receive a $100-per-day per diem for the days that we're actually at the board meetings.

Q. So is serving on the board a public service?

A. Yes, it is.

Q. Why do you do it?

A. I enjoy it. It is a means of paying back, I believe, a debt that everyone has to society. We have to pay back to society. The State of Arkansas was good to me in helping to educate me, helping me to become a physician. And this is a -- the purpose of the board is really to protect the public.

Q. How so?

A. Well, we protect the public by licensing and, as we all know, by disciplining physicians that have had problems that have been identified.
Q. Do you recognize the name "Randeep Mann"?
A. I do.
Q. How do you recognize that name?
A. Dr. Mann appeared before the board a number of times over the past few years.
Q. Do you see Dr. Randeep Mann present in the courtroom here today?
A. I do.
Q. If you would, please point to him and identify some clothing that he is wearing.
A. Dr. Mann is wearing a dark suit with a black shirt.
MR. GORDON: May the record reflect he has identified the defendant.
THE COURT: It will so reflect.
BY MR. GORDON:
Q. Do you know Dr. Mann's wife, Sue Mann?
A. I do not.
Q. Did you know Dr. Mann before he appeared before the state medical board?
A. I did not.
Q. Do you only know him from his dealings with the board?
A. That is correct.

Q. Tell us when Dr. Mann first appeared before the medical board.
A. I don't have his board verification summary in front of me. I know his first hearing before the board was in October of 2003, I believe.
Q. You were a member of the board then?
A. Yes, I was.
Q. Who was the chairman?
A. Dr. Ray Jouett.
Q. Did you sit in and participate in Dr. Mann's hearings?
A. I did.
Q. What was the nature of those hearings?
A. Dr. Mann was charged with overprescribing medication. I believe at that time he was charged with inadequate recordkeeping, and he was charged with prescribing amphetamine drugs for attention deficit disorder without obtaining a second opinion.
Q. From what you heard at those hearings or at that hearing --
A. Excuse me. He was also charged with distributing methadone to patients and not being an approved methadone clinic.
Q. From what you heard at that hearing, did you have concerns about Dr. Mann's practice of medicine?
A. I did.
Q. What were your concerns?
A. I felt that Dr. Mann had a very poor insight into his

prescribing pattern of controlled substances. At that time we had various testimony given to the board that Dr. Mann had had numerous patients that had drug overdoses due to his prescribing pattern and that there had been a number of deaths that had occurred due to overdoses.

Q. Did you voice your concerns to Dr. Mann at the board hearing?

A. I voiced my concerns to the board members, to Dr. Mann, and those persons in attendance at the board meeting.

Q. What was the outcome of the first board hearing?

A. The outcome -- the Arkansas Supreme Court requires that the Arkansas State Medical Board, in making a judgment as to a violation, have an expert opinion of a physician; that is, someone separate and independent from the board. We at that time had contacted Dr. William Ackerman, who was a pain management specialist, who had given us a written opinion.

MR. LASSITER: Your Honor, may we approach?

THE COURT: You may.

(Proceedings at the bench as follows:)

MR. LASSITER: The witness has gone into a narrative that is nonresponsive to the attorney's question. I don't know where he is going with this. There's no way I can monitor what he is about to do. We're out of the traditional question and answer. It is impermissible testimony.

THE COURT: I don't know what Dr. Ackerman said. But

it kind of is the foundation of why they took the action they took. I think that was the question. What did you do with information you had about Dr. Mann? We got an expert. I don't know what the expert said. He's about to tell us what the expert advised him to do.

MR. LASSITER: I believe the last question was what was the outcome of the first case. This is not responsive to that.

MR. GORDON: We're going to come back on the same issue, because the question was what is the outcome, how did you feel about it and why? This is all going to come out eventually.

MR. LASSITER: While we're up here, I object to any questions, how he feels about that, if that's not communicated to Dr. Mann. It's not relevant.

MR. GORDON: Actually, it was communicated to Dr. Mann.

THE COURT: Point your questions to what he communicated to Dr. Mann, not what he personally felt, because we're just going to get more objections if you ask him how did you feel. Ask him what did you communicate, or how did you communicate it, that type of thing. Do you understand?

MR. GORDON: Yes, sir.

THE COURT: That will get us past how you feel, that objection. We'll just move on.

MR. GORDON: Yes, sir.

(Proceedings continuing in open court as follows:)

BY MR. GORDON:

Q. Dr. Pierce, what was the outcome of the first board hearing?

A. The outcome of that meeting was, or at that hearing was, that Dr. Mann was found guilty of Regulation 7, which was prescribing amphetamines without -- for attention deficit disorder without obtaining a second opinion and a finding that he had inappropriately prescribed methadone without being a methadone clinic.

Q. Was there any disciplinary action taken against Dr. Mann?

A. At that time, he was asked to surrender his DEA, I believe for a period of one year.

Q. Did you agree with the board's decision?

MR. LASSITER: Your Honor, again, I object to that.

THE COURT: The objection is overruled. You may ask the question.

THE WITNESS: I agreed with the opinion given the circumstances of the testimony that had been presented to the board.

BY MR. GORDON:

Q. Can you explain that?

A. The expert witness who had given the board a written explanation that he believed Dr. Mann had overprescribed

medication changed his testimony in the middle of that hearing. And because the board did not have an expert witness for the charge of overprescribing, the board had to find Dr. Mann in violation of a lesser charge. So given the fact that our expert opinion had changed on us in the middle of the hearing, the violation of Regulation 7 and use of methadone outside of a methadone clinic were the only charges that the board could legitimately hold against Dr. Mann with that evidence. I, however, believed then, and still believe, that he overprescribed medications that led to overdoses and death of individuals.

Q. And did you tell that to Dr. Mann?

A. I did.

Q. At that hearing?

A. I did.

Q. Tell us what you recall.

A. I told Dr. Mann that I feared that he -- well, I told Dr. Mann that I believed that he had overprescribed medication and that I feared that he would be back before the Arkansas State Medical Board in the future because of his prescribing patterns.

Q. As you told him this, were you shaking your finger at him?

A. I was. I was frustrated with Dr. Mann. Most times physicians, when they get to the point that they are before the state medical board or having a hearing, at some time in that process they develop an understanding of the concerns that other

members of the medical community might have about their practice pattern. I specifically asked the expert opinion, how many deaths would it take for you to reexamine your practice pattern of prescribing medications? And Dr. Ackerman at that time stated one death. And I -- the board was presented with -- I'm not sure of the exact number -- anywhere from three to ten deaths related to overdose. So I was frustrated that Dr. Mann had no recollection -- had no recognition of the inappropriate manner that he was prescribing medications. He had no insight. He had no acceptance that he had inappropriately prescribed medications for those individuals that led to harm to those individuals.

Q. Did you communicate your frustration to him?

A. I did.

Q. Did Dr. Mann appear again before the board in 2006?

A. He did, in July of 2006.

Q. What was the issue at that time?

A. The issue at that time was, again, overprescribing medication, poor recordkeeping.

Q. You were a member of the board?

A. I was.

Q. Who was the chairman?

A. The chairman at that time was still Dr. Ray Jouett.

Q. Do you recall at the beginning of that hearing that Dr. Mann filed two motions to recuse?

A. Yes, he did.
Q. Dr. Pierce, if you would look at your screen there, let's look at Government Exhibit 82-J1.
THE COURT: Mr. Gordon, I'm getting a few eyes from the jury. We should have taken a break before. I didn't realize Dr. Pierce was the next witness. We need to take a break. I'm sorry to cut you off in the middle of your direct. I apologize.
Ladies and gentlemen of the jury, we're going to take 15 minutes. Be back at 3:15. We'll be in recess until then.
(Recess from 3:03 p.m. until 3:17 p.m.; jury not present.)
THE COURT: Mr. Gordon, I hated to do that to you. I had two jurors over there --
MR. GORDON: I understand. It's okay.
(Jury present.)
BY MR. GORDON:
Q. Dr. Pierce, before we broke, I was asking you about the 2006 hearing.
A. Yes, sir.
Q. Do you recall two motions to recuse being filed?
A. Yes.
Q. If you would, look at your computer screen there. We're going to look at Government Exhibit 82-J1. This was the motion to recuse Dr. Jouett?
A. Yes, sir.

Q. It states: "On the ground that R.S. Mann, M.D., will call Ray Jouett, M.D., to testify as a witness at the hearing of this matter and that both due process and Rule 605 of the Arkansas Rules of Evidence render a judge incompetent to testify in a trial as a witness, Dr. Mann applies for an order that Dr. Jouett recuse from the hearing of this case."

A. Yes, sir.

Q. So essentially Dr. Mann was saying he intended to call Dr. Jouett as a witness, therefore he could not sit on the board. Do you recall that?

A. That is my understanding of this, yes.

Q. Did Dr. Jouett recuse himself?

A. He did not.

Q. Let's look at the second motion to recuse that was filed, 82-J2. Was this a motion to recuse you?

A. Yes.

Q. The basis states: "On the ground that Dr. Trent Pierce, M.D., has expressed an unwillingness to judge this case by the evidence presented at the hearing, Dr. Mann applies for an order that Dr. Pierce recuse from the hearing of this case."

A. Yes, sir.

Q. And it states down below, in paragraph 1: "At the close of a hearing in 2003 on essentially identical charges in which the board's expert witness testified that Dr. Mann's prescribing practices did not violate the Medical Practices Act, Dr. Pierce

said that he did not care what the expert witness had said, he believed Dr. Mann overprescribed, and he truly feared he would be back before this board." My first question is, do you recall saying that to Dr. Mann?

A. I don't believe that I said I don't care what the expert witness says. But I did say that I believed that he had overprescribed and that he would be back before the board because of similar charges.

Q. Okay. Did you recuse yourself?

A. I did not.

Q. Did Dr. Mann file any motions to recuse any of the other board members for comments that had made -- had been made during the 2003 hearing?

A. He did not.

Q. Just you?

A. Just me.

Q. At that hearing did you still have concerns about Dr. Mann's practice of medicine?

A. From the new evidence that was provided to the board in July of 2006, yes.

Q. How was that hearing resolved?

A. The board held a seven or eight hour hearing on Thursday. The board had made a special time to hold a hearing for Dr. Mann. We had allotted three days separate from our board meeting. So we met specially on a Thursday, Friday and had

prepared to meet on Saturday to resolve his case. We had a full day of testimony on Thursday. And when the board reconvened on Friday morning, Dr. Mann and his attorney, Mr. Drake Mann, had made a proposal to the board attorney, Mr. Bill Trice, for a consent order.

Q. Was Dr. Mann's proposal accepted by the board?

A. Not his original proposal.

Q. Did the hearing then continue?

A. It did.

Q. Did Dr. Mann and his attorney later present the board with another offer?

A. They did.

Q. Was that offer accepted by the board?

A. After much discussion, it was accepted. And with much modification from the original consent order, it was accepted.

Q. What was the final consent order?

A. That Dr. Mann admitted that he had overprescribed medication, that he would surrender his DEA. And if you read the transcript of that discussion, it was the agreement that that would be a permanent forfeit of his DEA permit. He would reimburse the board the costs of the investigation, which was, I think, about -- I don't know the cost. It was 9- or $10,000. He also agreed that he would no longer provide pain management services to his patients. There was a concern that he would perhaps hire another physician to work in his clinic and that he

would just continue to write under that other physician's DEA pain medications that Dr. Mann might direct to use. So the consent order also included that Dr. Mann would not hire another physician, an advanced practice nurse or any other type of provider that would do any pain management.

Q. Did you agree with that consent order?

A. Yes, I did, because the issue with Dr. Mann was overprescribing of narcotics. I mean, in my mind that is a quality of care issue in and of itself. We had no other quality of care issues that would suggest that if you removed his ability to prescribe narcotics that he was going to be hurting other individuals with his practice of medicine. So I thought it was a good compromise. It allowed Dr. Mann to continue to work as a physician in an area that is underserved. And it also protected the public of Arkansas by taking away his DEA and his ability to prescribe narcotics that had had a deleterious effect on individuals in the state.

Q. You were okay with that agreement so long as the DEA permit was surrendered indefinitely?

A. Yes. If you read the transcript, it was an agreement that it was a permanent revocation of his DEA.

Q. Did you become chairman of the medical board after that 2006 hearing?

A. I did.

Q. Dr. Pierce, I'm going to ask you to look at your screen

there and ask you to look at Government Exhibit 74 and page 3 of Government Exhibit 181. Do you recognize those photographs?
A. I do.
Q. What was the occasion captured in this picture?
A. This photograph was taken at the October 2006 medical board meeting. At that meeting Dr. Jouett had resigned as a board chairman after 25 years, and I had been elected to be the new chairman of the board. We had prepared a plaque to give him for his service as board chairman. And that is a photograph of me presenting him with that plaque.
Q. For the record, that's you on the left and Dr. Jouett on the right?
A. That is correct.
Q. Despite the permanent surrender of Dr. Mann's DEA permit, did he request permission from the board to get it back?
A. Yes. He came back before the board in August of 2007.
Q. What do you recall -- did he appear in person?
A. Yes, he did.
Q. Tell the jury what you recall about that appearance.
A. Well, I recall that I was not necessarily the kindest individual to Dr. Mann as board chairman. I reminded him and the other board members that he had agreed to a surrender of his DEA. At that time we had a number of new board members that had not been present in the 2006 and the 2003 hearings. I reviewed for them the concerns that the boards had had at those

particular hearings, the concern and his admission that he had overprescribed medication. And I told him at that time, and the board affirmed, that he -- we would not allow him to reapply for his DEA, nor should he re-present before the board in any foreseeable time frame to reapply for permission to approach the DEA for another permit.

Q. When you say you were unkind to him, what do you mean?

A. As I mentioned earlier, sometimes the board chairman has to be the tough parent. And I essentially told him that it was inappropriate for him to be coming back before the board within a year's period of time, that he had agreed, and his attorney had agreed to a permanent surrender of his DEA, and that he need not come back and ask for that in the foreseeable future.

Q. Did Dr. Mann make multiple requests to get his permission --

A. He did.

Q. Did he make multiple requests to ask permission to get his DEA permit back?

A. He did.

Q. Were those requests repeatedly denied?

A. Yes.

Q. Dr. Pierce, if you would, please look at your screen again. Let's look at Government Exhibit 86-A. Is this a letter from Dr. Mann to the board?

A. Yes.

Q. Dated December 19, 2007?
A. Yes.
Q. In the second line there, the second paragraph, I guess, it states: "If I'm not wasting" -- excuse me. "If I am wasting Dr. Pierce's time, it would not hurt my feelings for you to turn down this request. It would not only keep from wasting his time but mine as well." Do you know why you were singled out in that letter?
A. I really do not, because the board is not one person. The board is a group of 13 individuals that make a decision. And I'm only one voice on that board. And as I mentioned, my comments to Dr. Mann was as chairman of the board in a summary manner to summarize the feelings of the general board. I'm not certain why I was singled out. When we received this letter at the board level, it concerned me, and it concerned the executive secretary, Ms. Peggy Cryer. And we made a determination at the time because of the tone of the letter that the full board should make a decision, and not just I as a chairman, about him appearing before the board to request an appearance.

Sometimes the board chairman will, between meetings, make a determination if someone may or may not appear at a meeting for an appearance. But I was not comfortable after receiving this letter that it be a decision on my part. And so we referred it to the full board at the February '08 meeting to make a determination whether Dr. Mann should come.

Q. What was the results from that hearing?
A. The result of that was the board again communicated with him that they did not have an interest in him appearing to discuss a request for reinstatement of his DEA.
Q. And was Dr. Mann sent a letter to that effect?
A. Yes, he was.
Q. Let's look at Government Exhibit 86-C. Is that the letter that was sent to Dr. Mann denying his request?
A. Yes, it was.
Q. Did Dr. Mann also make another request to get his DEA permit back in November of 2008?
A. Yes, he did.
Q. Let's look at Government Exhibit 87-A1. Is this that request?
A. Yes, it is.
Q. Did the board address this request?
A. Yes, it did. In its December meeting in 2008.
Q. Did the board respond in writing to Dr. Mann?
A. The board did.
Q. Let's look at 87-B, please. Is this the board's response?
A. Yes, it is.
Q. It states: "The board voted to deny your request at this time and to allow you to appear at the June 2009 meeting, at which time you will have been without a DEA for three years."
A. Yes, sir.

Q. What did that mean?
A. It meant that at the December meeting the board decided that again he should not be given permission to reapply for his DEA. And it means that the board would next allow him to come before the board in the June 2009 meeting, at which time he could plead his case. But there was no inferred -- there was nothing to be inferred from this letter that he was going to be granted permission in June of 2009. It was merely that we had agreed to let him come back before the board in June to plead his case again.
Q. Did you have any intention of giving Dr. Mann back his permit, his DEA permit, at this June 2009 meeting?
MR. LASSITER: Objection, Your Honor, stated previously --
THE COURT: Sustained.
MR. LASSITER: -- as to what his intentions were.
THE COURT: It's been ruled on. It's sustained as to what his intentions were.
BY MR. GORDON:
Q. Dr. Pierce, have you made it clear to Dr. Mann your thoughts about his practice of medicine?
A. I believe that I had made that very clear over the two previous hearings in 2003 and 2006.
Q. Did you make it clear to him your thoughts about him having a DEA permit?

A. I believe that had been communicated to him at both of those hearings.
Q. Is there any reason Dr. Mann should ever consider you an ally of his?
A. No, sir.
Q. Is there any reason he should think that you were going to help him get his DEA permit back?
A. No, sir. To the contrary, at that June meeting, if I had been able to have been there --
MS. CASSINELLI COUCH: Your Honor, objection.
THE COURT: That's sustained.
BY MR. GORDON:
Q. Dr. Pierce, let's talk about the morning of the bombing.
A. Yes, sir.
Q. Do you recall what your plans were for that day?
A. Yes. I planned to go in to work, to work to about 11:30, to leave the office about twelve. Excuse me. I would leave around twelve. I had a 2 o'clock meeting at the board with a subcommittee of the board, the physicians assistant committee.
Q. Does the board meet regularly?
A. Yes. We meet typically the first Thursday and Friday of every second month. And the physicians assistant committee meets the Wednesday prior to that board meeting.
Q. Are the scheduled meetings of the board and the subcommittees published?

A. Yes, they are.
Q. Where?
A. They are published both in our newsletter, and they are posted on the Web.
Q. And your plans for Wednesday, February 4th of 2009, was that pretty much your routine for the past several years?
A. Yes, sir.
Q. Tell us what you recall about the night before the bombing.
A. We had worked, that being my wife and I, had worked late. We got finished at the clinic probably seven, 7:15. My wife's mother is in a nursing home in West Memphis. My wife went to check on her mother. And I went by the grocery store to pick up some groceries for supper that evening. I got home before she did. And because of that, our cars were reversed in the typical order they would be typically parked on our driveway.

That evening we had supper. I did my dictation. I always would bag up my dictation, take it out to the car and put it in the car the night before. That night I would have, and did, take my hanging clothes for the board meeting and put them in the car. My carry-on bag of toiletries I would take out the next morning, probably went to bed between ten and 10:30.
Q. When you talk about loading the car, what kind of car was it?
A. It was a Lexus SUV.
Q. If you would look at your screen there, let's look at

Government Exhibit 56. Is that the car?
A. Yes.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. Dr. Pierce, I'm going to show you what I've marked as Government Exhibit 237. Is this a copy of your vehicle registration for the car in Government Exhibit 56?
A. Yes, it is.
Q. Thank you.
MR. GORDON: Your Honor, I would offer Government Exhibit 237.
MR. HENDRIX: No objection.
THE COURT: It's received.
(Government's Exhibit 237 received in evidence.)
BY MR. GORDON:
Q. Dr. Pierce, does Government Exhibit 237 show that this vehicle is a 2008 Lexus?
A. Yes, it does.
Q. With a vehicle identification number of JTJHW31U982853031?
A. Yes, sir.
Q. When you loaded your car the night before the bombing, did you put any work for the state medical board in the back?
A. Yes, I did.
Q. Okay. What kind of work was it?

A. The board is given in a series of mail-outs work that it needs to review prior to coming to the board meeting. At the board meeting we have appearances of physicians that are requesting license. We have appearances of physician assistants, respiratory therapists, occupational therapists requesting license. We also have physicians or other practitioners that we have invited to come down before the board to explain complaints that the board may have received. We also have new complaints that the public has directed to the board for their consideration that we look at on an every-two-month basis. We also have issues of interest that have come to the board's attention that need to be addressed.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. I'm going to show you what's been marked as Government Exhibit 238. Do you recognize that?

A. I do.

Q. Is that the work that you had placed in the back of your SUV the night before the bombing?

A. Yes, sir. Those are records that had been mailed to every board member. It starts three weeks prior to the board meeting. We get a mail-out every week prior to the board meeting.

Q. Do you recognize the black crate?

A. I do.

Q. Is that yours?
A. It is.
Q. The bag on top?
A. It's mine. It's in pretty bad shape. It's mine.
Q. The contents of the bag, do they deal with medical board issues as well?
A. It should. I haven't seen that in 15 months, but it should.
MR. GORDON: Your Honor, I would offer Government Exhibit 238.
MR. LASSITER: No objection.
THE COURT: It's received.
(Government's Exhibit 238 received in evidence.)
BY MR. GORDON:
Q. Dr. Pierce, let's talk about the morning of February 4th of 2009. Do you recall what time you got up?
A. I usually got up about 6:30.
Q. Do you recall what you did when you got up?
A. I got up. I had a glass of tea. I showered and shaved, and I got ready to go to work.
Q. Was that pretty much your morning routine?
A. Yes, sir.
Q. Do you recall saying good-bye to Melissa that morning?
A. I do. It's kind of a silly story, but I always wear sweaters. I get cold very easily. So that morning, it was very

cold. It was February. I had put on some gray wool trousers. And I put on kind of a maroon red sweater, and I had a white shirt under it. And a couple of years ago, I had got a tie that had little Arkansas flags on it. So when I looked at myself in the mirror, I thought, gosh. So Melissa was in the shower, so I opened the shower door. And I said, "Do I look like a cheerleader?" Okay? Well, Melissa and I went to Leachville, and the school colors were maroon and white. So she said, "You mean from Leachville?" I said, "No. Don't I look like an Arkansas cheerleader?" So we kind of laughed. I shut the door, and I left the house.

Q. Do you remember walking out of the house?

A. No, I do not.

Q. Do you remember a tire in front of your vehicle?

A. No, I do not.

Q. Do you recall moving that tire?

A. No, I do not.

Q. Do you recall an explosion?

A. I have a vague recollection of falling backwards and then sitting up kind of in an Indian-style manner. But it's just a vague recollection.

Q. What's your next memory?

A. A number of weeks later, waking -- waking up in The Med.

Q. Do you need a break?

A. Uh-huh.

MR. GORDON: Can we take a quick break, Your Honor?

THE WITNESS: I'm fine. I'm good.

BY MR. GORDON:

Q. Can you tell this jury how the bombing has affected you?

A. Well, the explosion of the bomb destroyed my left eye, so my left eye had to be removed. The bomb was evidently placed in a tire, so the explosion of the tire sent pigment into the cornea of my right eye, resulting in reduced vision in my right eye. Over the past 18 months, we've got it back to about 20/40 vision. But the tattooing that's on my face is also on my cornea, so it leads to some blurring of my vision. The explosion also damaged the iris in my right eye, so it doesn't open and contract very well, so I have some difficulty going from bright to dark environments.

The explosion knocked out most of my teeth, and I've had to have extensive dental repair. The explosion obviously damaged my face, and it has caused scarring and pigmentation.

The explosion fractured my right arm, requiring that I have metal hardware in the arm. It also blew most of the tissue off of my right forearm. I had to have skin grafting under the arm.

The explosion broke my right knee and tibia and also caused third-degree burns to that area, so that had to be repaired. The explosion also blew a large amount of tissue out of my left thigh that required skin grafting for repair.

The explosion blew shrapnel into my abdomen. I had three

or four penetrating wounds into my abdomen and had to have a portion of my small intestine removed.

The explosion -- evidently I must have picked up the tire -- has caused numbness in my hands. I have numbness of my thumb and my finger and numbness of these three fingers in this hand.

Also, the force of the explosion destroyed my olfactory nerve, and I have no sense of smell at this time.

I am here because of God's grace and goodness. And that goodness and love I think was channeled through emergency personnel and physicians in West Memphis and the physicians that provided care for me at The Med. I should be dead. I am very lucky that it did not affect me cognitively. If anything, I am a much more compassionate and understanding physician at this time because of the experiences that I've had over the past 18 months.

Q. How has the bombing affected your practice of medicine?

A. Well, prior to the explosion, as I mentioned, I worked quite long hours. I at this time have some -- my stamina is not back to normal. I'm not able to work as long or see the number of patients that I previously was able to see. I have eye fatigue. And my one remaining eye just doesn't hold up quite as good as it used to to working 12 hours a day.

I failed to mention in the explosion that the blast of the explosion blew out both of my eardrums. And it actually damaged

my left ear. From a neurologic standpoint, it's unlikely that I'm going to get very much, if any, hearing back in the left ear. We have repaired that eardrum. The right eardrum was blown out, but I still have pretty good hearing out of my right ear. But I try to utilize hearing aids to help. I have a little trouble hearing some, so that, again, slows me down in, you know, taking care of patients. But I still do a very good job.

Q. Are you still undergoing medical treatment?

A. Yes, I am.

Q. Thank you, Dr. Pierce.

MR. GORDON: Pass the witness.

THE COURT: Cross-examination.

MR. LASSITER: Yes, Your Honor. If I promise to be brief, can we have just a few moments to compare notes?

THE COURT: Ten minutes? Does that sound about right? Let's take a ten-minute break. We'll be back at 4:05.

(Recess from 3:56 p.m. until 4:06 p.m.; jury present.)

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. LASSITER:

Q. Dr. Pierce, I'm Jack Lassiter.

A. Yes, sir.

Q. I've got some questions for you about the medical board.

A. Yes, sir.

Q. And you have returned as the chair. Is that correct?
A. That is correct.
Q. And when does your term expire?
A. Well, the chairman's position is elected on a yearly basis, so this current term as chairman would expire at the end of this year, December, at the December meeting. My term on the board, I have another two years after this year.
Q. And tell us again when you were elected chair of the medical board.
A. The election occurred October of 2006. I chaired my first meeting December of 2006.
Q. So before the meetings that were discussed during your direct examination with Mr. Gordon in 2003 and then in 2006 concerning Dr. Mann, you were a member?
A. I was a member of the board. I was not the chairman, yes, sir.
Q. I want to ask you some questions in a moment about the 2006 hearing that you testified about a moment ago.
A. Yes, sir.
Q. Have you read a transcript of that hearing recently?
A. Yes, I have.
Q. Good. There are -- in that hearing there are a number of doctors participating in the discussions, and there are a couple of board members that I assume are citizen members, Ms. Britton, for example?

A. Yes, sir. I think the term they like to use is a "public member."
Q. All right. And is there another public member?
A. Yes, sir, there is.
Q. And who was that in '06? Do you recall?
A. I believe it was Ms. Bobbye Dennis.
Q. All right. Thank you. I assume when you became chairman that your responsibilities on the board broadened a good bit?
A. Yes, sir.
Q. I think you testified a little bit about that. You had a lot -- large responsibilities for organizing the meeting and sometimes day-to-day contact with, I guess, Ms. Cryer at the board. Is that correct?
A. That is correct.
Q. Did you have more individual contact with physicians once you became chair?
A. Not necessarily. Actually it is my understanding that when Dr. Jouett was chairman that a number of physicians would call and speak to him and get his advice as chairman. That hasn't been my experience. I've had some, but I've not had a large number of inquiries of me as an individual board member or as chairman.
Q. Have you ever had -- since you've been chair, have you had direct contact with a physician who has been disciplined by the board who maybe sought you out to talk to you or called you?

A. Could you talk into the microphone?
Q. Yes, sir. I certainly will.
A. That's okay. Thank you.
Q. I just asked you if you had direct contact with any physicians who have been disciplined or sanctioned by the board.
A. I can recall one direct contact.
Q. That would have been sometime within a few months of the bombing?
A. I believe it was in the winter of 2008, but I'm not certain of the date.
Q. Would that have been a doctor who had his license to prescribe narcotics revoked?
A. Yes, sir.
Q. A physician by the last name of Clark?
A. That is correct.
Q. I want to ask you to tell us a little bit about board procedure at these hearings. If there's an investigation and if that investigation results in an allegation being made towards a physician, does that physician have a right to a hearing in front of the board?
A. You could have a hearing in a number of ways. You could have an investigation that -- let me rephrase.
Q. I didn't ask a very good question. Maybe I should ask the question again. Under the procedures of the medical board, where doctors are accused of some violation of the ethics or the

standards of the profession, if they are accused of that, do they have a right under your procedures to a hearing?
A. Yes, sir, they do.
Q. I assume your policies and procedures are in writing and available to the general public and available to all the physicians of the state?
A. Yes, sir, they are.
Q. And at such a hearing, does the board typically retain some expert to review the records and give the board an opinion concerning the allegations?
A. As I mentioned earlier, the Arkansas Supreme Court requires that we have an expert opinion outside of the board membership itself if we're going to find a finding of a violation of the Arkansas Medical Practice Act.
Q. All right. I would assume your board has embraced that opinion of the Arkansas Supreme Court and you follow it?
A. Yes, sir.
Q. With respect to the allegations made?
A. Yes, we do.
Q. And is it the responsibility of the expert to review all of the records and to render that expert's opinion to the board as to whether a violation has occurred?
A. Yes.
Q. And who selects the expert? Does the board do that?
A. The board typically does that. The board may as a group

discuss it among themselves. When we vote that we think that we may have a cause that would require action, we may discuss as a board who they think might be a good expert witness to review that case.

Q. Is that done in coordination with the board's attorney?

A. No. Mr. Trice doesn't typically have any opinion about who is selected. He will forward those records to who is selected, but he doesn't help make the decision of who would be the expert witness.

Q. In the 2003 hearing you testified about involving Dr. Mann, the expert's name was --

A. I believe it was Dr. William Ackerman.

Q. All right. Was Dr. Ackerman selected through this process that you've just described?

A. I don't know. Dr. Jouett was the chairman at that time, so I'm not certain of the process that was used at that time.

Q. But that would typically have been the process followed by the board. Correct?

A. It may have been. But Dr. Jouett may have individually selected him to do that.

Q. All right. It wasn't somebody outside the board that made the selection. It was either the board or a committee of the board or Dr. Jouett?

A. It would be the board, or it would be the board chairman, yes.

Q. And it's clear from your testimony that you disagreed with the expert in that case. Is that right?
A. I did.
Q. But that was the expert selected by the board that gave the board an opinion after reviewing all the records in the case. Correct?
A. It was an expert who gave us a negative opinion that changed his opinion in the middle of his testimony.
Q. Experts get to do that, don't they?
A. They do. They do.
Q. All right. Have you ever testified as an expert witness?
A. I have not.
Q. All right. I want to ask you some questions concerning the hearing that you testified about in 2006. And there were -- that hearing went on for several days. Is that correct?
A. It went on for about a day and a half, yes, sir.
Q. And at some point, was it sometime during the hearing on the second day that there was a proposal that was announced, a suggested resolution by Dr. Mann's attorney?
A. There was an offer made at the beginning of the morning of the second day of testimony. The board discussed that offer. The board rejected that offer and resumed the hearing.
Q. Then following that, at some point there was a second offer?
A. There was a second offer made, yes, that was an expanded

with expanded sanctions.
Q. And the board eventually, after a discussion, voted to accept that agreement that you reached during the course of that discussion. Right? Is that a fair statement?
A. Could you say it one more time? I think the answer is yes.
Q. I certainly will. After some considerable discussion and some revision to the proposal, the board voted to accept it?
A. That is correct, yes, sir.
Q. Let's back up. I want to talk about the first proposal. I think Mr. Trice -- I want to show you a transcript of this hearing, which is in evidence. I don't remember the government exhibit, but I'm sure they will give it to me in a minute. I have it on our electronic monitor. I'll try to speak up here. Let me see if this microphone --
A. Actually I hear better out of that one.
Q. All right. But he came in and said the following. "Before we resume, Mr. Chairman, before we resume the hearing, Drake Mann, the attorney, and Dr. Mann approached me initially last night, and then again this morning, making the following offer to the board to resolve this and all other issues pending between Dr. Mann and this board. That after hearing the testimony of Dr. Roman, and understanding the problems that he had not recognized with these patients for whom he was prescribing scheduled medication, and that is obviously the theme, these patients all were scheduled medication and he was

prescribing scheduled meds for them after learning more about them or should have comprehended."

And I'm not going to read all of this hearing, but I just want to read what Mr. Trice announced. "He is requesting that this matter be ended, that he be permitted to retain his license, but that he will forfeit his DEA and his ability to prescribe scheduled medication in the future. And that he will reimburse this board the full costs of this investigation and hearing of $18,038 within one year from the date of this order."

Now, there was some discussion of that, which eventually led to a negative vote --

A. That is correct.

Q. -- on that offer?

A. Yes.

Q. Correct? And Ms. Britton, the citizen member of the board, she spoke up several times during that discussion. And she wanted to move forward, didn't she? Do you recall that?

A. She did.

Q. She did. She wanted to complete the hearing?

A. She did.

Q. She did not want to accept that proposal. Is that correct? You asked a question at that time concerning application for whether or not he could reapply in the future for his DEA permit.

A. Right.

Q. And Mr. Trice answered that question a couple of times during the course of that discussion and I think in the later discussion dealing with the second proposal. Do you recall Mr. Trice talking about that?
A. I do. I think I recall what Mr. Trice said.
Q. At one point did he say that he's offering Dr. Mann to give up his DEA but that he might apply for it in the future? Do you remember him telling the board that?
A. I remember Mr. Trice saying that. But if you read the full transcript, it becomes clear toward the end of the transcript that the intent of the board -- and neither Dr. Mann or Mr. Drake interfered with us agreeing that he would not reapply in the future at any time.
Q. There was an order entered in this matter. Correct?
A. I'm sorry. One more time.
Q. Was there a consent order entered?
A. There was, yes.
Q. I believe it would have been signed by Dr. Jouett. Is that correct?
A. That is correct.
Q. And that order doesn't say anything about him permanently giving up his DEA number, whatever term that you used? Is that correct, that the order does not embrace that?
A. I have reviewed the order, and the order does not say that. You are correct.

Q. And as you testified earlier, he was placed back on the -- or was informed that he would be placed on the June 2009 agenda, after he had been without his DEA for three years, to make his presentation or present his case, as you expressed.
A. Yes, sir.
Q. Is that a fair statement?
A. Yes, sir.
Q. During the discussion of the first proposal, do you recall Dr. Bell speaking up on behalf of Dr. Mann, essentially saying that he's a good doctor, and essentially talking in favor of resolving something?
A. I know that Dr. Bell did quite a bit of talking. I would have to look at the true transcript to know for sure that Dr. Bell said that.
Q. I'm going to point to that passage. It's at page 7 of the transcript. Dr. Bell says, "The reason I make the motion and support the concept, Dr. Mann is a good doctor." Dr. Bell had moved to accept the offer earlier. He was the movant. Is that correct?
A. I think he moved to accept the offer, yes.
Q. And Dr. Simmons had seconded it?
A. Yes, sir.
Q. Does that sound correct?
A. That is correct, I believe.
Q. And Dr. Bell speaks up here and says, again, that he makes

the motion he supports the concept Dr. Mann is a good doctor, cares for a lot of indigent and near-indigent people in a very underserved area. And with the exception of the narcotics issue and the overprescribing issue, there's never been any other issue that the board has been aware of, that we in that general area have been aware of.

A. Yes, sir.

Q. And then he goes on to explain why he would be in favor of accepting it. Is that fair enough?

A. Yes, sir.

Q. And then Dr. Simmons speaks up, and he talks about Dr. Mann serving a subset of the population that operates in ways we're not privy to. I mean, they do things we would never do, if I'm reading what he said here. And he thinks that Dr. Mann willingly or unwillingly got caught up in this trying to provide care. Do you know what Dr. Simmons was talking about when he said a subset of the population that operates in ways we're not privy to?

A. I can give my interpretation, but I don't know for sure what he was talking about.

Q. All right. And after those remarks, Mr. Trice interjects. And I'll put it up if you don't remember this, but let me paraphrase it, that he wants to say something, and that is that we, meaning the board, I guess, are not alleging in this charging document, nor can we prove that Dr. Mann prescribed and

thus caused the death of any of these patients. That's not what you've charged him with. Do you recall him saying that during the course of the discussion?

A. Yes, sir. He wasn't charged with the deaths, but he was charged with overprescribing that led to those deaths.

Q. And at some point in this discussion Ms. Britton again says, "We haven't heard all the evidence, and we should move forward."

A. Right.

Q. I think Mr. Trice said, "Well, you've heard just about all of it."

A. Yes, sir.

Q. Okay. And then you state, "Would it be appropriate to hear from Dr. Mann?"

A. Right.

Q. And then Dr. Mann addresses the board. And a few other board members ask him questions, like Ms. Dennis, who you mentioned a little while ago. Do you recall that?

A. I do recall Ms. Dennis, yes.

Q. Further discussion. Ms. Britton says again, "We need a full hearing." And then the motion was voted on, and it did not pass.

A. I believe so, yes, sir.

Q. And then I think the board heard testimony from the investigator or an investigator?

A. I think Mr. Moss. I think Mr. Moss testified.
Q. And then on that same morning, after a break, Mr. Trice comes out, and your attorney, the attorney for the board?
A. Yes, Mr. Bill Trice.
Q. And announces that there essentially was another offer from Dr. Mann to resolve the matter.
A. Yes, sir.
Q. Is that correct? Mr. Trice states to the board that Dr. Mann would acknowledge the violation of Regulation 2.7, the overprescribing of scheduled medication; that the proposed sanction in his consent order -- that this order would resolve all problems pending between Dr. Mann and this board and that his sanction would be a revocation with a stay, not a time limit, the conditions -- the condition -- in other words, it's ongoing. And he goes on to explain that the revocation with a stay of the license means the term of his license and conditions of the stay would be that he not have a DEA in this state and practice with it.

Again, as before, he offered to reimburse the board for the cost of the investigation. A further stipulation was that he would not hire any physician, advanced nurse practitioner, within his practice who would prescribe or have any kind of arrangement like that.

Had there been some concern in an earlier discussion about hiring an advanced nurse practitioner within his practice?

A. There had been concern on the part of the board that other physicians that had been before the board with overprescribing patterns had subsequently hired other physicians to come into their practice, or advanced practice nurses, that continued that pattern of prescribing even though the sanctioned physician could not.
Q. So the board had had some experience with other doctors circumventing their agreement by hiring people?
A. Yes, yes.
Q. Essentially his offer was, I'll stipulate I won't do that?
A. That's correct.
Q. And, again, there was a considerable discussion?
A. Yes, sir.
Q. By the board?
A. Yes, sir.
Q. And there was another issue that came up concerning a drug called Ultram?
A. Ultram.
Q. What is Ultram?
A. It is not considered a narcotic, but it is a scheduled medication that has the potential for abuse.
Q. And was the agreement -- pardon me -- the offer amended at some point such that Dr. Mann agreed he wouldn't prescribe that?
A. That is correct.
Q. And at some point you join in the discussion, and you state

that it's unfortunate these deaths have occurred and unfortunate that Dr. Mann didn't obtain a better understanding from his previous appearance before the board. You announce that?

A. I think so, yes.

Q. And you state to the board, after a few remarks from some of the other members, that the resolution is that he is no longer going to be prescribing narcotics or medicines that should result in further deaths, he's admitted to overprescribing. And as Mr. Trice says, we can't relate their deaths directly to his overprescribing. Were your remarks accurately transcribed?

A. I didn't hear your last --

Q. Were those your remarks?

A. I believe so, yes, sir.

Q. If at any time you want me to put anything up here --

A. That's fine.

Q. And as the discussion is reaching a close, you remark, "The only thing we gain by not accepting this offer would be for the board to revoke his license without stay. Okay? I mean not accepting this offer is saying that the board is moving for the total revocation of his license. As the offer stands, he will not do pain management, he will not have a DEA, he will not try and circumvent by use of other care providers." You make those statements. Are you trying to summarize where you think you are or the board is in terms of the discussion and to make sure

everybody understands what the issue is, kind of the bottom line?
A. Right.
Q. And before the vote, you asked Mr. Trice to again reread what the offer was?
A. Read it and summarize it, yes.
Q. And it was brought to question or to vote, and the board voted to accept the offer as modified during the course of the discussion. Is that correct?
A. That's correct.
Q. That led to the consent order that I showed you a moment ago.
A. Yes, sir.
Q. Is that right?
MR. LASSITER: May I have just a second, Your Honor?
THE COURT: Yes.
BY MR. LASSITER:
Q. Those remarks as closing remarks that I asked you about a moment ago, there were two board members who appeared to be against the offer at the time when you made those remarks. Would you agree that Dr. Zini and Ms. Britton appeared to be opposed to it, to the offer?
A. I'm pretty certain that Ms. Britton was opposed to it. I'm not certain if Dr. Zini was opposed to it or not.
Q. I asked you, or you asked -- pardon me. I asked you about

asking Dr. Mann if he would like to speak to the board. And did he answer questions that were posed to him by the board members at the time?

A. I believe that Ms. Dennis asked him a question, and he responded to Ms. Dennis's question.

Q. Had there been some, I'll just say, displeasure with Dr. Mann's attorney during the course of the proceedings?

A. Yes.

Q. Some remarks that he made?

A. Yes, sir.

Q. The way he conducted himself?

A. Yes, sir.

Q. And did Dr. Mann in effect apologize to the board for that?

A. He did.

MR. LASSITER: I pass the witness, Your Honor. Thank you.

THE COURT: Redirect?

MR. GORDON: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. GORDON:

Q. Dr. Pierce, Mr. Lassiter asked you about whether you had direct contact with any physician who had been disciplined by the board. You said there was one occasion in the winter of '08.

A. The fall or winter of '08, yes.

Q. Was it Dr. Clark?
A. Yes.
Q. Tell the jury about that, please.
A. Dr. Clark also has had a long history before the board with overprescribing medication. And the board was in the middle of a hearing regarding overprescribing of medication with Dr. Clark, and he again presented an offer to the board that he would close down his private practice and go to work for the prison system in Arkansas, and I believe at that time he would forfeit his DEA. He would utilize the federal prison DEA to prescribe medication. Dr. Clark worked for the prison for six months to a year and re-approached the board, asking if he could go back into private practice. And at some point -- it may have been one or two appearances before the board -- he was granted permission to go back into private practice outside of that sheltered work environment at the prison. But he was not given his DEA.

He called me at my office -- he practices in West Memphis -- and asked if he could come to my office and discuss this issue with me personally so as to better know how he might approach the board in reapplying for permission for a DEA.

We arranged for a meeting after hours at my office. No one had quite ever done that before. I'm a pretty cautious individual. My son happened to be in town, and I just thought it was prudent to have someone else in the office with me after

hours since it was in the winter and it was dark. I had no reason to believe that Dr. Clark had any motives other than just to discuss the issue with me, but I thought it was prudent to have someone in the office with me.

Q. Did you have someone go to the office with you?

A. Yes. My son.

Q. And tell the jury how your meeting with Dr. Clark went.

A. It went very well. I told Dr. Clark that I was only one member on the board and that the board made a decision as a group of 13 people, that he had short-circuited the process, he had not completed his hearing process. He had entered into a consent order, which meant that we had no finding, and that my belief was that the board would have to reopen his hearing and complete that hearing before -- and make a finding, good or bad, on his overprescribing before it would be allowed, before it would allow him to reapply for a DEA.

Q. Did you recuse yourself from Dr. Clark's case?

A. I did.

Q. Why?

A. Because he practiced in West Memphis. And it has typically been the position of board members that, if they have a physician appearing before the board in a hearing and they are in similar practices, that they should recuse from the vote so that if there were a negative vote that there would be no appearance of conflict of interest.

Q. By recusing yourself from Dr. Clark's case, what does that mean?
A. It meant that I did not vote for or against any decision that the board made.
Q. Dr. Pierce, I want to look at the consent order that was agreed to at the end of the 2006 hearing. It's going to be Government Exhibit 82-L. It should pop up in a moment. We're looking at paragraph C here on page 2 of 4 of the consent order, subparagraph (1). It says that Randeep Singh Mann, M.D., will surrender his Drug Enforcement Administration permit authorizing him to prescribe scheduled medication in the state of Arkansas. It says "shall surrender"?
A. Yes, sir.
Q. Right? Okay. And it does not say he can ask for it back?
A. It does not.
Q. And it's your testimony that that was the intent of the board, that Dr. Mann never get it back?
MR. HENDRIX: Your Honor, I would object again to be able to express the intent of the other members of the board.
THE COURT: I think the document speaks for itself. It says what it says.
BY MR. GORDON:
Q. Okay. Dr. Pierce, let's look at Government Exhibit 94-B, which is the transcript where this consent order was discussed. We'll start on page 43, towards the bottom, where y'all are

discussing the revocation of Dr. Mann's stay of license.

You ask: "Would his practice still entail pain management in the way of blocks or -- or what?" What does that mean, pain management in the way of blocks?

A. Individuals practicing pain management will sometimes do steroid blocks or perhaps narcotic blocks to assist with pain relief.

Q. And Mr. Trice -- that's the board's attorney. Correct?

A. That's correct.

Q. -- stated: "Well, he can't use the DEA. I mean if you don't have a DEA, you can't maintain a drug -- drugs within your office, and you can't prescribe them. I mean whatever the DEA power is, he won't have it."

Ms. Britton asks: "I think if we do that we're just putting a Band-Aid on this problem."

Mr. Trice said: "That is the offer.

"Ms. Britton: Well --

"Mr. Trice: It is a revocation --

"Ms. Britton: I -- I would --

"Mr. Trice: It is a revocation with stay ongoing.

"Mr. Jacks: Is that a permanent --

"Mr. Trice: Permanent.

"Mr. Jacks: On the DEA?

"Mr. Trice: Yes.

"Mr. Jacks: That needs to be stipulated.

"Mr. Trice: It is. With this board.

"Dr. Pierce: And a permanent revocation without a time limit?

"Mr. Trice: In other words, his licensure, it's permanent in the sense that his license is revoked with an ongoing stay that he can only -- the revocation goes into effect if he ever asks or seeks a DEA in this state."

What does that mean, Dr. Pierce, that the revocation goes into effect if he ever asks or seeks a DEA in this state?

A. The board utilizes a process that it can grant a license or it can revoke a license, okay, remove a license. So what we're agreeing to here and the doctor is agreeing to is that his license is revoked, but there's a stay on it, meaning that that revocation doesn't go into effect unless he has a violation of his agreement. And his agreement is that he will never seek a DEA.

Q. Then Dr. Beck asks a question about other stuff. Mr. Trice gives an example of using a robbery. Then he concludes: "This means his license will be revoked if he ever seeks a DEA in this state." And he's acknowledging the violation. Correct? His license will be revoked if he ever seeks a DEA in this state.

A. That's correct.

Q. So that was your understanding of the consent order. Correct?

A. That was my understanding, and I think that was the

understanding of the board members that voted to accept that consent order.

Q. Was it ever your intention to give it back to Dr. Mann?

A. No.

MR. HENDRIX: Your Honor --

THE COURT: That's overruled. He just went through the transcript. There's a basis for it. It's overruled.

MR. GORDON: Sorry, Your Honor. No further questions. Thanks.

RECROSS-EXAMINATION

BY MR. LASSITER:

Q. When a consent order is entered, I guess the lawyers participate in the drafting of that. Is that correct?

A. Mr. Trice would draft that consent order, yes.

Q. So that would have been the board's attorney's job to draft up the order. Right?

A. That is correct.

Q. Okay. At the risk of asking this for the third time, the consent order in this case, again, didn't say he was permanently barred from having a DEA. Right?

A. The consent order does not say that, no.

Q. And again, he was placed on the agenda for your June 2009 meeting to make his presentation. Regardless of whatever the vote might have been, at least the board said, you can come talk to us and make your presentation about your DEA. Right?

A. That is correct. That was the vote of the board.
Q. Thank you.
THE COURT: Is there anything else for Dr. Pierce?
MR. GORDON: No, Your Honor.
THE COURT: You can stand down. You can stand down, Dr. Pierce.
Call your next.
MR. GORDON: Your Honor, can we have just one moment?
THE COURT: Yes.
MR. GORDON: Your Honor, ladies and gentlemen of the jury, the United States rests.
THE COURT: Okay. You've just heard the case of the government. We're going to take a break, as I told you. We will not be here tomorrow, but we will reconvene on Friday. Let's start back up -- do we need any time in the morning on Friday?
MR. DUDLEY: We will need some time in the morning.
THE COURT: So we're not going to take up any issues this afternoon? You want to wait until Friday morning?
MR. DUDLEY: We would prefer to wait until Friday morning.
THE COURT: How much time do you think we'll need, Mr. Gordon? You were about to respond.
MR. GORDON: There is one thing I would like to address with the Court.

THE COURT: How much time do we need on Friday morning before we bring the jury back?

MS. CASSINELLI COUCH: About an hour maybe.

THE COURT: Okay. Well, let's do this. Come back on Friday at 10 o'clock. I give you the same admonition I've given you the entire trial. I don't think I've given it to you in a while, but I'll repeat it again.

This is four weeks of it, so I think it's probably pretty well ingrained. Don't read anything about the case. Don't watch TV about the case. Don't view any news reports about the case. Don't talk to your friends about the case. Don't talk to anybody about the case, including your fellow jurors.

When you are given the case when it's over and you go back in the jury room, that will be the time to start talking about it. I don't want you to go out and start listening to people out in the public who tell you about the case, because they will tell you things that you never heard in the courtroom. So just make sure that everything that you know about the case came from the witness stand.

Also, continue to not talk to the lawyers, the witnesses -- and we've had, from my count, 73 of them, so you have 73 people to avoid. Some of those people were recalled now, so it's not quite 73. But we want this process to not only be fair, but we want it to appear to be fair. So I will see you on Friday at 10 o'clock. You are released.

(Jury excused.)

MR. GORDON: Your Honor, I guess I do need to put this on the record. We were -- back in May of 2009, we requested experts notification from the defense. We didn't receive any notice. About two weeks before trial I sent out an e-mail reminding them, we still haven't gotten notice.

I got an e-mail response saying they might call John Norrell as an expert to testify about NFA matters if Gary Schaibble doesn't say what they want him to say. That's the only information I've been given. I've not been given a CV, his qualifications, a summary of his testimony or anything. I know it's the defense's intent to call him as an expert on Friday. He's an FFL holder. I don't think that he has expertise in anything. And I will probably, at least from what I know of him, contest his expertise. But I need to see something, anything, so we know what he's going to testify about.

MS. CASSINELLI COUCH: I could swear I gave you his CV. But if not, I'll give it to you. I don't know when the e-mail was. But I don't believe it was limited to Gary Schaibble's testimony. I think our response was we don't know who we're going to call. That decision will be made after we hear the testimony, and it will depend on all the evidence that the United States presents. So we haven't made a decision on that. And I don't know what the limits of his testimony would be if he does testify. I will be happy to provide them with a

CV if we haven't done that. And as soon as we have made any decision and know what he would testify about, I'll be happy to let them know.

THE COURT: Is it that you don't know if you are going to call him or you don't know what the extent of his testimony will be?

MS. CASSINELLI COUCH: I think it's safe to say both right now. It's likely that he will be called, but I haven't had time to sit down and go back through to know what, if there's anything we need to contest.

THE COURT: Will he be someone you call on Friday, or will he be somebody you will call early in the week, or you don't know?

MS. CASSINELLI COUCH: I don't know. I would prefer to get it out of the way if we do call him. But we have some other subpoena matters that's kind of riding on that we haven't brought to the attention of the Court, because I think we're trying to work through those.

THE COURT: How soon will you know, Ms. Couch?

MS. CASSINELLI COUCH: Probably tomorrow. Hopefully tomorrow, when we have a day off.

THE COURT: Here's what I don't want. I don't want the government to come walking in here on Friday and have no idea, not anything about this guy or what he's going to say. They do have a right with experts --

MS. CASSINELLI COUCH: Sure.

THE COURT: -- to prepare. So I need you to get that to him as soon as possible. Make a decision as quickly as possible. If you received information on this expert, how much time would you need to prepare? I know you need back to May or whenever you requested the information.

MR. GORDON: I guess it depends, because I really don't understand what he's qualified to offer an expert opinion on.

MS. CASSINELLI COUCH: I'll send his CV over this evening.

THE COURT: And has he given you a report on anything?

MS. CASSINELLI COUCH: No, sir. I've communicated with him, but we don't have any report. There's no --

THE COURT: I need you to determine it as soon as possible if he's going to testify and what he's going to testify about.

MS. CASSINELLI COUCH: Sure.

THE COURT: And you need to communicate with the government by 10 o'clock tomorrow. That will give you this evening, tomorrow morning, to get the information over to him by 10 o'clock. That way he will have the day to prepare for it.

MS. CASSINELLI COUCH: If we should call him on Friday?

THE COURT: If you call him on Friday. He's an

expert. I mean, at some point you have to decide whether you are going to. If you decide not to -- you can always give the government what you expect him to testify and then decide not to call him.

MS. CASSINELLI COUCH: Sure.

THE COURT: So that's a decision that can be made pretty quickly. If you are going to call him, what is he going to testify about? Let's do that by 10 o'clock tomorrow.

What else do we have?

MR. GORDON: Your Honor, just so the Court is aware, the defense has issued two or three subpoenas to ATF. We have been assisting them in trying to get ATF to comply. ATF has all these hurdles and things.

THE COURT: ATF has what?

MR. GORDON: Hurdles, processes, procedures they are requiring the defense to go through. We've been trying to --

THE COURT: When were the subpoenas issued?

MS. CASSINELLI COUCH: Several weeks ago. They keep changing the procedures.

THE COURT: Tell ATF if they can't get their people here, I'm going to mistry this case, and we're going to start it over. I'm not going to let them do that.

MR. GORDON: I communicated that might happen to them.

MS. CASSINELLI COUCH: He has.

THE COURT: I'm not saying Mr. Gordon has done or not

done anything. I know he has done everything he can in this case. I'm just saying, I don't want them to sit here and say, we're not going to show up because of a procedure.

MS. CASSINELLI COUCH: I guess I should alert the Court that some of that is records, that I have had trouble with the expert issue because of some of the records I need. That all kind of goes together.

MR. GORDON: I believe from some of the e-mail traffic on this particular issue, for records from the NFA, there's some question about apparently they don't keep the records in the way the defense wants them, and they are having some issue about whether or not they can actually do that.

THE COURT: We're not talking about just having witnesses show up. We're talking about records.

MR. GORDON: Yes, sir.

THE COURT: Them trying to put their hands on the appropriate records.

MS. CASSINELLI COUCH: I should clarify that. There's one witness that's an issue, appearance. There's one set of records that they have produced in part. They have redacted things that shouldn't be redacted. And there's a third set of records, which I was unaware of that issue. I think they said they were working on it, and I think I responded that I don't care what format it's in, just give me the information. It's just that they keep changing the protocol so you kind of can't

meet the requirements.

THE COURT: My initial statement about mistrying the case is more firmly stated against a witness who says he or she doesn't want to show up than it is about a record that's not in the proper form. But you need to let them know.

MR. GORDON: I have.

THE COURT: Let's work this out. I mean, we've done three weeks. You know, we're down at the end. We're at the end. I mean, no need at this point to start -- for any of us to do anything that makes us have to, you know, do it over if we don't have to.

MS. CASSINELLI COUCH: I think that's probably what we needed was just to hear from the Court so we can both report back to our respective contacts that the Court has gotten involved and there's a nudge.

MR. GORDON: I think two of those three issues have been resolved. It's the final record request from NFA. Can they produce them in the way the defense wants them is the last sticking point. I know the defense subpoenaed records from ATF, anything having to do with Dr. Mann prior to February of 2009. They produced some records that are redacted. I originally told them, I don't want it redacted, because they are simply blacking out confidential informant information. I said, look. You don't reveal the name. You just identify them by a CI number. They are not going to know who it is anyway. Give me

unredacted, because this is just going to create a headache that we don't need to worry about. They are insistent, no. So I said, well, if you are going to be like that, give me the unredacted copy, and I'll give it to the judge, and he can determine which copy they get. I sent out a nasty e-mail at lunch to that effect.

THE COURT: And I would rather not be in the back redacting documents. I really would rather not.

MR. GORDON: We would have a clean copy and a redacted copy, so you would just have to say which one the defense gets theoretically.

MS. CASSINELLI COUCH: That's fine with us. Just so we're clear, that's one agent. I didn't request all the records from all of ATF forever.

THE COURT: Tell them we've been through almost four weeks of trial and we're at the end. How many years of investigating? A couple years or whatnot. We're at the end. Let's just finish it out. Just let them know that.

MR. GORDON: I will.

THE COURT: If I need to sit in the back and look at documents, I will do that. I would rather not, but I will.

Now, is there anything else? Do we think we can get that here, Mr. Gordon? Do you think they will work with you?

MR. GORDON: Judge, I would love to stand here and tell you yes, but we've been fighting this for weeks. When I

say "we," I mean both parties to this case have been trying to get this stuff and have been unsuccessful to date.

MS. CASSINELLI COUCH: We might get a "yes" today and a "no" on Friday and a "yes" on Monday and a "no" on Wednesday.

THE COURT: They have to have counsel. No. Listen to me. I would imagine that they have looked at Eighth Circuit precedent on just not -- just deciding we're not going to do this.

MS. CASSINELLI COUCH: Counsel has sort of --

THE COURT: The lawyer is the one.

MR. GORDON: Please note my silence.

MS. CASSINELLI COUCH: I'll say it. Yes.

THE COURT: Just tell him. Anything else we need to take up?

MR. LASSITER: No, Your Honor.

MR. GORDON: No, sir,

MS. CASSINELLI COUCH: Thank you.

THE COURT: We will reconvene, I guess, at 9 o'clock on Friday.

(Overnight recess at 5:08 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Elaine Hinson, RMR, CRR, CCR Date: March 16, 2011.
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

July 30, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 9:02 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 13
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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On Behalf of Defendant Randeep Mann (1):

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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
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Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

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EXHIBITS: **RECEIVED**

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(Proceedings continuing in open court at 9:02 a.m., jury not present.)

MR. DUDLEY: May I, Your Honor?

THE COURT: You may.

MR. DUDLEY: Ms. Couch wanted me to go first if that's okay with the Court.

THE COURT: Fine.

MR. DUDLEY: Your Honor, on behalf of Sue Mann, I move for a judgment of acquittal on Counts 7, 8, and 9 of the indictment. On Count 7, Your Honor, the charge in the indictment is conspiracy to otherwise obstruct justice under 18, U.S.C., 1512(c)(2). Your Honor, there are specific sections, and let me back up. The bill of particulars that was filed on Count 7 states that the object of the conspiracy was to conceal documents, guns, other objects, and to influence the testimony of witnesses. Section 1512 contains a section that specifically prohibits influencing witnesses. Section 1512 contains another section that specifically prohibits concealing documents or other objects.

Otherwise obstruct. Otherwise in Black's Law Dictionary means in some other manner or in some other way, which means that the government could not prove Count 7 by proving a conspiracy to influence witnesses or hide documents or other objects because that's different from the specific sections of the statute that prohibit that. So, to meet the burden under

Count 7, the government has to present proof that Sue Mann and Dr. Mann conspired to obstruct justice in some way other than concealing documents or other objects or influencing witnesses. All of the proof in this case has been along the lines of the bill of particulars, which is, Count 7 is aimed at, concealing documents or other objects or influencing witnesses. Because there's no proof of any conspiracy to otherwise obstruct as charged in the indictment, we believe we're entitled to a judgment of acquittal on Count 8. Your Honor, I filed a motion to dismiss Count 7 which contained these arguments and the authorities for them, and I adopt that motion as part of my argument here.

Secondly, on the conspiracy count, Count 7, Your Honor, there is no evidence of a conspiracy to obstruct any official proceeding. There is certainly evidence that the grand jury was meeting, or would meet in the future, but there's been absolutely no evidence that any conspiracy was aimed at obstructing any official proceeding. On Count 8, Your Honor, we move for a judgment of acquittal. That's the count on aiding and abetting concealment of documents. There is no evidence of concealment. Your Honor, the only evidence that could possibly be concealment is that Sue took the bank statements and checks from the desk drawer in Dr. Mann's office. But there's no evidence she intended to conceal those from the grand jury or anybody else.

And the best proof of that is when the government asks for them, she gave them to them. If she had intended to conceal, when the government asked, she'd have said they're not there, I don't have them, they don't exist, something. But she didn't. She turned them over. And there's also been no evidence of any intent to conceal those documents from the government or the grand jury or anybody else. And there's -- again, there's no evidence of any official proceeding that she intended to impede or did, in fact, impede, and there's no evidence of witness tampering. The best they could do on witness tampering was Gerald Riley who said she told him you don't have to talk to the ATF and we'll get you an attorney and pay for it. That was the substance of his testimony.

Judge, there's no law that says you have to talk to the ATF. And I cannot find any case which says telling a witness something that's legally correct constitutes witness tampering. If I was his lawyer, I'd tell him you don't have to talk to the ATF. Would that make me guilty of witness tampering? And just because I'm a lawyer doesn't give me any rights greater than the rights the average citizen has, so if I could tell him that without tampering with a witness, she could tell him that without tampering with a witness.

On Count 9, Your Honor, the perjury count, number one, there's no evidence that Sue's statement was false. The statement was, I thought it would be safer. To prove falsity,

they're going to have to prove that she had some reason other than she thought it was safer when she removed those documents and so she lied about it to the grand jury. The only person in the world who would know whether she thought it would be safer or whether she had some reason other than her thoughts that it would be safer to remove those documents is Sue Mann. The only thing they proved there is the telephone conversation where Dr. Mann told her or asked her to get the documents out of the drawer.

That doesn't say anything about why she did it, though, what she was thinking when she did it. So there's no evidence of falsity under Count 9. More importantly, Your Honor, a false statement has to be material. It's material only if it's capable of influencing the grand jury. In this case, the reason Sue removed those documents had no capability of influencing, misleading or hampering the grand jury's investigation. To be material, Your Honor, the law is that the question, the alleged perjurous answer must, itself, mislead, hamper or impede the grand jury's investigation. To do that, the government has to prove what the grand jury was investigating. There's no way the jury, this jury could find that the statement had the tendency or capability of misleading, hampering or influencing the grand jury's investigation unless the government has proved to the jury what the investigation was.

Now, what they alleged, Your Honor, in Count 9, in paragraph 2 of Count 9, was that the materiality was the actions and directives of Randeep Mann during his incarceration were material to a proper matter of inquiry for the grand jury. We have heard not one iota of evidence in this case that the grand jury was investigating Randeep Mann's actions during his incarceration. Nothing.

This materiality is normally proved, Your Honor, and I can get you several cases to show this, it's normally proved by calling the foreman of the grand jury to testify about what the grand jury was investigating. They called nobody from the grand jury. The only person who even came close to testifying about an investigation was Agent Oliver and he didn't testify about what the grand jury was investigating, he testified about what he was investigating. There's a big difference. So there's absolute lack of evidence about what the grand jury was investigating, and since this jury doesn't know what the grand jury was investigating, they have no way to determine that the statement was material.

Secondly, Your Honor, the law is if the government has the evidence or access to the evidence they claim they couldn't get because of a perjurous statement, the perjurous statement is not material. There are a number of cases that say that. In the Eighth Circuit, there's ***United States v. Lasater***, 535 F.2d 1041. There is a district court case, ***United States v.***

Ball, 738 F. Supp. 1073 that says that. In this case, what she said was, I thought it would be safer. Now, I guess what I'm trying to get to here, I thought it would be safer, there's no way that the grand jury needed that evidence for any reason whatsoever, her reason for doing it. But, if the government's claiming that what we were trying to get to was that she removed it because Dr. Mann told her to remove it, they had that evidence. They had that on the tape recording already. If they already have the evidence, then any alleged perjurous statement cannot be material because it couldn't impede the grand jury investigation because the grand jury already had the information the government claims it was seeking.

Finally, Your Honor, there is strong precedent, including the United States Supreme Court case, ***Bronston v. United States***, 409 U.S. 352, and ***U.S. v. Lasater***, that says we're not going to let the government punish a false statement as perjury if it's really peripheral to the grand jury investigation. And I'm about through, Your Honor, but I'd like to read you something from ***United States v. Lasater***. The Court said, "But Congress has manifested its intent that the serious sanction of a perjury conviction be imposed only if the false testimony in fact tends to impede the grand jury. To allow the perjury statute to be invoked where the alleged misstatement relates only to a peripheral matter would unwisely expand the statute's code. It would render the measure taken against the offense so

severe as to discourage witnesses from appearing or testifying. We decline to so extend the statute's reach."

Your Honor, even if the government could or had proved that the statement was perjurous, it was certainly peripheral to the grand jury investigation. And under the authority of ***Lasater*** and the United States Supreme Court decision in ***Bronston***, this court should not allow the perjury statute to be used in the fashion that the government's attempting to use it. For those reasons, Your Honor, we move for a judgment of acquittal.

THE COURT: Let me ask you this so I'm clear. Count 8 is the count that deals with her actually removing the documents and -- well, just moving the documents? And the allegation is that that impeded the investigation. Count 9 is the count that deals with the statements to the grand jury as to why she removed those documents?

MR. DUDLEY: That's correct, Your Honor.

THE COURT: Okay. Response?

MS. CASSINELLI COUCH: Your Honor, before his response, I should probably say that we join in all of Mr. Dudley's arguments as to Counts 7 and 8.

THE COURT: That's noted.

MR. GORDON: Your Honor, I guess I'll start with Count 7 and the argument that there was no evidence of a conspiracy. I think it's well established that, under the law,

we don't have to prove an actual conversation, an actual agreement. A tacit understanding is enough. And I think the jail call that was played for the jury certainly gets us there where he says, go to my office, get the Sunny stuff out, get it out of the office. And she says, signature, checks, and then yes, go now. And then he even says give it to Tim or Riley, and I think by the end of that conversation he's actually saying give it to Riley. And then sure enough, you have Gerald Riley who came in here and said, yeah, Sue called, said she wanted me to keep something for her and she brought me this envelope. It was full of checks and bank statements. I think clearly there's an understanding, at the very least an understanding there of what was going on. So we don't have -- well, and I think, again, I think the jail call that we have does prove an agreement.

THE COURT: Let me ask this question. I followed and maybe I got off somewhere in listening to it. Ultimately when the documents are returned, how does that affect the case at all?

MR. GORDON: Your Honor, I don't think it affects it at all because it's not like she just called us up and gave it to us. We had to issue a grand jury subpoena to get it from her. And, of course, she complied with that subpoena. I don't think that gets her out from actually concealing it.

THE COURT: So you're saying the ultimate object of

the concealment really was irrelevant, but the fact that it was concealed, that the defendants themselves were concealing something believing it may have some effect, but it ultimately didn't. Understand this, Mr. Gordon. I understand that if I am a defendant and I'm concealing documents, those documents don't necessarily have to have an effect on the case ultimately for me to be charged and then found guilty of concealing them and of obstructing justice, so I'm not trying to put you in that position where you're trying to say that they had to prove this, that and the other. I'm just saying that is the posture we're in. Where they're concealing things, ultimately those things that are being concealed have no relevance to the case, but it's the mere fact that those documents were concealed?

MR. GORDON: Correct.

THE COURT: Okay.

MR. GORDON: Because that's all the statute requires. Destroying it and all that stuff, but concealing, it doesn't say conceal forever.

THE COURT: So your position would be that that's up to the jury to determine whether she's guilty? That you've met the basics to get it to the jury and then whatever the jury does with it, they do with it?

MR. GORDON: Correct. Then I think Count 8, that count also does say "did conceal or attempt to conceal". So I mean, they concealed it, and just by the fact that we learned

about it from a jail call and eventually got it back by compelling production through a grand jury subpoena, even if they want to say that's not concealment, they at least attempted to conceal it, and that's charged in the indictment as well.

THE COURT: Okay.

MR. GORDON: And I guess kind of continuing along the same lines, this kind of goes into Count 9 about, you know, there was no evidence that her statement was false. Everyone keeps forgetting --

THE COURT: Let me ask you this, and I need to ask Mr. Dudley this too. If I reach or if I deny you on 7 and 8, the motion to dismiss, then can I deny you on 9? Because if she actually removed documents and were concealing documents, how do I -- if there's enough to get to the jury on that issue, how do I then find that her statements to the grand jury in saying I did it for this reason and not that reason, how do I even get there? I guess I would ask both of you that. I know, Mr. Gordon, you say you can't get there, but Mr. Dudley, how do I get there? Because I think your argument that nobody knows what's in her mind, I guess you look at the circumstances, the phone calls, the fact that if she knows what's going on, then she knew when she made those statements that she was making them for a certain reason. But, I mean, if I deny you on 7 and 8, can I then grant on 9 and find that she didn't know?

MR. DUDLEY: Yes, Your Honor, for a couple reasons. One, her reason for removing the documents doesn't address whether she actually removed them or even whether she intended to conceal them or not. Two, still they've got the big problem on materiality.

THE COURT: Here's the question I have for you, Mr. Gordon. How -- Mr. Dudley's position on the materiality of the statements and the documents, how does the statement that "I thought it would be safer" impede the grand jury? How did it? I mean, how do her statements to the grand jury that I thought it would be safer for me to take them to the house -- the grand jury at this point knows they were taken to the house, they know what the documents are. How does the statement that, "Well, I took them to the house because I thought it would be safer to take them to the house", even if she's lying, how does that impede the grand jury?

MR. GORDON: I'm trying to remember here if we knew that at that point. I don't --

THE COURT: You got to realize I've listened to a lot of testimony and I'm not exactly sure how the testimony came in on that particular issue.

MR. GORDON: And I'm trying to remember the timing of certain things, how they came before the grand jury as well, because I think that affects the materiality of what she said.

THE COURT: You want to take a second? I don't want

to make you have to think this out right here on the spot if you want to take a couple seconds. Ms. Whatley's back there trying to get your attention. So you might want to take a couple seconds.

MR. GORDON: Let me take a second, Judge.

THE COURT: Address not only the time line, but what the evidence is in the record that shows that time line so that we can be clear.

MS. WHATLEY: May I argue it, Your Honor?

THE COURT: You may.

MS. WHATLEY: As to the materiality issue, the jury instruction, the Eighth Circuit jury instruction for 1618-1623 states that false testimony is material if the testimony was capable of influencing the grand jury, but it was not necessary to find that the false statement actually affected the grand jury. I think that's kind of the difference here. Just because we do good investigating and we go to Pulaski County and say give us your calls doesn't lessen the fact that she's lying about it in front of the grand jury. Had we not had those calls and she just said no, that's the only reason that I had removed it, that's capable of influencing the grand jury. The grand jury at this point in time is investigating Dr. Mann, they are investigating the bombing, they are entitled to know what his actions are and why he is doing these actions.

The other part of that and just how this all played out,

the phone call is made sometime between, I don't have the exact date in front of me, sometime between March 4th and March 13th of 2009, and we know that because that's when he was housed at Pulaski County jail. Actually the phone call was made before he goes for his detention hearing on March 9th so it was sometime between the 5th and the 9th. Phone call's made, she's saying there's going to be a -- Drake says it's likely they're going to come with a search warrant for the clinic. At this point in time, there had already been two search warrants run on their house. They're going to come with a search warrant for the clinic. He says -- they start talking in code, it's very obvious that she's "signature, checks", I mean, she goes and gets what she needs. He says take it to Tim or Riley. At that point in time, Your Honor, we don't even know who Tim or Riley are, and, in fact, early on, we thought that the tapes were saying Tim O'Riley. And if you look at her grand jury testimony, that's what she's asked, "Who's Tim O'Riley?" Because that's how it sounds. She testifies before the grand jury on April 8th of 2009, and the only thing that we have at that point in time is the call itself. We don't have Gerald Riley, we don't have Tim Harrell, we don't have anything but the call. We have no idea what she has taken out. That is capable of influencing the grand jury. What she has taken out are checks in the name of Sandip Mann.

It should also be noted that the clinic is in the

brother's name, the storage unit was in the brother's name, and one of the checks that was shown during Lloyd Hahn's testimony for a gun that was purchased by Dr. Mann was a check from the Sandip Mann account. So all of those things are capable of influencing the grand jury. It's not that it actually had to. Just because we do our job and go get the information we need should not count against us for that purpose.

THE COURT: I guess the question I'm asking is if the grand jury knows that the document has been removed or the checks have been removed. And I'm not certain. You correct me on this. The grand jury knows the stuff has been removed, and they ask, why did you do it, and she says, I did it for one reason and not the other, how is that statement material? What does it show?

MS. WHATLEY: At that point in time, we don't know what these are. At the time that --

THE COURT: So you don't have the document at the time you asked the question?

MS. WHATLEY: Exactly. We don't get the documents for a month later. The grand jury reporter, Melanie Miller, testified that the grand jury testimony was on April 8th of 2009. David Oliver testified we didn't get the records until May 5th of 2009.

THE COURT: So you were asking about documents you didn't have in your hands?

MS. WHATLEY: Exactly. We don't get them till after.

THE COURT: Okay. Mr. Dudley, would you respond to that?

MR. DUDLEY: Your Honor, she's not charged with lying about the documents. She told them about the documents. They asked her about the documents, she told them about it. She told them what they were, that's how they found it out. So they're confusing her reason for removing the documents with something about we didn't know what the documents were. Yeah, they did, she told them.

THE COURT: You're saying she tells the grand jury this is what the document is, this is what I did with it, and then the question's asked, why did you do that with it?

MR. DUDLEY: That's right.

THE COURT: Because I thought it would be safer.

MR. DUDLEY: That's right.

THE COURT: So your point is is that even if she says "I thought it would be safer", it's irrelevant because they know what the document is, they know where the document is, and they know how to get it at this point?

MR. DUDLEY: That's right, Your Honor. I think the best way to look at this, was it capable of influencing the grand jury is say, assume she lied. What if she had said, I took those documents because my husband told me to. Would the

course of the grand jury proceeding have been any different?

THE COURT: I'll let --

MR. GORDON: Your Honor, the point of this, she is covering up -- it is obstruction of evidence. That is very relevant in ultimately being indicted for that. That's certainly relevant for the grand jury to know.

THE COURT: I think that goes to 7 and 8 and there's no question. I'm not saying there's no question, but I think we have enough evidence in the record to get to the jury on 7 and 8. That's why I'm focusing in on 9 because now I'm wondering whether this statement, whether she said, hey, look, I did it, I took it because he told me to, I mean, would anything have changed at that point. What changes? Your investigation doesn't change. You go get the documents still. At this point, you know about the documents.

MR. GORDON: She is covering up her involvement with evidence and witnesses and her husband's and that is a relevant matter for the jury to inquire into.

THE COURT: That's a relevant issue, but I guess here's the point, Mr. Gordon, and answer this for me. She says, I covered up, I took -- that's not exactly what she said, but if she says I took the documents over there, I removed evidence that you're looking for, even though you really didn't know you were looking for it at the time, but I moved the stuff. And then the question is not whether you removed it,

where you took it and how can we go get it, it's why did you move it. Well, I lied, if this is the case. I moved it because I thought it would be safer, not because my husband told me to. Why is that material why you did it?

MR. GORDON: Because I think any time you have someone who is under a criminal complaint who is in custody and they're tampering with evidence, that is material for the grand jury to know. Because we need to know if something's been moved, we need to know what's going on behind the scenes. It's a relevant inquiry for the grand jury.

THE COURT: So you're saying the inquiry itself is relevant, so therefore, the response, whatever that response is is relevant?

MR. GORDON: Sure. Because had she said, yes, well, I moved it because my husband told me to, then it could have branched out into, well, what else has he told you to move, what else have you done. But she lies and doesn't mention her husband and she just says, I moved it because I thought it would be safer. Does it really make sense if it's going to be safer, you take it home and how about you lock it up in the gun safes with all this other stuff. No, you take it to one of your best friends and say, here, hold this for me. I mean, it's --

THE COURT: Mr. Dudley, what do you say to that? My initial thought was that you have the stuff or you know where

it is, you know the location of it. What reason I give you for why I did it is pretty much irrelevant because you know I did it. But Mr. Gordon makes a good point, doesn't he, if they're still investigating and they're trying to determine what Dr. Mann has instructed her to do and what else has he instructed her to do, wouldn't that be relevant?

MR. DUDLEY: But the question's not is it relevant. Sure, it's relevant for the grand jury to ask that. But the question is, is it material. And there's a difference between relevance and materiality. Materiality, they have to show it's capable of influencing the actions the grand jury took. And saying, well, we might have asked a different question, that was the argument the government raised in the ***Lasater*** case. And the Court said no, you weren't prevented, the answer didn't prevent you from asking any question you wanted to ask and you already had the information you were trying to get. It's the same argument that they're making here.

MR. GORDON: It's not, Your Honor, because had she said I moved it because he told me to, we could have asked her, well, what else have y'all talked about, and gone into all that. And obviously it was something for the grand jury to consider because they're indicted for it. Not only two counts specifically for the checks but for the other stuff that they were doing. It was a relevant, material matter of inquiry for the grand jury.

MR. DUDLEY: That's circular to say it's material because we indicted them. I mean, if that's true, it'd always be material any time there's an indictment. Your Honor, they have not -- despite what he argued, they have to put on proof of how it was capable of influencing the grand jury. They didn't put on anybody to say, well, we would have asked this question, we would have asked that question.

THE COURT: Let me ask this last final question and we'll deal with this and be finished with it. Mr. Gordon, who testified as to what the grand jury would have done with it had she answered differently?

MR. GORDON: Your Honor, that's not an element of proof. It's not one of the elements. It's an instruction that we can argue, but it's not one of the elements we have to prove.

THE COURT: Okay. Here's what I'm going to do. I'm going to deny on 7 and 8. I'm going to hold 9. I'm going to take a look at these two cases and the defense can start putting on their case and I will rule on that by this afternoon. But I need to take a look at the ***Lasater*** case. And, you know, I know, what is it, that Clinton case that deals with the same types of issues of giving false testimony under oath, but it being immaterial and irrelevant so, therefore, he doesn't get charged with perjury. I will take a look at those cases and rule on it by this afternoon.

MR. GORDON: Your Honor, the one thing we would ask not only for Count 9 but for all the other counts, we would ask the Court to reserve judgment until a verdict is returned because if you dismiss the count at this point, there's nothing the United States can appeal.

THE COURT: I understand. We can do that.

MS. CASSINELLI COUCH: May I, Your Honor?

THE COURT: Yes, you may.

MS. CASSINELLI COUCH: I'm going to go through the counts in the order they are in the indictment. In Count 1, the defendant is charged with -- well, in Count 1, we've had a bill of particulars so I'm limiting my argument as it's my understanding that the bill of particulars narrows the charge in Count 1 to aiding and abetting and conspiracy. So based on that, we would argue for judgment of acquittal on Count 1. Reasonable jurors could not find beyond a reasonable doubt that the conspiracy or the use of a weapon of mass destruction affected interstate commerce.

First and foremost, there was testimony that Dr. Pierce's clinic had out-of-state patients, that they had vendors that were out of state, things like that, but there was absolutely no testimony that there was any effect on commerce. They presented evidence that there was activity in commerce, but no effect. The testimony was that they continued to buy things where they bought them, they continued to have services

rendered from out of state. There was no testimony that there was a break in that, that it was in any way affected. And it --

THE COURT: Let's do this. I'm going to deny that one, and I will tell you this, Ms. Couch. What the Supreme Court has done with the commerce clause, everything affects commerce. If I buy a hamburger at a local diner, that's interstate commerce now, because they'll say the meat came from somewhere else or the buns came from somewhere else or the gas used to transport it came from another state. So it's so broad what interstate commerce is and how the effect is. There are even cases where if you plant crops in your backyard, that can be considered interstate commerce because that means you don't have to go buy from the local grocery store and, therefore, you have affected interstate commerce. It's so broad now that I think what we've heard has crossed that. And I'll let you make more of a record on it, but I think that's pretty clear.

MS. CASSINELLI COUCH: I understand the Court's position and I think that that's more the lower courts. The Supreme Court's actually in recent years decided several cases on interstate commerce elements and they've actually narrowed it. And the issue is now what effect. Does it have to be a substantial effect, can it be a minimal effect. And the lower courts haven't -- the Supreme Court hasn't decided basically. They've decided in cases where there's not an element in the

statute. They've said it has to be a substantial effect. They have not been presented with the issue of how much effect in a case where it is an element. So we would argue that those cases that require substantial effect should apply in every case under the commerce clause, and even if you don't require a substantial effect, it has to be some effect.

And in this case, the government is asking the jury to pile inference upon inference upon inference to determine if there was any effect whatsoever even if it was de minimis. We would submit that that, under ***Lopez***, ***Jones v. U.S***., there's also a Tenth Circuit case, I think it's Mulholland that discuss the effects. And so we would argue that the interstate commerce element has not been met. Obviously to pile inference upon inference takes the police power from the states and makes almost every offense a federal offense. And that was not -- that is not permissible under the constitution. There are cases that discuss the fact that -- I'm going to move to Count 2.

Count 2 is the car, the use of the vehicle in interstate commerce. Cases are pretty clear that there has to be active employment for commercial purposes. An example of that is if it's a leased vehicle or if -- I mean, that applies to buildings as well if they're rented, but if it's a personal use vehicle, the commerce clause does not allow the federal government to bring that in in a criminal case.

Specifically --

THE COURT: Let me ask you this, Ms. Couch. The cases that I have read have, for the most part, been civil cases, they have not been criminal cases that deal with this issue. Are you saying that the standard is different in criminal cases?

MS. CASSINELLI COUCH: I'm saying that in criminal cases, we have those three areas of the commerce clause and this one is clearly it is the effect on commerce and the use in commerce. So I would point you back to that Tenth Circuit case. In that case, I believe there was a judge who was traveling to court and he was ruling on cases that involved out-of-state claimants. And in that case, they said yes, your vehicle gets you to court, but if you didn't have it, you'd just have another one. So that was not a use and an activity affecting interstate commerce. And I would submit that this is a similar situation, that any minimal tie to interstate commerce is not sufficient to sustain a conviction on Count 2 under that element.

Back to Count 1. We would submit that no reasonable juror could find, under the conspiracy prong, that there was a conspiracy because there's been no identification of any other person, much less an agreement with any other person. I don't -- it's difficult to argue that because we really don't have any evidence to go from. Even though this has been a

circumstantial case, the government still has the burden of providing the jury with evidence of people agreeing to do something. And there's been no evidence of any agreement with anyone else. So we don't believe the evidence can sustain a conspiracy.

And aiding and abetting is a similar argument. There is no evidence as to who was aided and abetted or what actions that person took or what actions Dr. Mann took. We have a whole bunch of circumstantial evidence that really doesn't indicate any specific action by any person. So we would submit that no reasonable juror could find either one of those elements to satisfy Count 1.

Should I proceed to Count 2?

THE COURT: Yes.

MS. CASSINELLI COUCH: Count 2 is essentially the same. The indictment charges aiding and abetting a person or persons unknown. Identifying it as an unknown person does not relieve the government of the burden of providing evidence that someone did something, and what they did that was aided and in what way it was aided. Again, we have no evidence of that. On count -- and, therefore, we would move for judgment of acquittal on Counts 1 and 2.

On Count 3, this is the possession of the grenades not registered in the NFRTR. We would submit that there's not been evidence of possession sufficient for a jury to find that

Dr. Mann possessed these grenades. I believe the evidence was that they were found down the road and we would submit that that would be constructive possession arguably. We would submit that there's not evidence to get to constructive possession. On Count 4, that is the USAS shotgun, charged with knowingly possessed the USAS not registered in the NFRTR. We would submit that there's no evidence of knowing possession of the unregistered weapon. I think the testimony was that the law was changed at some point, and I'm not even sure if there was testimony, I believe maybe Agent Oliver testified that he didn't find it, and I'm sure the government will clear this up, in NFRTR, but there's been no testimony that he knowingly possessed it as an unregistered weapon.

Count 5, this is the machine gun, knowingly possessed the machine gun not registered in the NFRTR. We would submit that there's no evidence of failure to register. The indictment simply lists the different serial number, but there's been testimony that there is a 7.62 caliber machine gun registered in the NFRTR that matches the gun right here next to me, that the serial number on this gun and the serial number on the transfer form which was approved by the ATF and which is in the registry, all of that together, this gun is registered. And there's no evidence otherwise. On Count 6, this is also the machine gun, and the argument would be the same. If the gun was properly registered, then the defendant is not in violation

of 922 for legally possessing a machine gun. Again, we would submit that the records indicate that the gun was registered.

Count 7, this gets back into the obstruction counts. Your Honor, on these counts, I guess I begin with the conspiracy part. No evidence of an agreement. The government says, well, we played a phone call and the phone call, standing alone, can -- or maybe not standing alone, but the phone call evidence is the agreement. That phone call is a discussion between two people about how to handle their affairs. It does not in any way indicate the purpose of the concealment. And the purpose of the concealment is crucial to both Count 7 and 8. They have to have an intent to obstruct, influence, or impede a proceeding that is foreseeable, contemplated. So it's not just do you have an agreement to remove the documents, it's do you have an agreement to remove the documents so that they won't be presented to somebody. And there's no evidence of that whatsoever.

They're talking in numerous phone calls about how to handle their personal affairs, because he's been taken to jail unexpectedly. And I submit that any citizen has any right to talk to anybody about their personal affairs without the government's interference. That's why materiality is important. That's why it requires corrupt concealment. You have to know that you're doing something wrong. You have to act with a voluntary and deliberate purpose to influence,

obstruct or impede, not because you're worried about blank checks sitting in an empty office, which is not an unreasonable thing to worry about. So not only do they have to agree to do it, but they have to agree to do it for that reason.

And I submit that there has been no evidence whatsoever of any purpose or object of this conspiracy to keep that information from anybody that has anything to do with an official proceeding. The government also said -- I think as to Mr. Riley, I think Mr. Dudley addressed that perfectly, there's just simply no testimony that he was in any way influenced or told to do anything that was improper. I don't feel like any reasonable person could find otherwise. You don't have to talk to the ATF, you are entitled to a lawyer. Certainly Agent Oliver would have told Mr. Riley the same thing had he been doing what was appropriate and certainly anybody in the room could have said that. And Riley, Mr. Riley did not testify that that influenced him to do anything improper or to keep anything from the agents or that he took it that way. He simply testified that's what she told me.

Again, I go back to -- and I'm talking about corrupt concealment as to Count 7 and 8, and I think I've already said that it's deliberate, voluntary, and the purpose has to be corrupt. You have to know that you're doing something wrong. It also has to be likely to affect the proceeding. I think you've addressed that, but I want to reiterate that the

testimony was Agent Oliver saying, well, in a general investigation, my investigative techniques are that I follow the money. Well, what Agent Oliver does in a typical investigation has no relevance to this. It's what the defendants believed, thought, and intended to do. It has nothing to do with Agent Oliver's investigative techniques and what he might have done, could have done, would have done. It just doesn't.

And it's easy to come back now for him to say I would have gone and I would have found that, but that's not the test at all. The test is what they believed and what the grand jury needed, wanted, was going to use and was material to the grand jury. There's been no testimony at all that that financial information had anything to do with any of these other counts. I still, that just is sort of left hanging. I don't know that had those documents been seized in the search, there's no evidence that they would even be here now in court for this trial. I don't think they have any relevance to anything.

There's been no evidence that anyone thought the documents had anything to do with unregistered firearms. That's what Dr. Mann was in custody for, unregistered firearms. There's no evidence that at that point, that that financial information had anything to do with whether or not he possessed a gun and it was in the NFRTR. And that was the case that was active at that point in time. I believe we have dismissed

Count 10. So for those reasons, I would move for judgment of acquittal on Counts 1 through 8 at this time.

And, also, we would renew all of our motions that have been filed in this case, the motion to sever, and even if I don't list them, I still intend to include them, but there were several motions having to do with double jeopardy, multiplicity, duplicity and those things, and we would renew all those motions at this time. I think the evidence, once we've gotten into court, the bill of particulars has even been narrowed and it is even more clear that some of these counts are the same, the same evidence, and that you can't have two convictions for the same offense under the double jeopardy clause, so we would renew all those motions at this time as well.

THE COURT: Okay. Who's going to respond on these? Address -- first, I'll say this, Ms. Couch, that's fine. Whoever's going to respond can respond. I will say that on the conspiracy counts, I denied the motions for Mrs. Mann, I'm going to deny those for Dr. Mann. I will say if you took any piece of the case on its own, handing the documents to Riley, even telling Riley, heck, you're sitting here crying and boohooing, if you want a lawyer, we'll pay for you a lawyer. You understand, if it was just that, then that'd be one thing, but if you take the whole case together and the deal with this case is, there's no, I won't say no, this case isn't built on

one big piece of evidence that comes in and hits you across the head. It's the little pieces that all come together and if you look at the entire case, there's enough to get to the jury on the conspiracy counts.

On the aiding and abetting and the use of a vehicle in interstate commerce, those arguments, I'm going to deny those. On the possession of the grenades that were found in the ground, what was it, down the street, there's enough evidence that the cannisters having the same serial numbers or lot numbers or whatever, and all the different things involved, there's enough to get to the jury on that. Now, question with regard to 4, 5, and 6. The 12-gauge shotgun, I think the testimony is that Dr. Mann purchased that gun before the law changed, and the law changed, he was given seven years to register. There's been some -- I think some of the evidence talked about the fact that he didn't have to do anything until he sold it. What evidence is there in the record that he's violating the law in the possession of that firearm?

MR. GORDON: Your Honor, there's one phone call where Dr. Mann is talking to his wife where he clearly says, I had seven years to register this, I didn't do it, and he tries to blame ATF. He even says, you know, they didn't call me every year and say, dude, wake up, dude, wake up, and I forgot to do it.

THE COURT: That's the strict liability statute.

It's like having a driver's license, you might think you have an unexpired driver's license, but if it's expired, it doesn't matter what your thought is.

MR. GORDON: The only mens rea that the law requires us to prove is that he knowingly had the weapon and that he knew of the characteristics that made it required to be registered. Those are the only two mens rea we have to prove.

THE COURT: How about the other two, the two machine guns. Ms. Couch makes the argument, and I think there was some proof that there may have been some registrations on these guns. What's the deal with that?

MR. GORDON: Your Honor, it took us a while to get there, but the point, and what the testimony and the evidence bears out is that there is an RPD machine gun manufactured by Lloyd Hahn with 1442 registered with the NFRTR under Dr. Mann's name. However, it's not that gun, and it's the government's theory that that gun has been moved on.

THE COURT: I think the testimony went back and forth whether it was that gun or whether it was not that gun. I think the cross was hard on Lloyd Hahn about that might be the gun. So the government's position is that there's evidence in the record that says that that is not that gun?

MR. GORDON: Correct.

THE COURT: Regardless what the cross was?

MR. GORDON: Correct.

THE COURT: It's enough to get to the jury?
MR. GORDON: Yes, sir.
THE COURT: Okay. How about on the second one?
MR. GORDON: The second count?
THE COURT: Count 6, I mean, I'm sorry.
MR. GORDON: Same argument applies there, Your Honor.
THE COURT: Ms. Couch, what's your response to that?
MS. CASSINELLI COUCH: May I respond to Count 4 as well?
THE COURT: You may.
MS. CASSINELLI COUCH: On the USAS, it is not strict liability, and the Supreme Court in ***United States v. Staples*** began to deal with that issue. Actually, knowingly is not in the statutes because they weren't written with the mental intent. Supreme Court came back and said we don't punish people without knowledge, and maybe this is a tax statute, but when you put a prison term of ten years on it, it becomes a lot more than a tax statute for the person who violates it. So just like a felon in possession case, you have to knowingly possess the weapon and you do have to know the characteristics of the weapon. And the testimony was that, yes, the law changed, there was no testimony that Dr. Mann received any notice of that. And there was no testimony -- well, I'll address the phone call. The phone call is after he's aware of

what the government is alleging, so he's describing what they're accusing him of and he says, I didn't know, I didn't know that I was supposed to register it before it was transferred.

THE COURT: Now, what Mr. Gordon says is a little distinction in what he said and what you're arguing. What he's saying is that mens rea goes to the actual possession. I have to know I have this pen in my hand, I don't have to know it's illegal to have this pen. The mere fact that I have this pen and I know that I have this pen, if it turns out it's illegal to have it, then I'm liable, or not liable, I can be charged and be held guilty or found guilty for that. I think what you're arguing is that he had the weapon, I think that's what all the evidence has shown, he had it.

Even the phone call says, you know, I can't believe this happened or whatever, and I called them, they never told me, whatever, whatever, whatever the phone call said. But the phone call establishes that he knew he had it, but that he didn't know that it was unlawful to have it. So what Gordon is saying or Mr. Gordon is saying is that that's all you need. That's all you need. So you're saying that the Supreme Court has said something different than that?

MS. CASSINELLI COUCH: There are two parts to this, and I disagree obviously with Mr. Gordon's assessment. And ***Staples*** doesn't go all the way. ***Staples*** is the case that only

addresses -- that was a situation where somebody had a firearm and literally didn't know what it was, like that it was, I can't even remember, a machine gun or whatever. So the Supreme Court's not addressed the further issues on do you have to know if it's registered or not. But on this count, on this particular count, Dr. Mann didn't know the characteristics that made it a violation to possess that weapon without registration. Because ATF, prior to 1994, didn't apply that to that gun.

So he wasn't aware of the characteristics of the weapon that rendered it a registration type weapon. Now, the second part of that is no matter what statute it is, our law does not punish people for mistakes and inadvertence. And that -- I mean, I think that goes to every definition of knowingly that's ever been used. In fact, we don't even give definitions typically because that's such common knowledge.

THE COURT: Isn't it that knowingly actually goes to the act and not to what I know about the act? It's I knowingly commit this act. I knowingly shoot through this wall out here, but I think I'm shooting the wall and somebody gets killed on the other side, I didn't know I was shooting that person, but I still can be found guilty of murder for the fact of pulling out the gun and shooting through the wall because I knowingly shot through the wall.

MS. CASSINELLI COUCH: No, not necessarily. You

have to have intent to kill for murder. You might be guilty of a reckless act, but you're not going to be guilty of knowingly killing somebody if you didn't knowingly kill somebody. That's the difference.

THE COURT: What's your response to that?

MR. GORDON: Your Honor, nothing in the law requires us to prove that he intentionally or knowingly failed to register. There's no requirement. And I think even if there were on the facts of this case, we can still get there. Because Dr. Mann in the jail call says he called ATF in Atlanta when he had the gun, and he says they told him just sign it up when you transfer it. So at this point, he already knows it's something he has to register, he's already aware that this firearm has to be registered.

THE COURT: I think that cuts against your argument. I think that jailhouse phone call, he's essentially not sobbing to his wife, but he's saying I can't believe this "effin" stuff and this, that, and the other, and I called them and this is what I got. It's almost like when you call the IRS and say can I do something and they say yes, and then they come back later and say no, you couldn't. You know, why am I being held responsible for something that I called you on and got your advice on.

MR. GORDON: That's true.

THE COURT: I think that goes to intent that he knew

that he should have registered because they're telling him no, you don't have to.

MR. GORDON: Well, I'm sure -- well, that's what he says on the first call. In the later call, he's talking to Mrs. Mann and she actually says, yes, it's the one you called and they told you not to register. He's like, no, no, this was my fault. I had to do it within seven years. They didn't call me every year to remind me hey, dude, wake up, this is my fault.

MS. CASSINELLI COUCH: That's consistent with the first phone call. He's talking about what he's accused of and he's saying -- and let me say this, the ATF's own -- government's own ATF expert when asked about the seven years, said, well, there really wasn't a -- that wasn't the deal. He said in 2001 --

THE COURT: Here's the problem with that. The problem is at that point we're having somewhat conflicting testimony and that's a jury question and the issue is whether the jury gets a chance to decide. Here I'm just trying to figure out what was the mens rea requirement that Dr. Mann had. If the requirement was that he had to know he had to register it, that's one thing. Mr. Gordon says that he comes back on this telephone call and he says, well, I knew I had to and I didn't do it.

MS. CASSINELLI COUCH: I don't think that's what the

phone call said.

THE COURT: I would have to go back and look at that telephone call to make sure that's what he said. But if the mens rea requirement was that all he had to do was have intent to own this weapon and there's somewhat of a strict liability for having this weapon that I'm supposed to register, then I think it goes to the jury.

MS. CASSINELLI COUCH: The one thing that is clear is that these are not strict liability offenses. They are not. That is why knowingly is in every count and in every jury instruction. Because we don't have strict liability offenses where we put people in prison.

THE COURT: Go back to the proof on the 5 and 6, the possession of a machine gun. Remind me again because I'm about to rule on that.

MS. CASSINELLI COUCH: I'll have to remind myself. On 5 and 6, the testimony -- we have the weapon, it is engraved with the serial number 1442. We have an approved transaction form, transfer form approved by ATF with the serial number 1442 with the description of that gun, and it's in the registry. Now, Mr. Hahn was all over the place about what gun went where and all that, but there was no other 1442 presented. There was no other 1442 found, there's no other option. No reasonable juror could say, well, that's the real one and that's the fake one. There isn't a second one. We have a transfer form, it's

in the registry, it has the serial number, ATF approved it. That's the end of the story.

THE COURT: Why is that not the case, Mr. Gordon?

MR. GORDON: Because Mr. Hahn sat there, he had his magnet and he said I can tell you exactly why this is not the gun that I sold to Dr. Mann. If this magnet sticks, it's not the one I sold him. And he let go of the magnet and you could hear the thing hit the gun in the courtroom when it stuck. So the point of that is, you know, you can't register one gun and then do something with it, get another gun and scratch on there whatever you want.

MS. CASSINELLI COUCH: Okay. First, we weren't given any notice of this special test under Rule 16, this examination and testing. But there's no evidence that Dr. Mann put that serial number on there. There's no evidence of any of that. There's no evidence that they found engraving stuff, there's no evidence that anybody saw him, nothing.

THE COURT: I think all the evidence, to get to the jury, all the evidence has to show is that there has to be proof in the record that that was not the gun. And I think Hahn did testify that's not it. On cross, you know, he was crossed pretty hard about where he met with ATF and whether he had a chance to check it and there was a whole cross on that that could be argued. But if all you need is for there to be some evidence that it's not the gun, then I think we get over

that hurdle.

MS. CASSINELLI COUCH: I think the question is could a reasonable juror find that that wasn't the gun. And I would submit that no reasonable juror could find that based on the fact that there's an approved form and a gun with that serial number right there.

THE COURT: Here's what I'm going to do. I'm going to deny the motions for Dr. Mann on 1, 2, 3, 5, 6, 7, and 8. I am going to reserve ruling on 4 because I'm going to go back and look at those, that telephone call. Can you provide that to me?

MR. GORDON: Yes, sir.

THE COURT: Well, I have it here in my notebook.

MR. GORDON: I suspect you'll hear it during the testimony of some of the defense witnesses.

THE COURT: Okay.

MR. GORDON: On cross-examination.

THE COURT: If I don't, I'll read it again and I'll withhold ruling on that.

MR. GORDON: Your Honor, I will agree with Ms. Couch to a very small degree on the law for the possession of unregistered firearms on counts --

THE COURT: That's not strict liability, I understand.

MR. GORDON: It's not a pure strict liability, but

it does not require -- it doesn't go as far as what she's asking this court to think that it requires.

THE COURT: I probably need to pull the law on that and make sure.

MS. CASSINELLI COUCH: I'll tell you, Your Honor, the law is all over the place because the issues, like I said, ***Staples*** went up and it's going to have to be presented a couple more times because they're all over the place and you have to look at different kinds of gun counts to sort of get any kind of idea. Does the Court -- I take it the Court's rulings also apply to all the arguments that were made to each count?

THE COURT: You've made a record on your renewed motion to sever, renewed motion regarding multiplicity and duplicity, and I'm going to deny those too.

MS. CASSINELLI COUCH: And all other motions that were filed that I have not specifically listed.

THE COURT: We'll let the record reflect that every motion that you have filed has been renewed and I'm denying those that I've denied.

MS. CASSINELLI COUCH: Thank you.

THE COURT: Anybody else want to make a record now before we proceed?

MR. GORDON: Your Honor, I've got a couple more matters I'd like to bring to the Court's attention.

THE COURT: Okay.

MR. GORDON: The last topic before the Court when we broke on Wednesday, the defense had brought up some issues regarding ATF and the production of witnesses and documents. First they were complaining about the production of Tom Hopen from the ATF lab. He's here. He got here yesterday. ATF's position was, well, again, they had some procedures that had to be followed and there was an issue about whether or not those had been followed. But he is here. There's also an issue about the defense had subpoenaed some records from ATF, I think, after trial had started or right before, requesting the production of any reports on Dr. Mann before February of 2009.

They provided me with redacted copies which I gave to the defense. The defense wanted unredacted copies. I've been told that the redacted information is simply the identity of some confidential informants and phone numbers, personal information about agents. I've received -- yesterday I received unredacted copies and I'm prepared to give both the redacted and the unredacted to the Court for the Court to review them in camera to make sure that the redaction is proper.

MS. CASSINELLI COUCH: I'm satisfied at this point if the Court just wants to hold the unredacted copies and should that become an issue, we can address it at that time. It may or may not be an issue, but it won't be today.

THE COURT: Let's do that. That way I don't have to look at them unless I have to. If the defense determines that

the copies that they have in their hands are fine and there's no issue with looking at them and thinking there's some more information that they need, if that doesn't happen, then we can just proceed. If at some point they think that there's something on there that shouldn't be redacted, I'll take a look at it and make a determination.

MR. GORDON: Do you want me to hold on to both copies?

THE COURT: I would say hold on to them until it becomes an issue.

MR. GORDON: The final issue was, again I think during trial, the defense had subpoenaed information about destructive devices that were registered with the NFRTR, they wanted numbers and breakdowns, and the problem was that ATF doesn't keep them in the way that the defense wanted them. And they were trying to get it done, but it just didn't, wasn't working. So finally yesterday -- on Wednesday, I told them, look, if you can't do it, you can't just sit there and not respond, you have to tell them we can't do it and here's why, and that information was provided to the defense yesterday.

MS. CASSINELLI COUCH: I'm satisfied with that.

THE COURT: Okay. Is there anything else we need to take up?

MR. GORDON: I guess there is. This is one of the things we talked about Wednesday as well. The defense intends

to call John Norrell as an expert. The Court ordered the defense to provide a summary of his testimony by ten o'clock yesterday. They were close enough that I won't complain. However, I think their summary of his testimony is woefully inadequate. There are just very broad generalizations, there's no reports, there's nothing that he's reviewed, there's nothing from his CV that they've provided. He's going to be -- it appears he's going to be testifying about matters that are irrelevant and that he's not qualified and I would like to have a hearing on Mr. Norrell before he sees the jury.

THE COURT: When do you plan to call Mr. Norrell?

MS. CASSINELLI COUCH: I planned on asking for a few moments to make some copies and then I believe Mr. Lassiter had a couple of witnesses and then Mr. Norrell.

THE COURT: Is that something we need to take up this afternoon before we bring the jury back from lunch?

MS. CASSINELLI COUCH: I don't know that it's really appropriate. I don't know what the -- I mean, I've provided his CV, he will testify to his qualifications. We'll go from there. I don't --

MR. GORDON: That's the -- I made copies for the Court so you can see the summary of his testimony. It is so general. I mean, he's going to be testifying about specific destructive devices and how they function and what they look like. And they know what they are, but they haven't told us

what they are so we can counter them or cross him on it. And this guy is an FFL, there's nothing on his CV that says he knows a thing about explosives.

MS. CASSINELLI COUCH: I'll tell the Court this. I spent till nine o'clock last night with him. The summary that I did was the best I could do before I sat down with him for six hours. And after I did, I e-mailed them, I believe, another sentence or so. He will testify mostly about the NFA and what FFLs, manufacturers, and dealers do. To the extent that he will address explosives, it really doesn't take an expert to testify about what he's going to testify about.

THE COURT: Here's what I'll do. I'll do the same thing for the government that I did for the defense. If you want to take time after his direct to sit down with the documents and get your cross prepared, we can do that or we can have a short hearing before he testifies to determine whether he's qualitied to testify as to --

MR. GORDON: I'd rather do it before he's in front of the jury and he starts talking about stuff he's simply not qualified to. And I've got a bunch of relevancy objections to -- I mean, there's a list of like 20 things.

THE COURT: How long will your witnesses be this morning?

MS. CASSINELLI COUCH: Probably not very long.

MR. LASSITER: Judge, the first two witnesses will

be pretty brief. Thomas Hopen, who's the ATF forensic chemist, who's going to testify about comparisons that he made, I don't anticipate much of a cross on that, so I think he's probably 15 minutes. The next witness is Priya Patel, her direct I doubt will be any more than ten minutes. I don't know what they're going to cross her on, but both of these witnesses are probably on and off in under an hour.

THE COURT: How long is your FFL expert going to testify? How long do you think he'll take?

MS. CASSINELLI COUCH: Well, if I go through everything I intend to go through, probably 45 minutes.

THE COURT: And how many more witnesses do you expect to call this afternoon?

MS. CASSINELLI COUCH: Well, we could call one more, but we certainly wouldn't insist on it.

THE COURT: Let's do this. Let's take 15 minutes, come back at 10:30, let's put on your first two witnesses, let's take our break then. Let's have our short hearing, have lunch and come back and put him on after lunch.

MS. CASSINELLI COUCH: What are we going to do at this hearing? You want to put him on and go through his qualifications, is that what you intend to do?

MR. GORDON: That and I'm going to take your summary of what you intend to ask him and find out what he has to say --

THE COURT: He wants to voir dire this witness to see if he really knows what he's talking about.

MS. CASSINELLI COUCH: I object to him going through my summary and asking specific questions. If he wants to ask about qualifications for subject areas, but having a cross before I do direct.

THE COURT: I think that's fair. But it's not going to be in front of the jury. Actually, crossing him before the jury hear him might get him prepared for the cross in front of the jury. But stick to his qualifications, what he knows about this area, those types of things, and see if he's qualified to testify as an expert. I can't let you do your cross of him based on his summary before you hear what his direct is.

MS. CASSINELLI COUCH: That I wrote.

THE COURT: You understand what I'm saying?

MR. GORDON: I understand. And maybe I just need to give you the notice that I got yesterday. There's -- I mean, they want to have him testify about his opinion about ATF regulations, how ATF handles certain issues that come up. It's just a whole bunch of irrelevant stuff.

THE COURT: Let me say this. If his testimony is that I've had an FFL for 30 years, they come out and inspect every so often and this is what my experience has been, that's fine. If he starts talking about what the regulation book says and I know that they inspect other people, then that's a

different story. Then, of course, we're not going to hear that. So I mean, you know, if we need to have this hearing, if he gets up here and starts testifying here's what their regulations say and they go out and I had a friend who they came out and inspected and this is what they did and this is their procedure and all that, he can't testify about that.

But he can testify about being an FFL holder and in my experience this is what they've done to me. This is normally the way they've come out and testified here. Well, I can understand what the defense is and why they're using this witness.

MR. GORDON: I don't see what his experience has to do with this case.

MS. CASSINELLI COUCH: Maybe we should read the rule about experts.

MR. GORDON: If they're an expert.

THE COURT: If he's an expert.

MS. CASSINELLI COUCH: What renders someone an expert? Maybe we should get the book out.

THE COURT: You can.

MS. CASSINELLI COUCH: He clearly qualifies from his experience and technical knowledge, he qualifies. And his experiences are relevant and his interactions with ATF are relevant. He works with ATF on many matters. Off the top of my head, and I can't swear to this, but I think the only

regulations that I'll be getting into specifically are on the USAS. And I want just for the jury to actually be able to see what the regulation says and we'll talk about the notices that FFLs received and how it happened in practice.

THE COURT: I don't know whether he's qualified to give that testimony as I sit here right now because I haven't seen it. We can have a hearing so that you can flesh that out, get into his qualifications, what qualifies him to give this testimony and that type of thing. I would not want you to take her summary that she prepared and then start cross-examining him on it. Let's do that, let's take 15 minutes, let's come back, put on your first two witnesses. We will call in the expert, have him -- and give you a chance to voir dire him to see whether he's qualified to give this testimony.

MR. GORDON: Thank you.

THE COURT: We'll be in recess till 10:30.

(Recess at 10:17 a.m., until 10:30 a.m., jury present.)

THE COURT: Who's going to examine this first witness? Is it going to be Mr. Lassiter or Ms. Couch, or do we know?

MS. WHATLEY: Mr. Lassiter.

THE COURT: We can call in both of the witnesses and we will go on and swear them in. Do we have another witness back there or are you the only witness?

THE WITNESS: I don't know.

THE COURT: Come forward, let's get you sworn in. We have another one coming. Come forward.

MR. LASSITER: Sorry, Your Honor, she was down the hall.

THE COURT: We want to get you sworn in.

(Thomas Hopen and Priya Patel, Defendants' Witnesses, Duly Sworn.)

THE COURT: Mr. Lassiter, call your first witness, but I want to address the jury once you call him.

MR. LASSITER: Thomas Hopen.

THE COURT: Ladies and gentlemen, this morning I called you in at 10, but we had some hearings we had to take up, some issues we had to take up that went from 9 until about 10:15. So we had to take a quick break before we called you in. I think the way our schedule is going to work this morning is we're going to have two witnesses and then we're going to take our morning break, and we're going to take an extended break, because we have some other hearings to take up. And I would imagine, depending on when we stop, we'll probably take two and a half hours or maybe two hours before we reconvene this afternoon. So just wanted to let you know what your schedule's going to be so when you take your next break, you can know it's going to be extended.

Mr. Lassiter, you may begin.

MR. LASSITER: Thank you, Your Honor.

THOMAS HOPEN, DEFENDANTS' WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MR. LASSITER:

Q State your name, please.

A My name is Thomas Hopen.

Q Mr. Hopen, where do you reside?

A I reside in Lawrenceville, Georgia.

Q Where are you employed?

A I'm employed at the Forensic Science Laboratory of the Bureau of Alcohol, Tobacco, Firearms, and Explosives in Atlanta, Georgia.

Q How long have you been so employed?

A I have been with the Bureau since May of 2001.

Q Where did you work before that?

A Before that, I worked for a analytical laboratory, it's now called MVA Scientific Consultants. And before that, I worked with the McCrone Group at the analytical laboratory, and also I taught for four years in Chicago with the McCrone Research Institute. Before that, I was with the Alabama Department of Forensic Sciences in Montgomery, Alabama for ten years, and I also worked part-time in a law enforcement crime laboratory in Cape Girardeau, Missouri for two years.

Q Your undergraduate degree was in?

A I have a BS degree in chemistry with a master's in criminal justice.

Q Did you, as part of your duties at the BATF lab, did you conduct some comparisons in this case?
A Yes, sir, I did.
Q And what training do you have to conduct such comparisons?
A I have formal education. I also attend classes, seminars, and meetings dealing with the examinations that I conduct. I also have presented over 62 presentations dealing at scientific meetings on type of work that I do, and I also have over 25 publications in dealing with examinations that I conduct.
Q Have you testified in court before as an expert witness?
A Yes, sir.
Q How many times do you think?
A I've testified over a hundred times.
Q And during the course of your work at the lab, were you asked to conduct some comparisons of some submitted items in this case?
A Yes, sir, I was.
Q Did you conduct a comparison of some rope, some string, and some yarn from the Mann residence with some string from the scene of the bombing?
A Yes, I did.
MR. LASSITER: Your Honor, may I approach?
THE COURT: You may.

BY MR. LASSITER:
Q Let me show you what I have marked for identification as Defendants' Exhibit 34.
A Yes, sir.
Q And do you recognize that?
A Yes, sir.
Q And would you tell us what that is?
A What is marked now Exhibit Number 34 is two packages of twine that I received in the laboratory.
Q Did you use that in comparison tests that I just asked about?
A Yes, sir, I did.
Q And let me show you what I have marked for identification as Defendants' Exhibit 35. Let me ask you if you can tell us what that is.
A It's a piece of twine and it's now marked Exhibit 35.
Q And was that also utilized in the comparison?
A Yes, it was.
Q And I will show you what I have marked as Defendants' Exhibit No. 36. Let's turn that over and see if you recognize that.
A Yes, sir, I do. It's a piece of yarn that I received.
Q And let me show you what's marked as Defendants' Exhibit 37. And do you recognize that?
A Yes, these are three pieces of twine that were from the

scene.
Q As a matter of fact, did you take those photographs?
A Yes, sir, I did.
MR. LASSITER: Your Honor, I move to admit 34 through 37.
MR. GORDON: No objection.
THE COURT: They're received.
(Defendants' Exhibits 34 through 37 received in evidence.)
BY MR. LASSITER:
Q I'm going to place on the electronic monitor Defendants' No. 37 and I believe the jury's previously seen that sometime back, but is that the string that was submitted from the scene of the bombing?
A That is correct, sir.
Q And you compared that to Defendants' Exhibit 36 up here?
A Yes, sir.
Q Which looks like a string of yarn?
A Yes, sir.
Q And I'll put Defendants' 35 on the monitor that we just looked at, and is that some other string that was submitted to you?
A That would be correct, sir.
Q Okay. And then Defendants' 34, which is the tie-down rope?

A Yes, sir.
Q Again, it's your understanding that the tie-down rope and the string and the yarn in the last three photos came from the Mann residence?
A That's how they were identified to me, yes, sir.
Q You compared those against Exhibit 37, and what was your conclusion?
A That the three known samples from the residence did not match this twine that I have from the scene.
Q They couldn't have a mutual origin; is that your term?
A Yes, sir, they could not -- they had different physical construction, different physical makeup, and they could not have -- this yarn could not have come from any of those three samples that I received.
Q Would you tell the jury how you conduct that comparison?
A In this case, I just did a visual examination, also used a low magnification microscope to look at the construction, the fabric construction of the yarns to see if they were similar.
Q And they were not, correct?
A They were not similar, no, sir.
Q And also did you conduct a comparison of some pieces of duct tape?
A Yes, sir, I did.
Q And were there four pieces of duct tape submitted to you to compare with some duct tape found in the debris at the crime

scene?
A Yes, sir, there was.
Q Do you recall where the duct tape came from that you compared to the duct tape from the crime scene?
A I had duct tape from some black plastic as well as from an ammunition can and some duct tape that was found near an ammunition can and also there was some duct tape in woods near the house.
Q And what were your findings?
A Based on the examinations that I conducted on the pieces of duct tape from the scene, they were dissimilar to the other samples that were submitted to me for comparison.
Q Would you tell the jury how you conducted that comparison?
A Again, in this situation, I only needed to do a visual examination. Duct tape is produced, there's all kinds of varieties in the construction of duct tape and the visual examination eliminated that the four samples of duct tape, three from the ammo can or cans seen, one from the woods was different than the duct tape from the scene.
Q Subsequent to those comparisons, did you conduct a study of some black plastic submitted to you?
A Yes, sir, I did.
Q And was there some black plastic submitted sheeting, that black plastic sheeting or bits of it?

A Rolls, yes, sir.
Q Okay. Was there black plastic sheeting submitted to you from the Mann residence?
A Yes, sir.
Q And was that compared to black plastic associated with the ammo box?
A That is correct, sir.
Q And what was your conclusion?
A That the samples that I received of -- the known samples that I received from the house were dissimilar to the black plastic that was on the ammo can or box.
Q And the black plastic, I think, that was found next to it?
A And the black plastic found next to the ammo can, that would be correct.
Q And did you conduct another comparison of further black plastic submitted to you?
A Could you be more specific?
Q Sure. Did you conduct a comparison of black plastic that was found outside of the Mann residence?
A That would be correct. Besides the three rolls or sheets that you referred to, there was also sheets of black plastic from the yard or the house.
Q It looked like -- some of it looked like it had been dug up?

A Yes, sir.
Q Did you compare that with the black plastic associated with the ammo can?
A That would be correct, sir.
Q And your conclusions?
A They were different.
Q I also think that, along with that ammo can, you compared the lid to the ammo can, I think, to an ammo can that was inside the Mann residence?
A That would be correct.
Q They were similar, were they not?
A Yes, sir, they were.

MR. LASSITER: I pass the witness.

THE COURT: Cross-examination.

MR. GORDON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GORDON:
Q Good morning, Mr. Hopen.
A Good morning, sir.
Q I do want to talk to you about the black plastic for just a moment. First, what I'd like to do is make sure the jury can understand which black plastic we're talking about.

May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q I'm going to show you Government Exhibit 103. You recognize that as some of the black plastic you examined?
A Yes, sir, it is.
Q Okay. And I believe that was described as a roll of black plastic found in a white trash can?
A That would be correct.
Q Let's look at Government Exhibit 100-BB, please. Did the roll look like that?
A Yes, sir, it did.
Q Will you describe that roll of plastic for us, like how wide it was?
A I believe this roll of black plastic tape was approximately 3 feet wide.
Q You have notes with you?
A No, sir, I do not.
Q Okay. Do you have your notes anywhere up here at the courthouse?
A No, sir, I don't.
Q Do you remember telling me that that roll was actually 1 foot wide?
A There was one that was 1 foot wide. This may be the one that was 1 foot wide, yes, sir.
Q Tell you what, if you would just open that up and see if we can get it right.
A You want me to open the package?

Q Sure.
A Yes, sir.
Q Okay. So that roll is only 1 foot wide, correct?
A That would be correct. I'm sorry, I apologize.
Q That's all right.
May I approach the witness again, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q I'm going to hand you Government Exhibit 104.
A Yes, sir.
Q I'm going to ask you -- a witness earlier testified that that was -- that is the same black plastic pictured in Government Exhibit 100-DD. Do you recognize that as similar?
A It appears to be, yes, sir.
Q Do you recall what -- describe the black plastic for us.
A It was a black plastic bag.
Q Like a trash bag?
A Yes, sir.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q I'm going to show you Government Exhibit 105. Did you examine that as well?
A Yes, sir, I did.
Q Does that also -- is that also what appears in Government

Exhibit 100-FF?
A Yes.
Q Do you recall when you examined that, there's the outer clear packaging here, do you recall if it had been opened or if you opened it?
A I don't remember, sir.
Q Okay. Do you recall had any of that black plastic been used before you examined it?
A That I don't know.
Q Okay. How would you know or what's one of the ways you could tell this jury if that had been used before you examined it?
A Usually you can tell cut marks on the black plastic when you cut it manually as compared to a manufacturing cut. It's usually rougher.
Q Because when the manufacturer cuts it, it's generally a straight edge?
A That is correct, sir.
Q When humans start cutting, it's a little jagged?
A That is correct.
Q Would you do me a favor and open that up and tell me if you think that's a manufacturer's cut or -- sorry.
A No problem. Yes, sir.
Q What's your opinion?
A It appears to be that it's been -- it's not a

manufacturer cut; it's been manually cut.
Q Thank you. Then you also examined some black plastic that was found wrapped around an ammunition can?
A That is correct.
Q And when you examined that black plastic, there were two pieces, correct?
A Actually, there was three pieces.
Q Okay. There were two large pieces?
A Yes, sir.
Q About the length of this table here?
A One was approximately 10 feet and the other one was approximately 7 feet.
Q Okay. Then there was a third smaller piece that appears as if it had been torn from one of the larger pieces?
A Torn or cut, yes, sir.
Q Okay. The two larger pieces, both of them had a manufacturer's edge, correct?
A Correct.
Q And then both of them also had an edge where it looked like someone had cut them, correct?
A That would be correct.
Q And if you laid those two pieces, the cut ends together, they didn't fit together, correct?
A That would be correct.
Q For example, if I were to cut this piece of paper and

turn it around, you could tell -- you could eventually manipulate it so you could tell that it went together?

A One of the comparisons we do is try to do a physical fit, and I conducted that examination. I conducted that examination in this case.

Q So when there's a manufacturer's end, edge, excuse me, normally that will tell you that could be the beginning, and I'll use Government Exhibit 105 as an example. On this roll of black plastic when it was new in this bag, there was a manufacturer's edge at the beginning, correct?

A Correct.

Q And there should be a manufacturer's edge at the end, correct?

A Correct.

Q All right. So eventually when you get to the end of this roll, you'll have the manufacturer's edge at the end and then you'll have a human cut, correct?

A Would you repeat that?

Q If I were to unroll this all the way, we're going to have the manufacturer's cut on one end, correct?

A Yes, sir.

Q Then we would have an edge that a human cut on the other end, correct?

A If something had been taken from it, yes, sir.

Q Right. It's your opinion of the two pieces that were

wrapped around the ammo can, someone had cut those?
A That's my opinion, yes, sir.
Q On one end?
A On one end, yes, sir.
Q Of both pieces?
A That would be correct, sir.
Q Then the other end of both pieces was a manufacturer's edge?
A That is correct, sir.
Q So it's possible that those two pieces you found wrapped around the ammo can were the ends of two rolls of black plastic, correct?
A They were either the ends of two rolls of black plastic or a roll where some of the black plastic is missing.
Q Okay. So it's possible they were the ends of two different rolls of black plastic?
A That is correct, sir.
Q You did compare the width of those two pieces, correct?
A Yes, sir, I did.
Q And one was larger than the other?
A One was an eighth of an inch wider than the other, yes, sir.
Q So it's possible those could have been two different rolls of black plastic, correct?
A They could have been two different rolls or from the same

roll where the width varied slightly, yes, sir.
Q Okay. So it's possible it could have been two different rolls?
A Or from the same roll, yes, sir.
Q So, hypothetically, let me ask you this. Let's say I had two rolls of black plastic in my house and I already used it, part of it for something else, and I had two ends left and I used those two ends to wrap the ammo can and then all my black plastic was gone. Then I go out to the store and buy two more rolls of black plastic from a different store and put those in my house. Might that explain why the black plastic in the house doesn't match what's around the ammo can?
A That I don't know, sir.
Q Possibility?
A I really don't know, sir.
Q All black plastic's not the same though, right?
A That would be correct, sir.
Q But you will state it's a possibility that the ammo -- the black plastic wrapped around the ammo can could have come from two different rolls, correct?
A Or the same roll, yes, sir.
Q I understand. Or they could be the same roll.
A Okay.
Q They could have been -- it could have been the ends of two different rolls, correct?

A That would be correct, sir.
Q And you know about black plastic, right?
A Yes, sir.
Q Different manufacturers' have different characteristics to it?
A They may have, yes, sir.
Q So then if I went out and bought two rolls from a different store to replace the two that I just used, they might not match the ones that I just used?
A That would be correct stated that way, yes, sir.
MR. GORDON: No further questions.
THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. LASSITER:
Q Mr. Hopen, does any of that speculating cause you to change any of your opinions you testified about earlier?
A No, sir.
MR. LASSITER: May I approach?
THE COURT: You may.

BY MR. LASSITER:
Q This is Government's 105 that Mr. Gordon asked you some questions about. In your work, that would correspond to which number, do you know?
A Again, in my -- that was submitted as Exhibit No. 29.
Q Okay. I believe that black plastic originated in the

house; is that correct?
A I believe that's what was identified, yes, sir.
Q Did it have some similar characteristics to some of the black plastic that was out in the Manns' yard?
A There was four pieces that was submitted from the yard, and based on a preliminary examination, some of the black plastic from the yard had similar characteristics to the roll that I just identified as Exhibit 29, yes, sir.
Q So some of that's cut-off that would be consistent with some of the plastic out in the yard?
A Based on the preliminary examination I conducted, that would be correct.
Q Some of the -- does black plastic come in different thicknesses?
A Yes, sir, they do.
Q Were these plastics that you looked at of different thicknesses?
A Which ones?
Q Well, just tell me. Some at 3 mill, some at 4 mill?
A I had some at 3 mill, I had some that was 4 mill, and I had some that's referred to as 5 mill. The mill has to do with the thickness.
Q Is that a characteristic you use in determining similarity and dissimilarity?
A That's a measurement, yes, sir, that we make.

MR. LASSITER: No further questions.

THE COURT: Anything else?

MR. GORDON: No, Your Honor.

THE COURT: You may stand down. Call your next witness.

MR. LASSITER: Priya Patel.

THE COURT: Just come down and have a seat right over here.

PRIYA PATEL, DEFENDANTS' WITNESS, PREVIOUSLY DULY SWORN

DIRECT EXAMINATION

BY MR. LASSITER:

Q State your name, please.

A Priya Patel.

Q Ms. Patel, where do you live?

A 8720 Somerset Lane, Germantown, Tennessee.

Q Okay. Your parents' names?

A Pramod and Alka.

Q Where are you currently employed?

A At a retail pharmacy in Memphis.

Q And do you live with your parents?

A Yes, sir.

Q Back in 2002, did your family purchase an Altima?

A Yes, sir.

Q What color was it?

A White.

Q And we heard some testimony earlier in the trial about that car and the search of that vehicle at your residence. Do you remember that?
A Yes, sir.
Q Were there any other Altimas there that day?
A No, sir.
Q And after it was purchased in 2002, was that vehicle in your possession for some time?
A Yes, sir. I used it to drive back and forth to St. Louis for college.
Q It was in your possession principally for how long?
A From August of 2002 to about midsummer or so of 2004.
Q And who had the vehicle after that?
A My mom.
Q And at some time while that vehicle was in your possession, did you have a flat?
A Yes. It was the summer of 2003, I was going to St. Louis to go to a concert with some of my friends.
Q Were you living in Memphis that summer?
A Yes, sir, sorry. I was living in Germantown at the time. And it was about an hour into the drive on 55, somewhere in Arkansas where I had a flat tire so I pulled over and then I called triple A because I can't change a tire by myself, and then that's when the state trooper came behind me and waited until triple A changed my tire, and then they put --

Q Where did you go after the tire was changed?
A Oh, well, the state trooper told me I shouldn't drive with a spare tire for that long like to St. Louis, so I turned around and went home back to Memphis.
Q Did you have a full-size spare or did you have what's commonly called a donut spare?
A A donut.
Q And the trooper again told you or suggested that you do what?
A He said that you're not supposed to drive with a donut for long distances, so he said that the next place I stopped, I should change it and get it fixed. Which, I was close enough to home where I just went home and we changed it when I got home.
Q All right. And at that time, did you keep the donut spare or did you replace it with a full-size tire?
A My dad said he didn't want that to happen to me again because he didn't want me to be stranded with a donut. So we got rid of the donut or we replaced the donut with a full-size spare tire.
Q And are we talking about the same white Altima that the agents searched when they came out to your house?
A Yes, sir.
MR. LASSITER: May I approach the witness?
THE COURT: You may.

BY MR. LASSITER:
Q Ms. Patel, I'm going to show you three photographs that are marked Defendants' Exhibits 38, 39, and 40. Would you look at those and tell me if you can identify those photographs?
A Yes, sir.
Q And are those photographs of the white Altima that we've been talking about?
A Yes, sir.
Q And is that the vehicle that you drove from 2002 to 2004?
A Yes, sir.
MR. LASSITER: Your Honor, I move to introduce 38 through 40.
THE COURT: Any objection?
MS. WHATLEY: No objection.
THE COURT: They're received.
(Defendants' Exhibits 38 through 40 received in evidence.)
BY MR. LASSITER:
Q I'm going to show you what's been introduced as Defendants' 38. Let me ask you again if that's the vehicle we've been talking about?
A Yes, sir.
Q And where is that vehicle located in that photograph?
A It's in the single car garage.
Q I believe these photographs were taken about May of last

year; is that correct?
A Yes, sir.
Q I'm going to place on the projector Defendants' 39, and let me ask you if the vehicle we've been talking about appears in that photograph?
A Yes, sir. It's the one at the end that's open.
Q The vehicle on the left or the right?
A The right.
Q Let me show you Defendants' Exhibit 40. Let me ask you if that is the vehicle we've been talking about?
A Yes, sir.
Q I'm looking to -- look on the right side of that photograph. It looks like there are some ladders and I'm not sure what else there. Do you know what's in that picture?
A Ladders, there's a shovel, and paint buckets. And then the stand-up freezer, the chest freezer, and Coke cans.
Q In May of 2009, was there any remodeling or repainting or anything going on at your house that what we see in the photograph there might have been involved in?
A Well, we were painting the foyer and the hallways.
Q At some point in time, was the attic in your residence remodeled?
A It was remodeled.
Q Tell me what was done to it.
A It's above the garage and it used to be just a normal

attic, but it was a waste of space and we used to collect a bunch of junk there. So my mom and I came up with this brilliant idea to clean it out and turn it into a girls' closet, so we closed it up and that's where we hang our clothes.

Q Was it remodeled, was it refinished in some way?

A Yes. It was finished before the summer of '07. We started around '06.

Q You have some event in your mind that --

A Well --

Q -- indicates what time frame?

A We had family friends that were involved in a Gold Strike limo accident where five of the ten passengers were killed, so we had a whole bunch of people fly in from all over and it was the same weekend as music fest so the hotels were all booked in Memphis or they were really high, so all of the houses that were involved were at max capacity with house guests so we opened up our house to have people stay with us and that's when we had to pull out sofas and everything, so that's how we know.

Q Was the remodeling before or after that?

A It was before that.

Q On the trip to St. Louis when you had the flat, did anybody go with you on that trip?

A No, sir.

Q When you got the full-size spare placed in the car, do

you know what happened to the donut tire?
A I don't remember, no, sir.
MR. LASSITER: I pass the witness.
THE COURT: Cross-examination.
MS. WHATLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. WHATLEY:
Q Good morning, Ms. Patel.
A Morning.
Q I need you to do me a favor.
A Sure.
Q Just make sure we're on the same page. Your dad goes by Pete to some of his friends?
A Yes. It's just easier because a lot of people can't say Pramod.
Q Can you spell Pramod that I probably just butchered?
A I spell it the American way. It's P-r-a-m-o-d. But the real way is P-r-a-m-u-d-h, and then there's the Bhai part, B-h-a-i.
Q What are your parents' names? What do people normally call them?
A Pete and Alka.
Q A-l-k-a?
A Yes, ma'am.
Q Was that your dad I saw out in the hall?

A Yes, ma'am.
Q Were you at the house the day the search warrant was executed on May 28th?
A Yes, ma'am.
Q You said you don't know what happened to the donut spare tire after you got back from your -- after it was changed out?
A No, ma'am.
Q You just know that a full-size spare was put in the trunk so that daddy's daughter would not be caught somewhere?
A Yes.
Q I understand that. Do you know that the donut spare tire actually stayed in the trunk for a while and was eventually moved to the garage?
A I don't recall.
Q Is it fair to say your dad's a pack rat? Let me rephrase it. Is it fair to say that if something is still usable, your father's not going to get rid of it?
A Yeah. It depends, yeah.
Q He actually has a warehouse, doesn't he?
A Yes.
Q Where he keeps a lot of things?
A Yes.
Q And at one point in time, he moved some lacrosse equipment out there that wasn't being used anymore and other stuff. And occasionally your mom gets tired of everything

being junked in the garage and it gets hauled to the warehouse?
A True.
Q Is that a fair statement?
A Yes.
MS. WHATLEY: Your Honor, may I approach?
THE COURT: You may.
BY MS. WHATLEY:
Q I've handed you what's just been marked for identification purposes as Government Exhibit 239. Do you recognize that as being your father's warehouse?
A Is this the back? Yes, I guess. Well, may I ask you something? Is this like the back of the garage?
Q That appears to be a garage door opening.
A Okay, yes.
Q Does your father's warehouse have a --
A In the very back.
Q -- door that raises?
A Uh-huh.
Q He has a fairly good-sized warehouse?
A It's pretty decent, yeah. It's to store like hotel stuff and pretty much everything.
Q How many hotels does he own?
A I don't know.
MS. WHATLEY: Your Honor, we move to introduce Government Exhibit 239.

THE COURT: Any objection?

MR. LASSITER: No.

THE COURT: It's received.

(Government's Exhibit 239 received in evidence.)

BY MS. WHATLEY:

Q This is the picture that we were just discussing, right?

A Okay. Yes.

Q This is the warehouse we were talking about, correct?

A Yes, ma'am.

Q Fair to say that your dad keeps a lot of things in there, old vacuum cleaners, looks like there's boxes of old computer equipment, closet doors maybe?

A They're probably air conditioner grills.

Q But he also has a lot of spare tires in there as well. Let's talk about your dad's hotel business real quick. You said you don't know how many he owns?

A No, ma'am.

Q Do you know that Dr. Mann is actually in business with your dad?

A Yes.

Q Actually, the Mann family used to live just two streets over from you in your neighborhood in Germantown, correct?

A Correct.

Q And do you know their kids?

A I know them.

Q So you know they have four children?
A Yes.
Q Do you know their names?
A Yes.
Q Dan is one of them?
A Yes.
Q I always get it wrong, Dushyant. I can never pronounce that correctly. D-u-s-h-y-a-n-t or something like that?
A I'm a bad speller. But it's Dushyant, yes.
Q Sarina?
A Yes.
Q And Shivani?
A Yes.
Q Isn't it true that Dan Mann actually worked at some of the hotels at one point in time?
A I don't remember. I wasn't really involved in the business. Like, I just helped my mom at one of the other hotels.
Q So you're not aware that Dr. Mann owns 31 percent of some of the hotels?
A No, ma'am.
Q 10 percent of other of the hotels?
A No, ma'am.
Q They've been in business together for a long time?
A Yes.

Q You said your mom's driving the white Altima now and has since 2004?
A Yes, ma'am.
Q Once the donut tire was changed out, you don't know what happened to it?
A No, ma'am.
Q You do acknowledge that your father doesn't get rid of anything if it still has a use?
A Yes.
MS. WHATLEY: One moment, Your Honor. Nothing further.
THE COURT: Redirect?
MR. LASSITER: Briefly.

REDIRECT EXAMINATION

BY MR. LASSITER:
Q Your association with the Mann family would have been primarily before or after you went off to college?
A Before college.
Q And you left in 2002; is that correct?
A Yes, sir.
MR. LASSITER: All right. That's all I have, Your Honor.
THE COURT: Okay. Anything else?
MS. WHATLEY: No, Your Honor.
THE COURT: You can stand down. Ladies and

gentlemen, as I told you, we were going to take two witnesses and then take our break. Let me ask this question of the lawyers. How much time do you -- I guess I should ask this of Mr. Gordon. How much time do we need for our hearing and then I can determine how much time we need to take in this break?

MR. GORDON: I would guess just about 15 minutes on the hearing, Your Honor.

THE COURT: Okay. Which means we need to take about 30. So if we started our lunch at 11:30, then we'd be back here at 1. I'm going to let you break until one o'clock. We'll be in recess until then. You'll be in recess until then; we'll stay in court.

(Jury exits the courtroom.)

THE COURT: Okay. Is our other witness out in the hallway?

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: Bring him in. We're going to swear you in.

JOHN NORRELL, DEFENDANTS' WITNESS, DULY SWORN

THE COURT: Have a seat over here. Sir, what is your name?

THE WITNESS: John Norrell.

THE COURT: Mr. Norrell, normally, we would just call you when the jury was here and we would let you testify. There's been a question as to the areas you're going to testify

about and your expertise in that area. So before we bring you in in front of the jury and let the jury hear what you have to say, I'm going to give the government a chance to what we call voir dire you or ask you questions to establish that you have the expertise to testify in the areas that you're going to testify about. So just sit back and relax and just answer the questions that Mr. Gordon asks.

THE WITNESS: All right.

VOIR DIRE EXAMINATION

BY MR. GORDON:

Q Good morning, sir.

A Hello.

Q Will you tell me, please, what do you do for a living?

A Well, I work for USAble Corporation, but I've also worked for John Norrell Arms, John Norrell, Inc. for the last 30 years as a firearms manufacturer and dealer and gunsmith.

Q Who was it -- you said you worked for someone in addition to your gun business?

A Yes.

Q Who is that?

A USAble Corp.

Q USAble Corp?

A Uh-huh.

Q What is USAble Corp?

A That is a third party administrator of health insurance.

I manage the workers' comp.
Q Is that a full-time job?
A Yes. Both of them.
Q In your business, do you have any employees?
A No.
Q Just you?
A Yes.
Q Do you have a -- is the business conducted out of your home?
A Yes. I've had retail businesses also on business areas too.
Q You have an FFL?
A Yes.
Q As both a dealer and a manufacturer?
A Well, manufacturer covers being a dealer.
Q Dating back to the '80s?
A Uh-huh.
Q I'm looking at your resume here. One of the things you have written here is that you've manufactured, sold, and repaired thousands of machine guns, silencers, short barrel shotguns, and other specialized weaponry.
A Yes.
Q What's the specialized weaponry?
A Well, pin guns, I've made numbers of different types of any other weapons which are special classification of Title II

weapons. I've manufactured machine guns from scratch, rewelded them, bought Department of Defense destroyed halves, put those together. I've done repairs for many, many agencies on their machine guns. I've bid on contracts with agencies. I supplied agencies with their machine guns, their handguns, their ballistic vests, just kind of across the board.

Q Okay. And I note at the top of your resume you say consultant and expert witness in firearms.

A Yes.

Q What about explosives?

A No.

Q Do you have any training in explosives?

A No training.

Q Any experience with them?

A Yes, I have bought explosives and used those for agricultural use.

Q Like what?

A Blowing beaver dams, things like that.

Q Any military experience?

A No.

Q No training in explosives?

A No.

Q No education in that?

A No, not other than, you know, what I've acquired on my own.

Q You also list that you're a weapons and equipment consultant to various SWAT teams?
A Yes.
Q Explain that for me, please.
A Well, SWAT teams need products and I do trades with the agencies and I take their used armory items and then I supply the SWAT teams with whatever items they require, which could be flash-bangs, it could be smoke grenades or machine guns. I supplied the state police with all of theirs, Pulaski County Sheriff's Department with all their handguns. But, basically, you bid on these contracts, and as the awarded contractor, you make arrangements to have things drop shipped directly to the agency. So a lot of instances, you don't actually handle the items, you have machine guns dropped from Colt directly to an agency or Glock, or your flash-bangs, your explosives, you know, whatever items that the agency may want, then you make arrangements.
Q So you're like a middleman on those?
A In some cases. In others, I'm the direct supplier where I may supply silencers to game and fish commissions or law enforcement agencies for their SWAT teams.
Q You mentioned smoke grenades and flash-bangs. Do you keep those or manufacture those or work with those in your business?
A No.

Q Just as a middleman?
A Yes.
Q Same thing with flash-bangs?
A Yes.
Q Have you ever thrown a smoke grenade?
A Yes.
MS. CASSINELLI COUCH: I know Mr. Norrell answered, but some of these are more cross-examination questions than voir diring an expert witness.
THE COURT: He can answer to see what experience he has with them.
BY MR. GORDON:
Q You've thrown smoke grenades?
A Yes.
Q Have you attended any training on them?
A No.
Q What about flash-bangs?
A No.
Q When's the last time you threw a smoke grenade?
A It's been a number of years ago.
Q Give me an idea.
A Ten years.
Q Okay. How many times have you thrown a smoke grenade?
A Once or twice.
Q What about flash-bangs?

A I've not thrown those.
Q You list on your resume that you're a consultant and/or expert witness for defendants in criminal cases in Arkansas state courts.
A Yes.
Q How many times have you done that?
A I've consulted probably ten times. I've testified, I believe, three. I'm working a liability case in Arkadelphia right now, I've done two federal public defender cases here recently, was paid on one and not on the other. I've done a machine gun case for Judge Woods, Henry Woods. I testified for ATF in Oregon on a case where I came in as a witness but it developed into expert opinion on manufacturing techniques and so forth on machine guns.
Q So between criminal and civil cases, you've consulted ten times?
A And testified, I believe, three.
Q Dealing on what topics?
A The legality of machine guns and what is legal and what's not according to not only the regs, but also, mechanically, what is permissible. I just thought of number four. I've testified in four.
Q Okay. Again, nothing on explosives?
A Not on explosives.
Q You also list that you're a local consultant in regard to

military ammunition contracts with Remington Arms?
A Yes. The DOD, it's been in the past when the DOD inspector would come in, he would take me with him as a local consultant and they would have government contracts with Remington for military ammunition.
Q What were you doing?
A Well, looking at the manufacturing process, rendering my opinion on reloading and manufacturing of ammunition and powders and so forth.
Q Okay. Are you familiar with MK3A2 hand grenades?
A I'm familiar. I have not owned one or thrown one.
Q How are you familiar with them?
A Academically.
Q What does that mean?
A By reading about it, studying it.
Q Okay. And how recent has your study of MK3A2s been?
A Been fairly recent.
Q Give me a better date than that.
A Probably six months.
Q Looking stuff up on the internet?
A That and other resources.
Q How about 40-millimeter grenades, same thing?
A I own grenade launchers and I have practice rounds so, I mean, I have some knowledge directly with that, shooting practice rounds and flares through a grenade launcher.

Q What about the real thing, 40-millimeter grenades?
A No.
Q Have you read up on those?
A Yes.
Q In preparation for trial?
A Yes.
Q Again, within the six months, past six months?
A Yes. Maybe a year on that.
Q Have you written any reports in this case?
A Not other than just --

MS. CASSINELLI COUCH: Your Honor, I object to him asking about my work product. If there was a report made that applied to something he was going to testify about, it would have been provided. So I don't want him getting into my communications with my consultant.

THE COURT: He can ask whether he produced reports. It's the same question that the defense has asked every government witness, have you prepared a written report, have you let them see it, have you let them read it. Normally this would happen on cross-examination, but we're here now. He wants to find out if there was a report issued and whether he got it.

MS. CASSINELLI COUCH: I don't think that's the same because we don't have the same responsibilities. And some reports, our communications, may not be relevant to this

proceeding, but my work product in preparing my case.

THE COURT: Well, let's get the question asked whether he's done that and then I'll entertain an objection if he gets into something that is not producible.

BY MR. GORDON:

Q I guess, Mr. Norrell, when were you hired on this case?

A Approximately a year, let's see, June, I believe, of 2009. Somewhere in that vicinity.

Q Okay. Have you written any reports?

A I've done e-mails. I haven't had any official reports or analysis, but just different topics that would come up, issues on the grenades, ATF paperwork, I've expressed some opinions on how the paperwork is handled, the transfer of machine guns to dealers and so forth. Most of it's been on the NFA end of things, which I'm, of course, very familiar with that.

Q And since you've been hired on this case, have you been making notes about things that you've been asked to do and look at?

A Well, yes.

Q Okay. Have you taken any pictures?

A No.

Q Have you conducted any interviews?

A Interview, how's that --

Q Not with any attorneys but any witnesses in this case.

A Witnesses in the case, no.

Q I see you have some material up there with you on the stand. Is that all information that you've --
A Yes, these are files on ATF forms and copies of the regs on serial number, machine guns and, you know, different categories of information.
Q Is all that information that you've reviewed and you're going to be relying on in giving your testimony in this case?
A If I need to. I don't know that I'll need to rely on it other than maybe some numbers, quantities, things like that.
Q But you've at least reviewed it in preparation for your testimony?
A Yes.
Q And some of that information you rely on in forming whatever opinion you're going to give in this case?
A The regulations, yes.
MR. GORDON: That's all I have, Your Honor.
THE COURT: Ms. Couch, do you have anything?
BY MS. CASSINELLI COUCH:
Q Mr. Norrell, is it fair to say that you helped me figure out how to read NFA records and the databases and the other items that we've been provided?
A Yes, that and looking at ATF forms and inventories.
Q The majority of your assistance to me the past year has been just me not knowing how to read certain things or where to find something?

A Correct.
Q Is that fair? You have not reviewed any of the evidence in this case and provided a written report of your opinion?
A No.
Q And you've not provided a written report of your opinion on any matter at issue in this case?
A No.
Q Mr. Gordon mentioned that your CV says that you're an expert witness in firearms.
A Yes.
Q And being that you're an FFL, you're familiar with the term "firearms" as used in the NFA, are you not?
A Yes.
Q It does include destructive devices, does it not?
A Yes.
Q You've also testified that you don't have as much experience in explosives, but is it fair to say that certain explosives are firearms with which you deal frequently?
A Well, rephrase that.
Q Well, let's go back to the contracts that you do for law enforcement agencies. I think that you mentioned that they're different, and I use the term "grenades" for everything that explodes, so all of those various flash-bangs, smoke, all those kinds of things you deal with to the --
A Yes, I understand.

Q And --
A I will be the purchaser and the person that's awarded the contract and have those items delivered to the agency.
Q And in doing that, you have to be familiar with those items, do you not?
A Yeah, you have to know what you're ordering, yes.
Q So by being involved in those contracts and that business, are you familiar with the physical characteristics of those items?
A Oh yes. I've seen hundreds of flash-bangs and smoke grenades. All agencies have those.
Q So you know what they look like?
A Yes.
Q How big they are?
A Uh-huh.
Q What colors they can be?
A Yes.
Q Are you familiar with their purpose, their operation?
A Yes.
Q And so I think you said you've not thrown an MK3A2; is that right?
A No.
Q You wouldn't expect a normal everyday person to have thrown one, would you?
A No.

Q But you don't have to throw one to be familiar with what it does?
A No.
Q Or what it looks like?
A Right.
Q And I think you indicated that you've also done some research. Is that correct?
A Yes.
Q And, actually, looks like you've written many articles about different kinds of guns and things, so you are fairly academic in the business, are you not?
A Yes, I am.
Q I think you've mentioned the Department of Defense. You consulted with them about ammunition?
A Yes.
Q And so that would be kind of a similar line because you're dealing with what the ammunition contains, right?
A Yes.
Q What explosives are in what ammunition; is that correct?
A Yes.
Q So you have experience with explosives that are considered firearms under the NFA; is that accurate?
A Yes, in the way that you've described it as far as ordering those for agencies and being exposed to them at agencies.

Q Let me ask you this. When you order them for an agency, do you have occasion to go to the agency and see them?
A On occasion. You see them often when you go into their locked vault areas. The machine guns, the flash-bangs, all their equipment is there.
Q And just going back through your CV, you've manufactured dozens and dozens of guns of different types?
A Thousands. I've also picked up probably over a thousand machine guns directly from ATF in Little Rock, Dallas, and Oklahoma. And federal court has appointed me as liquidator in some large bankruptcies.
Q Let's talk about that. So you have frequent contact with the ATF. Is that fair?
A On occasion, it just depends on if there's a collection that has been seized and being released, then I would have frequent contact during that period of time, and also with chief counsel in Dallas.
Q ATF would contact you?
A Both ways. If I'm appointed to liquidate a collection, then I've got to make arrangements to pick it up.
Q That would be in the case of maybe an estate or somebody that had a lot of weapons seized?
A It could be a criminal case where the weapons are being released.
Q When you've been retained as an expert witness, I think

you said you testified three or four times. Most of the time those cases don't go to court? Is that --

A Most, yes. Liability ones haven't and a lot of the criminal ones are pled out.

Q You testified both for the government and the defendant?

A Yes.

Q And in civil and criminal cases?

A I haven't testified in civil because none of those have gone to court, but I have been paid as a consultant.

MS. CASSINELLI COUCH: May I have just a moment, Your Honor?

THE COURT: Yes.

MS. CASSINELLI COUCH: I think that's all I have, Your Honor.

THE COURT: Mr. Gordon, any redirect?

BY MR. GORDON:

Q These articles that you've written, your resume lists 16, correct?

A Could be, yes. And there may be more that I didn't capture in that.

Q Of those 16, 14 of them were in 1984?

A Right.

Q For the Jacksonville Daily News?

A Yes, I wrote for them for, I don't know, most of a year.

Q Okay. And they're hunting articles. One of them was

entitled ***Possibilities Evolve From Experience That Deer Can See, Distinguish Color***; right?

A Yes.

Q One was called ***Sighting In Your Squirrel Rifle***?

A Yes.

Q One was called, ***Springtime Is Here, Snakes are Slithering***?

MS. CASSINELLI COUCH: Your Honor, is this really relevant at this point?

THE COURT: He's attempting to discredit this witness.

MS. CASSINELLI COUCH: He can do that in front of the jury.

THE COURT: He can make his record. He's trying to discredit the witness and he has a right to do that.

BY MR. GORDON:

Q Right?

A Yes.

Q One was entitled ***Spearfishing***?

A Yes.

Q You testified that you're familiar with the operation of flash-bangs and smoke grenades. This is from you being the middleman on these SWAT contracts?

A Yes, being a middleman and being exposed to SWAT teams.

Q Explain that for us.

A Well, you're exposed to SWAT teams and when you're working up a trade, you spend time with them determining, and they determine also what type of arms they need which may include flash-bangs, smoke grenades, tear gas, I mean, it may include machine guns, silencers, basic issued handguns, I mean, it includes everything.

Q And they tell you what you need and then you run off and find a manufacturer or someone who's going to provide what they need?

A That's generally the way that works at that point.

MR. GORDON: No further questions.

THE COURT: I have a couple questions for you.

BY THE COURT:

Q How many years have you worked in this area?

A In Arkansas?

Q No, no, I mean in the area of firearms.

A About 30 years.

Q Okay. And you said that you've consulted with DOD. What exactly does that mean?

A Well, the Department of Defense has contracts with ammunition manufacturers and they have DOD inspectors that travel and periodically check on those contracts. They go through the factory, they look at if the ammunition is being made to spec, to contract specs, you're looking at safety issues, you're looking and so forth. And the DOD contractor

would come into town, he would take me as the local consultant and visit with Remington, in particular, for looking at the ammunition and the powder blends and mixes and so forth, and, you know, the criteria on setting the machines up so many times a day, their quality control issues and so forth.

Q Okay. And I think the area you've identified that you have not the least experience but the least physical or hands-on experience has been with grenades?

A Yes.

Q Okay. What will qualify you to testify about grenades?

A Well, I've been exposed to them through agencies. Basically the testimony that I would render has to do with just the cosmetics, it really doesn't even need to go beyond that. We're talking about shapes and sizes of other types of grenades being similar in size to a Mark III. I mean, that's a pretty basic comparison that doesn't require, I don't think, a lot of technical experience on the internal mechanisms and so forth.

Q With the work you've done, you've identified those before?

A Pardon?

Q In the work that you've done, I think you said you go out with the DOD and check and look at --

A Yes, ammunition --

Q You've done that before?

A Yes.

Q How much experience do you have in that?
A I had several visits to Remington. That wasn't, of course, on destructive devices, that was on ammunition, but I've been exposed to the law enforcement grenades that are typically used that are nonlethal or sometimes called less lethal. I've been exposed to those for several decades. Those are very common in agencies.

THE COURT: Okay. Do we have anything else?

BY MS. CASSINELLI COUCH:

Q The only other thing is, Mr. Norrell, you're familiar with the registration requirements and the paperwork for various types of firearms under the NFA?
A Yes. I've handled probably 10,000 of those.

MS. CASSINELLI COUCH: That's all, Your Honor.

THE COURT: Is there anything else?

MR. GORDON: No, Your Honor.

THE COURT: Okay. Mr. Norrell, you can stand down and I'll allow the parties to address their concerns or state their positions before I rule.

MR. GORDON: First, Your Honor, I need to state again given the summary provided by the defense, I really have no idea what he's going to testify about because all they talk about is he's going to testify about NFA firearms and non-NFA firearms, and then Ms. Couch is up here playing word games about, well, firearms include destructive devices and those

include this. So I don't know what the heck he's going to testify about. But I think it's perfectly clear from his testimony he is not qualified on any issue regarding explosives, how they function. The defense notice states that Mr. Norrell will testify to firearms and nonfirearms by NFA standards, whatever that means, that are similar in appearance and/or effect to the two types of grenades at issue. Again, I don't know what that's going to be.

I can guess it's going to be smoke grenades and flash-bangs, but he's never thrown one. He's the middleman. They say I need a flash-bang and he runs to a catalog and finds the flash-bang and has it sent to them. That will not qualify him to testify about the effect, how these things operate when they go off. I mean, I guess maybe he can come in here and say I've seen pictures of them and here's what they look like. But I think if he goes anything beyond physical appearance, he's way beyond his expertise. Any testimony about the MK3A2, the 40-millimeter, I mean, him jumping on the internet and reading stuff in preparation for this case within the last six months does not qualify him as an expert on those issues at all. I mean, I think he is an expert in machine guns and ATF paperwork. I don't have a problem with that. But testifying about grenades, flash-bangs, I think that's beyond his expertise.

THE COURT: Ms. Couch.

MS. CASSINELLI COUCH: Well, I apologize for the word games. I could have sworn Mr. Gordon went over that in voir dire with the jury and that that's a legal term.

THE COURT: What I want you to focus on more than anything, I mean, I don't worry about all that. The question here is what is he qualified to testify about. And I think he sat here, Mr. Norrell, he was pretty convincing on machine guns and those types of things and he's pretty convincing on paperwork and he's pretty convincing to me on being able to identify these various grenades.

MS. CASSINELLI COUCH: I'll be happy to tell the Court what --

THE COURT: The question's going to be is he competent to testify about the effects of internal workings of the various grenades, and I think he sat here and said that's not what he's going to testify about anyway.

MS. CASSINELLI COUCH: I also didn't provide in my summary that that's what I was going to ask him and I don't intend to. He's going to generally discuss the effects of the various types of grenades and nonlethal grenades just like the government's witnesses, Hahn and Lee did, who I don't believe were experts. That's just general common knowledge, nothing about inner workings. And then we'll deal with physical characteristics. So I don't think there's anything about that that requires you to have thrown one or have any more

knowledge. And I think the rules support that.

THE COURT: What's the response, Mr. Gordon? She says they're not going to talk about inner workings, they're not going to talk about, I think, all the things you addressed except for maybe the effects of.

MR. GORDON: That's fine. But her summary here says the effects of.

THE COURT: That's fine.

MS. CASSINELLI COUCH: By effects of, I mean just what the testimony's been, there's fragmentation, concussion, flash-bangs. There's been testimony as to the differences in those things.

THE COURT: I think that's fine. Is there anything else we need to take up?

MR. GORDON: No, Your Honor.

THE COURT: I know sometimes we have to do these exercises to make sure we nail this down, but I think he's competent to testify about the things he's going to be called to testify about. So let's break and we'll come back at 1:00.

(Lunch recess at 11:49 a.m.)

C E R T I F I C A T E

I, Karen Baker, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Karen Baker, RMR, CRR, CCR

United States Court Reporter

Date: March 17, 2011

(Proceedings continuing in open court at 1:03 p.m.; jury present.)

THE COURT: Ms. Couch, call your next.

MS. CASSINELLI COUCH: John Norrell.

THE COURT: Mr. Norrell, you've already been sworn in, so you're still under oath.

JOHN NORRELL, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Please tell the jury your name and spell it for us.

A. John Norrell, N-o-r-r-e-l-l.

Q. And, John, what do you do for a living?

A. I'm a licensed firearms dealer and manufacturer of machine guns.

Q. You have another job as well?

A. Yes.

Q. And you said you're a licensed manufacturer and dealer?

A. Yes.

Q. Do you have a company?

A. John Norrell, Inc.

Q. And what business is that company in?

A. What business is -- well, it's in manufacturing, sales, law enforcement, trades, products like that.

Q. And how long have you been in business?

A. 28 to 30 years.

Q. And I believe you said you have an FFL; is that right?
A. Yes.
Q. And to manufacture?
A. Yes.
Q. And to deal?
A. Yes.
Q. What kinds of firearms do you manufacture?
A. Full auto machine guns, silencers, any other weapons which are kind of like sawed-off shotguns, those type products. I do conversions for semis, autos, the full autos. At one time I did a lot of rewelding of receiver hefs (phonetic) together back in the '80s and some gunsmithing for individuals as well as some law enforcement agencies.
Q. So you manufacture new guns, reweld guns, repair guns?
A. Uh-huh.
Q. And how long have you had your FFL?
A. I've had it since -- I've had several, but 1980, I believe, was the first one.
Q. And in your business, we know you manufacture. What other kinds of things do you do through your business?
A. Well, I sell a chemical that goes on the outside of firearms, it's a refinishing product, and I sell that additionally --
Q. Scoot up just a little bit.
A. -- through mail order.

Q. I think you said you have a product. Did you invent a product?
A. Yes, I developed it back in, I guess, the mid '80s, a chemical.
Q. And do you also do some consulting type work?
A. Yes.
Q. With any government agencies?
A. Yes, with the law enforcement agencies. I do trades not only in -- sales not only in Arkansas, but New Mexico and been a number of places around the country.
Q. And do you work, I guess, for or with ATF?
A. I have on occasion.
Q. What types of things do you do with ATF?
A. With ATF, I will liquidate machine gun collections that have been held by ATF and they are being released. And those are usually the contacts I have where I'm picking those weapons up or doing the paperwork, transferring, so forth. And so I work with Little Rock ATF as well as Dallas and Oklahoma.
Q. And so that would be an estate or if somebody has guns seized or something like that?
A. Yes.
Q. And ATF would allow you to take --
A. Yes. They would hold the firearms and then release them to whoever has been appointed as the liquidator.
Q. And then you would generate the proper paperwork --

A. Yes.
Q. -- and sell them to other people, I guess?
A. Other dealers and so forth.
Q. Tell us about generally firearms. We've talked about the NFA. Kind of tell us what types of firearms are out there for people --
A. Well, there are two types of firearms. They're called Title I and Title II. And Title I firearms are your basic shotguns and rifles and pistols. And they are generally defined by barrel lengths and overall lengths. In other words, a rifle has to have a barrel that's over 16 inches long. A shotgun has to be over 18 inches. When you get into Title II, you're talking about machine guns, you're talking about sawed-off shotguns, which, a lot of times, they call them short-barreled shotguns, sometimes called "any other weapon," which is more of a shotgun-pistol. You're talking about silencers. You're talking about firearms that don't meet the standards of what is considered Title 1. And if you think of Title I, that would be what Wal-Mart or someplace like that would sell. A Title II would be the weapons that were, you know, defined in the 1934 Firearms Act that classified those as a -- a regulated item.
Q. Okay. So Title I guns are your every day guns that people --
A. Yes.

Q. -- can have without registering them?
A. Yes.
Q. Right?
A. The registration.
Q. Title II require registration?
A. They require registration, right.
Q. And tell us about the registration. Why do they have to be registered?
A. Well, it's actually the Firearm Control Act, I think, is what they called it in '34. They started requiring the machine guns to be registered. And there was a 200-dollar tax imposed on the transfer of title; $5 for a category called "any other weapon." These are not permits. I mean, there's no permits required to own Title II weapons. They are called transfers. It's like a pink slip on your automobile. It's a transfer. A title -- they record the person who owns it. And when it transfers and it's approved, they remove that name and replace someone else as the owner.
Q. And what law currently applies to registrations?
A. Well, you've got everything from -- well, '38 is when they started the firearms licenses. And '34 is when they had the Firearms Act. But the Gun Control Act of '68 expanded the requirements for dealers and the forms that were needed to transfer just to, you know, regular firearms, and added restrictions for felonies and all of these other issues that

permits one from legally owning a firearm.
Q. What came after that? What's the next --
A. The next one was -- became Public Law 99-308. And that was passed -- signed by President Reagan on May 19, 1986. And that is very significant in the machine gun world, called the NFA world, in that it stopped future manufacturing of machine guns for civilian sales. And up until May 19th, '86, machine guns, of course, could be owned by civilians and police departments, dealers. They stopped future manufacturing, but they grandfathered everything in. So anything that was registered with ATF, NFA branch, National Firearms Act branch, was grandfathered in. Anything manufactured after that date would have to be sold to -- either the dealer would have it as a sale sample. If it's a Class III machine gun dealer, it would be to law enforcement or military use.
Q. And we'll come back to that, but in 1986, things changed for machine guns?
A. Right.
Q. Now, under the National Firearms Act, the NFA, I think you mentioned there are transfers, there are not permits --
A. No.
Q. -- they're registration?
A. They call them transfers. They don't use the term "permit" for NFA weapons. They are transfer of title like a pink slip as opposed to what you would call a license

or permit. Licenses are for dealers, people who are in the business. So transfers are for -- they are also used in the dealer world. They are tax-free transfers. But for individuals, they are -- they call them transfers of title.

Q. What's the purpose of those transfer forms?

A. It's to -- the purpose is really two-fold. One is to keep up with that item throughout its history of being owned. And two is to make sure that the new person that is buying it, possessing it, inheriting it, whatever, meets all of the qualifications, which are the typical felon, mental illness, drug addictions, all of those things.

Q. What else? Is there money involved?

A. Pardon?

Q. Is there money involved?

A. Oh, yes. You pay a 200-dollar federal tax that goes to the Treasury Department. And it's been $200 since 1934. And, you know, a car cost 500 in 1934, and now $200 is not that much.

Q. So it helps the government keep up with the taxes?

A. Yes.

Q. Okay. Tell us about the different types of licenses one could be granted under the NFA.

A. Let me refer to Form 7. This is just the standard ATF Form 7. This is where everything starts. From Wal-Mart selling shotguns to General Dynamics in Camden building the

patriot missile, it all starts with a standard ATF Form 7.

MS. CASSINELLI COUCH: Before you start, may I approach?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. I'm showing you what's been marked as Defendants' Exhibit 41. Do you know what that is?

A. Uh-huh.

Q. What is it?

A. That's a Form 7.

Q. Okay. And you have your own copy?

A. Yes, I have an original here.

MR. GORDON: No objection.

THE COURT: Is that marked?

MS. CASSINELLI COUCH: It's Defendants' 41.

THE COURT: Okay. It's received.

(Defendants' Exhibit 41 received in evidence.)

BY MS. CASSINELLI COUCH:

Q. I'll put this up here, and if you just want to tell me when you want me to flip.

A. It's a form for applying for a firearms license. And you've got a number of categories that you check off and you pay a license fee for what business you're wanting to engage in. You know, an 01 is -- type is a -- just a basic gun dealer or gunsmith. An 02 would be a pawnbroker. They've got a

little bit different license because they are lending money on guns as opposed to buying --

Q. Let me stop you just a minute. Slow down a little bit. The court reporter has got to keep up with --

A. I'm sorry.

Q. That's okay.

A. You've got an 06, which is a manufacturer of ammunition, you've got an 07, which is a manufacturer of firearms other than destructive devices.

Q. Let's go through these one by one. We're looking at a Form 7.

A. Okay.

Q. And this is the form that you fill out for any type of license?

A. Yes. Well, these type that are on it, which are the basic. The one I don't see on there is a type 03, which is a C and R, which is a curio and relic and collectors' license. There may be some other form for it.

Q. So on this Form 7, if you wanted to be a manufacturer, you would fill out this form --

A. Yes.

Q. -- or a dealer --

A. Yes.

Q. -- or a manufacturer of destructive devices --

A. Yes.

Q. -- or dealer of destructive devices --
A. Yes.
Q. -- importer of destructive devices --
A. Yes.
Q. -- all of those things?
A. All of those things.
Q. And so someone would fill out and submit this form to ATF?
A. Yes.
Q. And on this form there are no special questions for different types of licenses?
A. No. It's the -- the same form. Of course, you send it in with fingerprint cards and a picture and, you know, other ancillary things that go with it.
Q. And they don't just rubber stamp it. They come and check and make sure you meet --
A. Yes. Normally anytime they issue a license, the ATF does a visit, not always, but they'll do a visit.
Q. Okay. Tell us about the license types in just a little more detail and a little slower, particularly the manufacturing and dealer types.
A. Well, the 01 -- and that's what generally -- you know, you've got 1200 licenses in Arkansas with FFLs. And 01, it would be a very common -- that's just, you know, the basic dealer dealing in Title I firearms, you know, rifle, shotguns, pistols, and so forth.

Q. Okay. I'm sorry to interrupt you. Even nonNFA weapons?
A. Well, actually with an 01, you can transfer NFA weapons. You don't have a tax exemption, which we'll get into here soon, on classes of SOTs. But if an 01 dealer wanted to buy a machine gun, he would buy it through an ATF form and pay a 200-dollar tax just like an individual would.
Q. So these licenses give you the right to buy and sell or manufacture or import, depending on which license you have?
A. Right.
Q. Okay. You mentioned the 200-dollar tax. Does one pay a 200-dollar tax each time they exchange a firearm?
A. They do if they are not -- don't have a SOT, a special occupational taxpayers, exemption. In other words, you could be an 01 and not be a machine gun dealer, you still buy machine guns, but you would have to pay $200 every time you do it. If you are a machine gun dealer, you would have an 01 license, and you would be called a Class III, which is a tax exemption, meaning that you can deal in machine guns and you don't have to pay the 200-dollar transfer fee.
Q. Do you know what type of license Dr. Mann had?
A. He had an 01.
Q. Which allowed him to deal?
A. Yes.
Q. Okay. And now we're talking about what is referred to as an SOT?

A. Yes. And he had a Class III occupation -- it's a tax exemption, meaning that he could buy and sell without having the federal 200-dollar tax or the 5-dollar tax, you know, imposed.
Q. Is that common for dealers or manufacturers to have that?
A. Oh, yes. It would be very expensive. I mean, you could do the same business, but you would have an expense associated with that on every transfer. So naturally, you -- you would pay your $500 a year and be exempt on $200 on every item.
Q. Okay. So you have a license and you have your SOT?
A. Yes.
Q. And we've heard from various people about, I think you said, Class 3?
A. Yes.
Q. Tell us what those classes mean.
A. Well, you've got -- you've got -- you've got three. You've got a class -- starts with a Class I, which is an importer. That's a tax exemption to be able to import. A Class II is a tax exemption for manufacturers. In other words, manufacturers can manufacture firearms, you know, machine guns, and not have to pay a 200-dollar tax on each item. A Class III would be where you're not manufacturing and you're not importing, but you're just buying and selling. And so that's primarily what most machine gun dealers do. They are Class IIIs and have an 01 license. They are buying and selling.

They are not involved in importing or manufacturing. But that Class III exempts them on paying $200 every time there is a transaction that occurs.

Q. And do you know whether Dr. Mann was a Class III?

A. He was a Class III.

Q. So he had the license and the stamp?

A. Yes.

Q. Over, gosh -- I think you said you've been in the business 30 years?

A. Yes.

Q. How many transfer forms have you looked at?

A. Well, thousands of transfer forms. I've manufactured thousands of silencers and machine guns. And I've handled collections that might be a thousand weapons in them in just one collection; machine guns, silencers, auto sears, you know, different items.

Q. Let's start by talking about sales, dealer sales. Can you kind of walk us through the process? And I know there are different processes for individuals versus dealers.

A. Okay.

Q. So if you could kind of explain how that works.

A. Okay. For individual sale for Title I weapons, you would -- let's just use Wal-Mart discount store. You go in, you fill out a yellow form called a 4473. It's also yellow. That's the only two yellow forms ATF has. But it's 4473. And

that is an application to buy the gun if you want to use an application. But you fill it out, you sign it. You state whether you're a felon, you've been -- you know, all of these felony issues, and you're a citizen of the United States, so forth and so on. And they also have what's called a FBI NCIC check. In other words, you fill it out. The dealer would call a toll-free number, goes to the FBI. They give the FBI your information off the form and they do a quick background check, and give you a -- I guess a release number you may want to call it. They give you a number you put on the form that indicates that you have made the call, unless you have a concealed carry permit, and then you don't do the NCIC background check. It's already been done.

Q. You've already been double checked?

A. Right.

Q. 4473s are required for individual sales?

A. Yes, not the dealers. You would use it at the time you sell to a nondealer.

Q. Moving on from there, what about sales between two dealers?

A. Well, between two dealers, you normally use what's called an ATF Form 3. And that's where both sides have a tax exemption. You fill out the 3, you put your license number on it. You send that form in to the NFA branch in West Virginia. They take that form. They -- it goes through fingerprint

cards, by the way, and photos, and a law enforcement signature, local law enforcement signature on the back of the form. But you send that to NFA. They take it. They process it. They do a background check with the FBI. They record the new owner, which would be the person you're transferring to. It would be the transferee. They take it out of the transferor's name and put it into the new owner's name. Then they approve that form and send it back to that dealer. And it's a pretty quick process, about 30 days. Actually, the Form 3 is a dealer. It doesn't have fingerprint cards and so forth. That's actually an individual. But it's just a dealers license between two -- two dealers. And they approve it and send it back.

Q. So a Form 3 is dealer to dealer?

A. Yes.

Q. And you have a few less steps if you're a dealer?

A. Yes. You avoid -- the background check has been done because you are a licensed dealer.

Q. And you mentioned law enforcement signatures?

A. Well, that's on the Form 4. Form 4 is where you're selling to an individual, a nondealer. A Form 4 requires much of the same information. It does have some questions there about felons and aliens and domestic violence and so forth and so on. You send your fingerprint cards in, you send photos, and then they have a section where you sign stating that -- why you're wanting this firearm. And let's say you're wanting to

buy something as a collection, then you would put it's a collection. They have a section there for a local law enforcement signature. And you -- a lot of times you use the county sheriff's office in most states. And the sheriff or a designated person for the sheriff would sign that form. And the statement he is signing is not permission. It just says that as far as he's aware, your possessing this is not going to violate, you know, any laws.

Q. And just so we're clear, dealers can purchase weapons as individuals; is that right?

A. Yes, it's -- that's generally done when you're a corporation because the corporation, you've got a license in your corporate name and technically you're an employee of your corporation. So you see that on occasions.

Q. And how long does it usually take to do a transfer of an NFA weapon either dealer to dealer or --

A. A dealer takes about 30 days. The Form 4, which is for individuals, oh, three to six months. It's a bit of a wait. And that's one where you pay the $200 and they put a stamp -- actually lick a stamp and place it on the form. It's a tax stamp.

Q. It shows you paid that tax?

A. Yes.

Q. What kinds of records does the NFA require a dealer to keep?

A. Well, it's the NFA, but it's primarily ATF. They require a dealer to keep an A and D book, which is acquisition and disposition book, of where you got something and where it went. And it's in and out. And that's what all dealers have. And dealers have to maintain that. And when ATF does an inspection, that's primarily what they are coming out to look at. They count your inventory and then look at your records and see that what you have matches what you show in your books.
Q. And let's talk about manufacturing for just a minute. We've talked about dealers and sales. If you're a manufacturer, what do you have to do?
A. Well, for a manufacturer, there's quite a few of those, you file a Form 2 and --
Q. When do you file a Form 2?
A. It's within like 24 hours of completing whatever you've manufactured. And so you file a Form 2. And that -- this is on NFA weapons. And that puts it into the system. So as a manufacturer, if you made a Title II weapon that needed to be recorded, re-registered, you would send the Form 2 in with that information, sign it, date it, fax it. They enter it into the system and they send you a copy of that Form 2 back where they have stamped it that they've received it. So now it's in the system now, and you have it in your book as an entry. And it came -- basically came from yourself since you were the manufacturer as opposed to some other entity.

Q. And you send it -- and we're talking about Form 2s, but Form 3s and 4s, also, you send those in to ATF?
A. Yes.
Q. And they approve them?
A. Yes.
Q. Do they sign or something?
A. Oh, they sign them and stamp them and have dates they received them and dates they processed them.
Q. And when does the transfer of the weapon occur?
A. It occurs after the transfer application has been approved. And for a dealer, once you get the application back, then you ship it off.
Q. Is that the transfer --
A. Yeah -- with a copy of the transfer. And you log it out to that -- on the individual, they would come pick it up and they would fill out a 4473 yellow form to go with it, and they'd have a copy of that approved Form 4. And the transaction is completed at that point. You log it out of your books to that individual.
Q. So you transfer -- physically transfer the weapon after you have the transfer form approved by ATF?
A. Yes.
Q. What about manufacturers? Are they required to keep the same kind of records?
A. Same exact books.

Q. What happens when you decide you don't want to be a dealer or a manufacturer anymore?
A. Well, they have an address in the regs where you bundle up your records and send it to them. And I think that's -- the records are your A and D book and your 4473s. I'm not sure if there's other records you send in, but those are the two pertinent sets of records. You send it to them, and that way, if you've gone out of business, if there was a need to do a trace on a firearm, so forth, then somebody has the records that is going to be responsible for them.
Q. So when you close up shop, you send all of your records in to ATF?
A. Right.
Q. Who is -- who sends in the transfer forms to ATF for approval?
A. It's the transferor, which would be the seller.
Q. Okay. So the seller gathers up that information, sends it in, gets approval or disapproval?
A. Right.
Q. And then either sends the weapon on or not?
A. Yes.
Q. And where does all of this information go and what happens to it?
A. Well, the 4473s remain with the dealer. And the form -- the Form 1s, 2s, 3s, 4s, 5s, all of those, you will get a copy

back that's approved because you submit it in duplication, in duplicate, and the ATF keeps that form. And they put it into the national registry. And that's a big data base where they keep all of the transactions and who owns the weapon at that point in time.

Q. And that's what we've been calling the NFRTR or the National Firearms Registration and Transfer Record?

A. Yes.

Q. But what do you call it?

A. In the industry they call it the registry, the NFA registry.

Q. So that information is contained in the registry?

A. Right.

Q. And do you know how the registry is searched?

A. Well, you search it like most data bases. You can put a person's firearms license in it. You can search by the name of the person. You can search by serial number. Any data that has been entered in, barrel lengths, you can sort this out. And, you know, that's how they come up with a list of inventories that a dealer, you know, should have in his stock at any given point.

Q. And what information does the registry typically contain on a transfer?

A. Well, it's got the transferee, the transferor. It's got -- it depends on what the format of the report is. But,

generally, they are wanting to know who the manufacturer was, when it was -- you know, the transfer was approved, the barrel length, the caliber, the model, whether it's a machine gun, silencer, AOW, destructive device, whatever category of weapon it is. And it's pretty much all of the quick little information about what it is that you -- you've got in your inventory. And then they, of course, I guess, can pull more detailed information up also.

Q. And what is probably the best way that ATF tracks the firearms through the registry, each firearm --

A. Well --

Q. -- meaning there's information from the firearm in the registry?

A. Well, what's the question?

Q. Serial numbers, do they put --

A. Yeah, serial numbers are the key element. Serial numbers are interesting in that you could have a lot of firearms with the same serial number and that's legal. It's the manufacturer that -- it has to be a different manufacturer. So any given manufacturer can't duplicate his serial number, but you can have two manufacturers that happen to use the same serial numbers. So the serial number is important along with the manufacturer so you can define it.

Q. Okay. We were talking about the registry. I assume you have some firearms in the registry?

A. Yes.
Q. And do you have an opinion based on your experiences and your knowledge about the reliability of the registry?
A. Well, the registry is kind of like any data base. It's only as good as the information that goes in it. And when ATF does an inspection on NFA weapons, they bring a printout, current printout of your inventory that's in your name. It's generally not complete. And there's several things that occur. They will have items that are listed on it that you've already sold maybe years ago. You have paperwork that didn't get in the system somehow, but they've approved the paperwork for you and the transaction. It'll sometimes have firearms that you have that you have paperwork on, but they don't have it in the registry. And the ways a lot of those errors occur is that when somebody -- they manually enter this information. And so S's and 5's could be problems, 0's and D's, I's and 1's; just issues with numbers being correct.

Also, when they approve transfers, if you are transferring, let's say, ten machine guns or anything that -- silencers, whatever, and you put on the form Serial No. 1 through Serial No. 10, sometimes they will put in Serial No. 1 and 10, and they will leave all of the other numbers out in between. So those are data entry issues. And it's reoccurring. I mean, that's just the nature of a data base when you have manual entry.

Q. And are you aware of, I guess, reports within the industry about the reliability --
A. Oh, yeah, there's a lot of controversy about the accuracy of NFA and, you know, you see various government reports, Senate hearings, everything that are discussing the data base and the accuracy. And it's just an -- kind of an ongoing issue. I have to say that ATF is pretty gracious in dealing with that. Dealers make mistakes on their end in the record keeping, its manual, and NFA makes mistakes. And if they bring an inventory list out and it doesn't match inventory, then you start finding forms and resolve it and move on.
Q. And that was my next question. What about mistakes?
A. Well, you've got different kinds of mistakes, but, you know, most things are just administrative. You get a number, numbers reversed on your A and D book, you know, serial numbers, just common things that you forget to do, and because if you're processing -- some of these gun shops process thousands and thousands of forms a year, and usually try to have one person assigned to do it, but, you know, things happen, and the numbers or information will be errors on the A and D book.
Q. If there's a mistake, but you have a transfer form, will ATF honor your form?
A. Yes. I've not known them ever not to do that certainly in anyone I know. If you've got a form, then they use that as a

trump over them not having the data in their system. There may be some exceptions of that, but I don't have any experience with any other --

Q. Generally an approved form is the most --

A. Yes.

Q. -- accurate?

A. Yes, it's a pretty complete little document.

Q. And sometimes, I guess, mistakes are made with serial numbers. Can a gun have multiple serial numbers on it?

A. Oh, yeah, especially if it's a rewelded firearm. In other words, a rewelded machine gun would be where the firearm has been destroyed either to ATF's specifications or Department of Defense. They sometimes have different specs on destroying a firearm. And a manufacturer -- used to be even individuals -- could file what's called a Form 1, and they could weld them a deactivated or destroyed firearms -- take all of the parts, line them up, weld them back together. And ATF normally wants you to use another serial number or take the existing serial number, because it's a destroyed firearm and the serial number may be on it, original number, and add a letter or number or something behind it to differentiate it. And so with rewelds, you can not only have a couple different serial numbers, but you may have more than that. These things come from all over the world and they can have numerous numbers, and stamping improves marks and things on them.

Q. So what would happen if a transfer form was submitted with one serial number, and a prior transfer form for that same gun had been submitted with a different serial number, and they were both on the same gun?
A. Well, they collide in the registry.
Q. What?
A. Collide, meaning the information collides. That's what you normally call the data base. And it would kick out. And ATF would contact the transferor, and they have a little form for doing that, and they check off the box and say this serial number is not currently registered in the NFA data base.
Q. So they wouldn't let you register --
A. They wouldn't let you transfer. They can't approve it because it's a serial number that's not in the system. And so at that point, you would either put the wrong number down -- usually what would happen if there's several numbers on it -- you may not remember it's the serial number over here, and you may accidentally put another number on there. There's also importers sometimes will put their own serial numbers on firearms coming in. Guns made in Czechoslovakia, it's got the serial number and it's imported, and the importer is required to put his name and place of business and all of that, and sometimes puts a wrong serial number.
Q. So ATF would not approve that transfer --
A. Right.

Q. -- if they couldn't figure out the originating point --
A. Yes.
Q. -- of the gun, I guess, in this country?
A. Yes.
Q. Okay. Machine guns -- we touched on this earlier. I know this is a bit complicated, but tell us about who can own a machine gun.
A. Who can -- well, anybody that -- basically anybody that can legally own a handgun, it's the same requirements on the machine gun. I mean, you have to be 21, you know. Rifle or shotgun, you know, you can be 18, but a handgun has to be 21. So it's basically the same information. The difference is that on a machine gun, you send in an application with your fingerprint cards and all of that, you send that to NFA. And it takes several months. And they run you through, I would assume, a more in-depth, you know, background check.
Q. So you don't have to have a license, but you have to have ATF approval?
A. Yes.
Q. And are there restrictions on what machine guns can be owned?
A. Yes, there's two basic categories of machine guns. There's some subdivisions of those. But your basic categories of machine guns came about primarily in the act in 1968, May 19, '86, that I mentioned. Machine guns manufactured and

registered before that date are what in industry is called fully transferable, and that means they can be owned by, you know, civilians, depending on the state. There's a few states that don't allow civilian ownership of machine guns, but most of them do. But those guns are fully transferable, and they can be bought and sold back and forth among individuals, to dealers. There are generally no restrictions on the type of person you sell to as long as they qualify under the specs.

What '86 did, it says that any machine gun made after May 19th, 1986, or -- fall under Public Law 99-308. And it means they're for law enforcement, military. And ATF made a special, I guess, ruling for samples, dealer samples. They allow Class III dealers to possess the post '86 machine guns as samples for sales either to -- and they can transfer them to other dealers that -- may get into that about the police letter and so forth, law enforcement letter.

Q. So there's pre-1986 machine guns. If they were legally possessed pre-1986, they can be transferred?

A. Right.

Q. Put those out. And then there's post-1986 --

A. Right.

Q. -- is that right? And all machine guns manufactured after 1986 --

A. Are considered to be post.

Q. And they are restricted --

A. Yes.
Q. -- to law enforcement or these dealer samples?
A. Yes, dealer samples or military. They are not sellable to individuals.
Q. Okay. How -- what is a dealer sample?
A. A dealer sample is -- a post sample is a machine gun that was manufactured and registered after May 19th, 1986. And it can be -- machine guns are still being manufactured. That didn't change that. I mean, manufacturers make them. It's just they are -- who they are able to sell them to.
Q. So this law that came into effect in 1986 only deals with the transferring of machine guns?
A. It's manufacturing. It ended up affecting the -- obviously the transferring, because you can't transfer to individuals any weapon manufactured after that date.
Q. But it didn't affect a person's -- a licensee's ability to manufacture a machine gun?
A. No, not the ability to manufacture. If you have a manufacturer's license, you can continue to manufacture.
Q. So a manufacturer can continue to manufacture machine guns after 1986, but they might be restricted who they can sell them to?
A. Yes.
Q. And I think we've discussed law enforcement and military. And the other category is the dealer samples?

A. Yes.
Q. And, first, how common is it for a dealer to have the dealer samples?
A. Well, it's pretty common, especially if you become a Class III, you know, machine gun dealer after '86. Either you're going to be paying, you know, top dollar for pre-'86 machine guns, which were very expensive because they were freely transferable -- but if you're going to attempt to make sales to agencies and so forth, agencies aren't going to pay a lot of money for a machine gun. So you still have to have access to -- the agencies have access to the post-machine guns that are, you know, priced within the range of what normal manufacturing standards would be.
Q. So would you say most dealers have some dealer samples?
A. Yes, most Class IIIs would have some dealer samples.
Q. And what exactly is a dealer -- what do you have to do to get a dealer sample?
A. Well, a dealer sample is first you've got to find a manufacturer or a dealer or -- you can buy dealer samples from the police department. You've got to locate the firearm. And if you are wanting to get a post-sample, then you would locate your source, you would contact a law enforcement agency and ask for what the rules requires that -- you have a list of potential agencies that would like to see a demonstration. They ask for a letter from an agency stating that they would be

interested in a demonstration of a particular firearm. And you need to be able to state that if you were to get orders from an agency, you have an ample supply of those machine guns. And so you need to kind of have your source worked out.

Q. And so you get a letter from a law enforcement agency that says, "We would be interested in seeing you demonstrate this"?

A. Yes.

Q. Does that always happen?

A. Probably not. They are pretty common though. There's no obligation on the part of the agency to buy the firearm. So they give those out a lot of times upon request, especially if they know someone that's -- they are in the industry that's local. I don't know about just anybody walking in the door would be able to get the letter like that.

Q. Is there any legal requirement that the demonstration actually take place?

A. No, I've never seen that. There's no time frame on it either. It says the agency express a need or an interest in a demonstration. So I've not ever seen anything that -- in the regs or anywhere else that said a demonstration, you know, had to occur.

Q. And --

A. And there's reasons that you can't do one.

Q. Like what?

A. It may take a year and a half to get a sample from some of

these manufacturers. And by the time you got -- you get that sample, you've got a new sheriff, the SWAT team has changed. I mean, there's some time frames here that agency's changed and so they are no longer -- or they've gotten a demo from someone else, or just gone ahead and made plans and bought whatever they need.

Q. So a law enforcement agency could provide that letter to several people --

A. Yes.

Q. -- different types of machine guns and decide, "You got yours first, so you do the demo, and we don't want any more demos"?

A. Right. They have that option.

Q. We talked about the transfers of firearms and the forms and all of that stuff. Are there other situations where somebody might have physical possession of a firearm, but it's not transferred?

A. Oh, yeah. On repair -- ATF makes an exception for repair. It's not considered a transaction. And they recommend that you do a Form 5, but to let NFA record the transfer, if you --

Q. The physical transfer?

A. Yeah, the physical transfer, but it's not required. So with Type 01 weapons, anybody can just -- can send their gun to a manufacturer and have it worked on. You don't have to have a firearms license. It goes back and forth. With repair on

Class III, anybody with a firearms license can do a repair on a Class III. They have to -- ATF requires you to log it into your books. If the person is not there physically -- I mean, they can show up physically and it not be overnight and you don't have to log it in, you can repair it and they can leave. But if it's left there, then you're supposed to log it in your books and record. And sometimes they ask you to have a separate book for, you know, gunsmithing and repair.

Q. So when you say logged in your books, you mean the A and D books?

A. Yes, A and D books.

Q. So the A and D book, I think you said you have to turn it in, it's an official record?

A. Yes.

Q. Dealers, manufacturers, do people who have these licenses -- are they always for the sole purpose of dealing -- of making money off buying and selling, or --

A. Well, the application, Form 7, asks a question on there, it says, "Do you plan to actually engage in business?" And, of course, they are saying that the -- these are not meant -- the licenses are not meant just for personal collections. So if you're selling, you know, firearms, you're meeting that standard. But obviously people in the firearm business are also collecting and keeping, you know, firearms also. There's no number of firearms listed that I've ever seen that says in

order to have a business license, you've got to transfer or sell so many firearms.

Q. And people that are interested in -- have you had an occasion to look through Dr. Mann's list of his firearms --

A. Yes.

Q. -- and photographs?

A. Uh-huh.

MS. CASSINELLI COUCH: May I approach, Your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. I'm showing you what's marked as Government's 185g, 185s, 185c, 185x, 185b, 185r. Actually, I'll put them on the overhead.

A. Okay.

Q. Did you review these photographs --

A. Yes.

Q. -- prior to testifying? And did you pick these photographs out of a stack?

A. Yes.

Q. Why did you pick --

A. Well, I can readily identify them from the picture. You know, some -- you know, some photographs you just see brown and black in a contour.

Q. And so you looked through Dr. Mann's --

A. Yes.

Q. -- collection. And these are some of the firearms in the collection. And why are -- what kind of firearms are these and why are they significant to you?
A. Well, they are machine guns. He -- most of this stuff is pre '86. He had in his records that I saw -- he had several post. But these are very valuable. And, you know, that one looks like an M-14, military M-14.
Q. What would be the approximate value of this?
A. You've got wholesale and retail, but let's say 10-, 12,000 wholesale; 14-, 15,000, retail. It can vary depending on which manufacturer made -- you've got several manufacturers of M-14s, so it becomes a brand name issue and condition.
Q. And this is another one that you picked out.
A. Yeah. It looks like a little M-11 9-millimeter. Those are -- oh, being an M-11 is a little less expensive than a 10. Probably 2,500 wholesale, maybe 33- retail.
Q. Do these things appreciate in value?
A. Yes. I mean, that gun cost $169 prior to 1986, M-16s, 5- or $600, and now they are worth 15,000 or so. So it's an area that a lot of doctors and a lot of attorneys and different people invest in that are looking for ways to invest money. There's 401(k)s that are invested in machine guns. So it's a very lucrative business dealing with the pre '86 firearms.
Q. What about this one?
A. That's -- well, it's an M-16. I can't tell if it's a

converted AR/M-16. Looks like a Colt. That's a -- that's an early one. It may be a converted AR. That's probably anywhere from 12- to 15,000.

Q. And how about this one?

A. That's an Uzi, Uzi carbine. And those are bringing about six grand wholesale and about nine retail.

Q. This one?

A. That's an MP-5 H & K, Heckler & Koch. And that's a pretty valuable -- that's probably 17-, 18,000 --

Q. And --

A. -- maybe retail.

Q. And this is the last one that you picked out. And you picked these out of a huge stack?

A. Right. That's an American-180. That's kind of an interesting little firearm and real popular. It holds 275 rounds of .22, shoots 30 bullets a second. And law enforcement started using those early on. And then, you know, they got into the industry and they've been bought and sold. But they are about nine grand for that.

Q. And in your opinion, are these firearms in pretty good condition?

A. Looking at the pictures, it's kind of a little hard to tell, but I don't see rust or finishes that are missing.

Q. And have you seen the photographs of the storage of these firearms before they were in the possession --

A. I saw some vaults, I believe, some safes.
Q. And were they organized and tagged?
A. Yes, that's something I noticed. They all had tags on them. They are clearly organized.
Q. Is that typical for a dealer?
A. Oh, yes. You put a tag because you have to reference it back to your log book somehow, some kind of number.
Q. Let's go back and talk about manufacturing.
A. Okay.
Q. We've heard -- post-1986 machine guns, rewelds, what is that?
A. Well, that's where a manufacturer has been able to find some parts of a machine gun that have been cut, destroyed. And he's able to find enough parts to build some guns up, if he could get those receivers welded back together, and has value once it's welded together. And, you know, not as much as pre-'86 firearms, but certainly some of these rewelds are firearms you can't find otherwise. You'd have to reweld them. So you have manufacturers that kind of specialize in the rewelding of these receivers, and basically, you know, reactivating them, putting them in ATF NFA data base. And then they sell them. But they reweld them, refinish them, put all of the parts back on them and turn them into a legally registered machine gun.
Q. And when a manufacturer is rewelding a machine gun, what

is usually the goal of rewelding --
A. Well, the goal other than -- well, I guess it's all financial. You're wanting to create something from nothing and turn it into some value. And so what you would do is find the best parts kits you can find and you would use the greatest expertise you have to -- resources you have to weld that back together. You want it to look as close to the original as possible, and that makes it the most valuable.
Q. We've mentioned serial numbers. Manufacturers assign serial numbers --
A. Yes.
Q. -- to their -- and briefly -- we've heard auto sear. So tell us briefly what the -- how does an auto sear --
A. An auto sear is kind of an interesting little device. And started out -- it's a piece of metal. It may be a moving part, may not be a moving part, that when you put it into a semi-auto Title I firearm, it allows it to be shot full auto, meaning one pull of the trigger and it shoots multiple times. It's tiny. You've got some that are an inch by a half-inch wide depending on what type of, you know, firearm it's going into. You can register a complete gun as a machine gun, or you can register just that little part and put it into that firearm. And that firearm is only a machine gun as long as you have that part in it. When you take the part out and any additional parts that may work with that part, then that firearm is considered a

semi-auto Title I firearm again. So the registration is on the little piece itself.

Q. Okay. Let's talk about the RPD.

MS. CASSINELLI COUCH: May he come down and help me with this?

THE COURT: He may.

MS. CASSINELLI COUCH: If you want to set it up right in front of where you're sitting.

THE WITNESS: Okay. There's kind of no safe place to point this.

BY MS. CASSINELLI COUCH:

Q. Well, they've been setting it right there if you want to do that.

A. Yeah.

Q. Okay. This is Government's Exhibit 111. Have you looked over this firearm prior to testifying?

A. Yes.

Q. And what kind of firearm is it?

A. It's an RPD, it's a Russian belt-fed machine gun, 7.62 caliber. I don't know how many millions of those things were made, but, China, you know, Russia, the European countries have used them. They are from the 1950s era.

Q. Okay. And on -- you've looked at this machine gun. Where do you see serial numbers on this --

A. Well, you see serial numbers in two places, the --

Q. It's a lot heavier than it looks like it will be.
A. Yes, it is.
Q. Is that it?
A. Let me see if I can't find it here. That's the top cover.
Q. What does this say?
A. Well, that's a BM0834, and then you have a serial number here, 1442 --
Q. Okay.
A. -- or a number that's placed on the receiver.
MR. GORDON: Your Honor, may I just ask that they not point that at the jury? Maybe point it the other way or something.
THE WITNESS: Yes.
MR. GORDON: We're getting some concerned looks.
BY MS. CASSINELLI COUCH:
Q. It's not loaded, is it?
A. No.
Q. And we keep talking about the receiver. Which part is the receiver?
A. Well, the receiver is this main piece right here. And that's what ATF on this particular weapon considers to be the main part of the weapon. Sometimes they are called frames. But that's the part that a serial number would have to be placed on.
Q. Okay. So if this gun was rewelded, that's where the

serial number would be?
A. Uh-huh.
Q. And you -- I think you said you saw a serial number on that receiver. What's that serial number?
A. 1442. And then I had -- there was another number on there.
Q. What is this piece called?
A. That's the cover. That's the top cover that folds down. And that's, you know, just one of the parts of the --
Q. What number is on that?
A. That's BM0834.
Q. Okay. I think you said that's an RPD?
A. Yes.
Q. As a rewelded RPD, what -- would a manufacturer typically use stainless steel to reweld an RPD?
A. Well, stainless is not something any of these guns were originally made with. The manufacturer may use stainless, but the problem you run into when you use stainless is you've got a problem in getting the finish to match. Stainless doesn't take the typical military type finish. So if you wanted it to be a perfect match, you would use a regular cold steel or carbon steel when you finish it or cauterize it or whatever process you use, that the metals will be the same -- same color. If you use stainless steel, then you're pretty well limited to having to use paint over the firearm in order to cover the

stainless.
Q. So a rewelded RPD like that one made with stainless steel would not ever look like an original RPD?
A. Well, not if you're trying to place an original finish on it, no, it wouldn't take it. It would still be bright silver, you know, metal colored.
Q. Or painted over?
A. Yeah, or you paint over it.
Q. And, therefore, it would be less valuable?
A. It would be -- oh, yes.
Q. Are you familiar with stainless steel?
A. Oh, yes.
Q. Have you used stainless steel in some --
A. I use it all of the time.
Q. Tell us about characteristics of stainless steel.
A. Well, you've got four or five classes, about 150 different formulas for stainless, and four or five classes. You've got your ferritic stainless, which is magnetic. Got your nonferritic, which is generally nonmagnetic. You've got several others. And they all have little different properties on weldability and machineability. And you can make nonmagnetic stainless magnetic. It can become magnetic during the working machining processes and so forth.
Q. Let me break it down a little bit. Are there types of magnetic stainless steel?

A. Yes.
Q. And types of nonmagnetic stainless steel?
A. Yes.
Q. And the nonmagnetic stainless steel, can it turn into magnetic stainless steel?
A. It can under the right conditions.
Q. And I think some of those -- when does that happen? What are some examples of what would make a nonmagnetic stainless steel come --
A. 303 and 304, those are the two most popular stainlesses. When they are extruded from the manufacturing process by the manufacturer, they may end up becoming magnetic. It can also be when you're drilling, when you're machining. It can happen when you're welding, because you're working that metal and trying to shape it and polish it and grind it. And so it can have a magnetic effect on it.
Q. So it's the movement -- I think they call it cold working?
A. Yeah, it's the movement of the steel.
Q. So whether or not something is magnetic does not tell you whether or not it's stainless steel necessarily?
A. Absolutely not. Think of kitchen knives. There's stainless blades you put them up on the magnet on the wall. There's a perfect example of a magnetic stainless.
Q. Going back to what you said a moment ago about a manufacturer would use a material that would allow the

manufacturer to make the gun as most like the original as it could be --

A. That would generally be the logical effort that someone would want to go through. If you're going to put your -- put that kind of labor into it, you would want it to be as good as possible.

Q. And be as valuable as possible?

A. And be as valuable as possible.

Q. Would you be able to tell if that gun was rewelded out of stainless steel by looking at the finish?

A. No, I can't tell. I did put a magnet on it and it was magnetic, but that -- as I've explained, that's not necessarily the test. It could have been welded with magnetic stainless. It's just a chromium and nickel content, and it changes those properties. It is rewelded. I can see the pitting where the weld marks were. It wasn't a perfect weld. And you can see pits where the area where the receiver was welded and, you know, at least two pieces.

Q. I guess what I'm wondering is, if you manufactured this machine gun and used stainless steel, you'd have to use paint?

A. Yes, you'd have to use paint.

Q. So you would be able to tell by looking at --

A. If it had paint on it, I would know -- I don't know that the stainless with paint, but that would be -- if it's parkerized, which that one looks parkerized, it doesn't look

like paint, which would indicate that's probably not stainless and probably regular steel.

Q. So the person that manufactured that weapon wouldn't have to use a magnet because they would be able to tell by looking at it that it was not painted, and stainless steel would have to be painted?

A. Yeah. Looking at that, that's parkerizing, I would not think it's stainless and not really an issue of magnetism.

MS. CASSINELLI COUCH: May I approach even though I haven't asked every time?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. I'm showing you what has been introduced as Defendants' Exhibit 15. Do you recognize that document?

A. Yes.

Q. And do you have a copy of it with you?

A. Yes.

Q. Can you see that a little?

A. Yes.

Q. What is this?

A. It's an approved Form 3, went to ATF. It was submitted by -- or the manufacturer on it is Hahn Machine. It was actually submitted to -- transferor is Hahn Machine and transferee is Randeep Mann. It's an RPD. It's got barrel length, overall length, caliber, it's a machine gun, Serial

Number 1442. It's got both of the license numbers of the transferor and the transferee. There was -- it was submitted July 17th, 2001. Signed, looks like, by Lloyd Hahn. It was approved by ATF on September 19th, 2001. And they have the examiner and the supervisor both have their marks on there, you know, their signatures.

Q. Okay. So this -- what's the serial number?

A. 1442.

Q. And say again the model.

A. It's an RPD.

Q. Does the information on this form match that weapon?

A. Yes.

Q. And this was approved by ATF?

A. Yes.

Q. And there's a -- you can faintly see a stamp on there.

A. Yes. That says "Restricted registration to Public Law 99-308" meaning that it's a post-1986 machine gun.

Q. And so that --

A. Yeah. And it's restricted compliance. You know, it's kind of hard to read.

Q. Does that signify as a dealer sample?

A. Yes, dealer sample.

Q. And I think you said this was approved by ATF in September of 2001?

A. Yes.

Q. And does that --
A. September 19, 2001, right.
Q. Does that appear to be a signature of the transferor, Mr. Hahn?
A. Yes, it looks like spell -- signatures are hard to read.
Q. Is that the proper place for it?
A. Yeah, that's a proper place for it.
Q. And I think we skipped over this, but when a manufacturer makes a machine gun, I think you said, 24 hours to do your Form 2?
A. Yeah.
Q. What if you make three or four in one day?
A. Well, you can put them all on the same form or you can submit, you know, separate forms. I think there's space for eight on each Form 2.
Q. Now, these transfer forms that we're looking at, they don't tell us the date of manufacture, do they?
A. No. That would be on the Form 2. That would have been where Mr. Hahn submitted the form that actually created this gun and put it into the NFA registry.
Q. And who would have a record of that?
A. Well, Hahn would and also NFA. I mean, they have that.
Q. Have you seen that?
A. No, it has not been in the information I've looked at.
Q. What does this appear to be? This is Defendants' Exhibit

17, which has already been admitted.
A. That's 14 -- Serial No. 1441. Same submission date. It was approved October 24th, you know, about four weeks after. That's 2001. Yeah, about four weeks after the 1442 had been approved.
Q. What kind of firearm was transferred --
A. That's an RPD. It's matching the same descriptive information, transferor, manufacturer, the -- let's see. The FFL -- it's got a different transferee FFL, but that doesn't mean anything. You get new firearms licenses.
Q. Well, this was transferred to someone in Michigan, it looks like.
A. Okay. That's why the FFL is different. Yeah, it's someone in Michigan.
Q. And Defendants' 16, does that appear to be also a transfer form to that same --
A. Yeah, 1443. Yes, that went to someone in Michigan. So, you know, everything is the same except the transferee's name and his license number.
Q. And this one is a different kind of machine gun, it looks like?
A. Yeah, MG-34.
Q. Now, these all appear to have been transferred the same date or paperwork --
A. Well, I think the -- the submission of the form looks like

they are -- I'd have to look back at the other one. It looks like they are all 7 -- he submitted those three at the same time.

Q. And they all came back -- two came back --

A. Probably faxed them in, you know, but they all came back at different times, which is not unusual.

Q. But we don't know if they were manufactured at the same time because we don't have the Form 2s; is that right?

A. Absolutely. It could be years apart on these things.

Q. Are you -- I think you said you're familiar with the registry?

A. Uh-huh.

Q. And have you reviewed inventories or I guess the lists that come out of the registry before?

A. Oh, I'm very familiar with it. I look at my own quite a bit.

Q. Are you familiar with how to read it?

A. Yes.

MS. CASSINELLI COUCH: May I approach?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. Do you recognize this?

A. Yes.

Q. What is it?

A. That's a typical report you'll get. Now, sometimes

they'll have it in their little form where it'll be just itemized up and down, but this is the primary form format, I think you would want to call it, that prints out. And, you know, you'd have pages of these. And it's kind of a basic same -- got some of the same information that would be on the forms.

Q. This is where the transfer form information goes?

A. Yes.

Q. And this is just one page?

A. One page.

MS. CASSINELLI COUCH: Your Honor, I move to introduce --

THE COURT: What number is that?

MR. HENDRIX: 42.

THE COURT: Any objection?

MR. GORDON: Your Honor, can I take the witness on voir dire?

THE COURT: Hold on just one second.

I'll just withhold receiving it until you've had a chance to cross-examine.

MR. GORDON: Thank you.

MS. CASSINELLI COUCH: May I discuss it with the witness?

THE COURT: Yes, you may discuss it.

MR. GORDON: Your Honor, actually I object to them

discussing anything that's not in evidence.

MS. CASSINELLI COUCH: Let's approach.

THE COURT: Hold on just a second. She can use it as a demonstrative exhibit. I just won't receive it into evidence.

MR. GORDON: Correct, but if he testifies about something that's not received by the Court, then his testimony is not evidence.

THE COURT: Let me see the document. Come to the bench, Mr. Gordon.

(Bench conference reported as follows:)

THE COURT: What is the objection to this form?

MR. GORDON: First of all, I know this is only part of a larger record, and I would want the entire record.

MS. CASSINELLI COUCH: I offered to do that.

MR. GORDON: This witness didn't create it. I don't know if he's going to testify that he knows what it is, who requested it, when it was requested.

THE COURT: What is this for, Ms. Couch? I don't know --

MS. CASSINELLI COUCH: This is the NFRTR record that shows the RPD that the government produced that any licensee can request that the government provide certified copies of. So for you to object --

THE COURT: Hold on. You're not explaining to me what

it is. And use laymen's language. This is the form that shows what?

MS. CASSINELLI COUCH: This is the printout. There are other pages. I told him I would be happy to introduce the whole thing just for simplicity. I have the page, it lists every firearm that's registered to whoever they've searched, how they put in the criteria. The transfer form information in the registry for these lines, they are in the wrong places. This is typical. He's going to explain that this is the way these forms are. So, for instance, on this one, this is the RPD that we're discussing right here. And it shows an approved date which is consistent with the transfer form right here. And he's going to explain that everything up here goes with this firearm, you know, how to read it so there's --

THE COURT: Where did you get this form?

MS. CASSINELLI COUCH: From the government.

THE COURT: What would be the objection for him to explain the form and say this is the normal form that indicates that?

MR. GORDON: First of all, Your Honor, it's not a normal form. That is the list -- when David Oliver went to search Randeep Mann's house, that is the summary of the list that he received from the NFA. It is not a complete list of the information. It's what they in the field call like a field copy. It's just quick, basic information.

THE COURT: This is the one that was carried by ATF or NFA, this was their field copy. I'm getting the language mixed up here. I don't know who had this. You found this in Dr. Mann's house?

MR. GORDON: No, no, no. When David Oliver -- when he went in to search Dr. Mann's house, he contacted NFA. He said, "I want a list of all of Randeep Mann's guns." And this is what they shoot to people in the field. It's a partial summary of the information that are on the Forms 3 and 4, the documents she was just talking about, that lists all of the registration information on the gun. That's the complete record. This is a summary of it. And my concern, just like Ms. Couch just said, is, you know, she wants his -- like she said, it's confusing because these lines are in the wrong spot. And it's going to mislead the jury to make them think that the gun is in dispute, the RPD with the 1442 was actually manufactured in 1993, and it wasn't.

MS. CASSINELLI COUCH: I'm going to make that perfectly clear.

THE COURT: Here's the problem. What would your voir dire of this witness show? That he didn't produce this document and that it's not normally kept in his hands? But if he says this is the ATF's document, then what?

MR. GORDON: How does he know?

THE COURT: I guess we could have, while the agent was

here, have the agent testify about this document.

MR. GORDON: If she could articulate why is this even -- what value does this add to anything? The registration documents are the Form 3s and 4s. This is going to mislead the jury by exactly what she said because these lines are in the wrong spot.

MS. CASSINELLI COUCH: Judge, this is a red herring. I mean, he's going to --

MR. GORDON: Why is it relevant?

MS. CASSINELLI COUCH: He's going to very clearly read the form and show it wasn't --

THE COURT: Why is it relevant?

MS. CASSINELLI COUCH: It's relevant because the ATF calls the NFA and says, "What guns are registered to this person?" This shows the NFA the NFRTR has documented, accepted, and posted in its registry an RPD manufactured by Lloyd Hahn with Serial No. 1442 on a Form 3 approved September 2001. We are charged with having an unregistered RPD that has this serial number on it.

THE COURT: I think the government's case has always been that that gun right there is not the one on the form.

MR. GORDON: True.

THE COURT: It came later. And Lloyd Hahn came in here and said, "My magnet sticks to it, so therefore I know it's not mine because mine was made of stainless," you've

gotten through the direct of this person. And I think Mr. Dudley went through a cross, a vicious cross with Hahn, to get to that issue. What does this form do for you?

MR. GORDON: This --

MS. CASSINELLI COUCH: This shows in, I guess, Washington, wherever the magic registry is, they have in the registry this information that that form was approved and put into the system so that if anyone went to the registry and said, "I need to know if this gun is registered to Dr. Mann," this is what they would get. I mean, there's really not anything controversial about this. The government presented us with copies after copies of these lists.

THE COURT: Let's get back to the point.

MR. GORDON: We already have a certified copy from Washington, D.C., of the actual Form 3 that was submitted to register this gun. We put it in evidence. It's already in there. This is cumulative. There's a danger of confusing the jury with it.

MS. CASSINELLI COUCH: No.

THE COURT: I guess I'm trying to figure out and I guess I'm trying to weigh this. On one hand, I have a document that -- we have the actual document that's in the registry that proves what you're showing with this document in the records. Listen to me. So why do you need it? That's one hand. On the other hand, I have a document that's in the record already that

proves what this document shows. So why is it objectionable?

MR. GORDON: Because, again, it's the fear of misleading. Blake even crossed David Oliver with that, with the date, because when you look at the form, it looks like the gun that we're talking about was originally created in 1993.

MS. CASSINELLI COUCH: That was before. We understand that. I'm going to make that crystal clear.

THE COURT: You're saying you're going to make it clear? I'll overrule. You can take the document -- if she does not do a good job with him going through it and explaining it, take him back through it.

MS. CASSINELLI COUCH: I was only using a piece of paper to show where the line is.

THE COURT: Overruled.

(Proceedings continued in open court as follows:)

BY MS. CASSINELLI COUCH:

Q. I'm sorry. I keep having to flip this thing around. Okay. What does this appear to be?

A. Well, this is a National Registry printout of a dealer's inventory.

Q. Okay. This is what -- is this what the NFA would generate?

A. Yes. This is a lot of times what they'll give you. They give you the full thing.

Q. And this thing is confusing to read. Is that accurate?

A. It is confusing. And it's the format of the form. You'll see the line that runs horizontal. You would normally think between two horizontal lines that that information would pertain to the weapon, but it doesn't. The line is confusing. Actually, on the first one, the Serial No. 114107, that actually goes down below owner history and below the line.
Q. Okay. So let me --
A. There you go.
Q. So that is right there?
A. That would be your location, yeah.
Q. Okay. And then the next firearm on this list?
A. Yeah. Start with --
Q. Sorry. This isn't very technical.
A. You go from serial number heading to serial number heading. Yeah.
Q. Okay. So that's the second firearm on this list; is that right?
A. Yes.
Q. So the line goes through the middle of the information?
A. Right.
Q. And right here is the last firearm on this list?
A. Yes.
Q. And just so we're clear, I'm going to move this up. The July 23rd, 1993, date has nothing to do with the RPD below it; is that right?

A. No, it doesn't. It would be right there.
Q. So that's all of the information in the NFRTR on this printout?
A. On this printout, yes.
Q. About this particular firearm?
A. Uh-huh.
Q. And what firearm is this?
A. This is the RPD Serial No. 1442, caliber length -- looks like it matches the crude form here I'm looking at.
Q. Okay. So this is an RPD, Serial No. 1442?
A. Correct.
Q. What does it say under the "Remarks"?
A. "Restricted," calling it 922(o). That's probably a statute or, you know, a -- 99-308 is actually what -- that stamp on the form. And I assume that means the same.
Q. That's what you call the public law?
A. Yeah. I believe that's -- that's exactly the same.
Q. That's the machine gun statute?
A. Yes.
Q. Okay. What does it say?
A. It says, "Restricted. Hahn Machine is original manufacturer."
Q. Original manufacturer?
A. Yes.
Q. Down on "Owner history," what does it say?

A. It says, "Form 3," it gives an approval date, "Randeep Mann, exotic weaponry," address, so forth, and zip code.
Q. And, Mr. Norrell, is that consistent with the transfer form that we just looked at as Defendants' Exhibit 15?
A. Yes.
Q. I can't get this to be on the right thing. Sorry. Is that consistent with this transfer?
A. Yes, I believe so.
Q. And so when ATF is trying to determine if a firearm is registered, what's the most reliable way to determine the registration?
A. Well, they go to their registry.
Q. And then what?
A. And print the inventory out. You know, they go to the registry to see if it's in the registry. I mean, that's the...
Q. And we've already established that sometimes it's not accurate, right?
A. Yes.
Q. So what's then the most accurate way to determine whether or not --
A. Well, the next is to look for the form.
Q. The transfer form?
A. Yeah, the transfer form. And that's what they generally will look for if they do have an error in their data base.
Q. So do you have -- based on this information and your

experience, do you have an opinion about the registration of this firearm?

A. I think it's this firearm here. I mean, I have no reason --

MR. GORDON: Your Honor, I'm going to object. He's testifying that this is the original firearm?

MS. CASSINELLI COUCH: I asked if he had an opinion.

THE COURT: That's his opinion, Mr. Gordon. You can cross-examine him on it.

MR. GORDON: Okay.

BY MS. CASSINELLI COUCH:

Q. And have you -- I think you mentioned you had a chance to review Dr. Mann's log books?

A. Yes.

Q. Was this firearm reflected in his log books?

A. Yes, it was.

Q. Moving on -- I'll try to take this out from in front of you. Are you familiar with the USAS 12-gauge shotgun?

A. Yes.

Q. And where is that gun made?

A. Well, the original was Daewoo made in Korea, and eventually started making them over here, a couple of companies that were manufacturing it. Sold it in the '90s.

Q. When it was originally manufactured, what was its status?

A. It was just a semi-automatic shotgun.

Q. Not an NFA gun --
A. Just a Title I.
Q. So it did not require registration?
A. No.
Q. And did that change?
A. Yes, it changed in '94. They ruled that it was -- didn't meet the -- some of the characteristics of a sporting firearm shotgun. It was heavier and bulkier and had detachable magazine capability in some of the things. And they reclassified it as a destructive device.
Q. Who is "they"?
A. ATF.
Q. The ATF decided it wasn't suitable for sporting?
A. Yes.
Q. And what -- and they decided it needed to be registered?
A. Yes.
Q. Okay. And are you aware of the first time -- I guess the ATF's first decision on that issue?
A. Well, yes. They sent -- supposedly sent a notice out. I don't -- I looked through my records. I keep all of my notices. I didn't see it. But I remember hearing that the UAS -- USAS-12 was being reclassified as a DD. And they did some other shotguns at the same time.
Q. Let's go back. Do you know what year that change --
A. Well, it was in -- it was -- in '94 is when they -- got

the actual dates here of those. Yeah. March 1st, '94, status changed to DD.

Q. Are you aware of any notice that was sent out in 1994?

A. No, I'm not.

MS. CASSINELLI COUCH: May I approach, Your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. Is this the ruling that you're referring to?

A. Yes, 94-1.

Q. And you have your own copy, right?

A. Yes.

Q. And can you tell us in 1994, in March of 1994, what the holding was in that ruling?

A. That it was --

Q. You can read it. Do you have a copy of this?

A. Yes. Well, basically they described that it --

Q. You don't have to try to make up the -- here's the holding.

A. They basically -- let me see. I may have it here. Held -- here we go. I've got it. They basically -- you know, through most of the ruling they described the shotgun and why they reclassified it. And at the bottom, they say it was held to be more than a half-inch in diameter, which falls into the destructive device range, and not suitable for sporting purposes and so forth and so on, and classified it as a DD, a

destructive device.
Q. Can you read us the holding of that '94 ruling which I think is the last paragraph that says, "Held"?
A. The whole "Held"?
Q. Yes.
A. It says, "Held: The USAS-12 is a shotgun with a bore more than one-half inch in diameter which is not particularly suitable for sporting purposes. The weight, size, bulk, designed magazine capacity, configuration, and other factors indicate that the USAS-12 is a semiautomatic version of a military type assault shotgun. Accordingly, USAS-12 is a destructive device as that term is used in 26 U.S.C. 5845(f)(2). Pursuant to Section 7805(b), this ruling is applied prospectively effective March 1, 1994, with respect to the making, transfer, and special (occupational) taxes imposed by the NFA. All other provisions of the NFA apply retroactively effective March 1, 1994."
Q. So this standing alone, what does this holding tell us, or tell -- not us -- tell a dealer in 1994?
A. Well, that it's been reclassified as a DD.
Q. Well, what are you supposed to do?
A. It doesn't say what to do. It -- there's not any instructions as to what course to take if you have this. It's being reclassified as a destructive device.
Q. So it doesn't tell you what to do. Does it tell you when

you're supposed to do whatever you're supposed to do?
A. No, it doesn't tell you what to do or when. It gives you a date that they effectively declared it a DD.
Q. Now, at the time of this change, you were a dealer, right?
A. Yes.
Q. Were you aware of this change?
A. I heard -- I just heard about it. It's not a firearm I had any particular involvement with. I remember reading this ruling later. And I, you know, just heard about it. But, no. Probably on their website, some different places, but it's not something that I was, you know, expressly aware of.
Q. When you read this, did you have any idea what someone was supposed to do based on reading it?
A. No.
Q. So if you -- is it fair to say you're active in the business?
A. Yes.
Q. If you weren't active in the business, would you have heard about this?
A. If you were an individual with this shotgun, you probably wouldn't have heard anything because you don't get any notification from ATF on such things.
Q. And what's the next -- do you know what the next ATF --
A. On February 9th they approved the ruling to establish a cutoff period.

Q. February 9th of what year?
A. Of '01.
Q. Is that the next ATF ruling that you're aware of?
A. Yes. The ruling was approved, and then they send a letter -- appears to be sent out to firearms dealers.
Q. Okay. Let's talk about the 2001 ruling.
MS. CASSINELLI COUCH: May I approach?
THE WITNESS: Okay.
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. And this ruling was issued when?
A. This was -- the ruling was -- somewhere to look at the date. I'm going to say it would be close. I think it was February 9th when it was approved. And then they sent the letter -- yeah. Okay. This was February 9th.
Q. And is that ruling much more clear?
A. February 2nd. Excuse me. It is more clear obviously. It doesn't tell you exactly what you should do, but they do say that they contacted purchasers of record. I don't think that means all FFL holders. I think purchasers of record may have been those that they determined from the manufacturer had -- dealers maybe that had bought the shotguns from them.
Q. Now, this ruling says pretty clearly the registration period is going to close?
A. Yes.

Q. And what date did it say the registration period was going to close?
A. May 1st, 2001.
Q. So this is issued February 2nd, 2001, and they say you have until May --
A. Uh-huh.
Q. -- 1st? Does it tell you how?
A. No. It does use the term "registration" in this listing. That term was not used in the original 3-1-94.
Q. You mentioned that you -- do you keep your correspondence from ATF?
A. Yes, I have a folder I've had for nearly 30 years with all of the -- they have FFL newsletters that ATF sends out.
Q. Do you keep those?
A. Yes.
Q. Did you go back and review that file?
A. I looked the other night and went through those and went through the '90s and so forth, and I did not see that listed in their newsletter. Not to say there wasn't some other document that they sent, but I did not have it.
Q. And if there was a document -- are you aware of a document that was purportedly sent to licensees?
A. Yes.
Q. And do you know when that document was purportedly sent to licensees?

A. Well, it's dated April 10th, 2001.
Q. And that would have alerted licensees that they had until May 1st?
A. Yes. It says: Open letter to all FFL or federal license -- firearms licensees, so --
Q. Did I give you that letter?
A. Yes.
Q. Did you find that letter in your file?
A. No, I did not.
Q. And while we're on this, if ATF had sent letters or any kind of notice to licensees, would that have covered everybody that was in possession of this weapon?
A. No.
Q. And why not?
A. Because once the shotgun was sold, the dealer would only know the first person that -- only know the person he sold it to. He wouldn't know who the others would be that maybe bought it from that individual.
Q. Let's go back. So before this firearm was reclassified, who could own it?
A. Anyone that could own a shotgun.
Q. So anybody?
A. Yes.
Q. It was not an NFA weapon of any sort?
A. No.

Q. So how would all of the individuals in the United States who had purchased this weapon prior to '94 know about this change?
A. Well, they wouldn't likely know if this was only communicated with the dealers.
Q. And are you aware of anything that required dealers or distributors to notify individuals to whom they sold this weapon?
A. Well, I can't speak for distributors, but as far as dealers, I've seen nothing that required dealers, once they've sold a shotgun, that they needed to contact anyone.
Q. You mentioned that the rulings don't tell anybody what they are supposed to do or how to do it. Even the 2001 says the registration period is going to close, but it doesn't tell us how to register this thing?
A. Right.
Q. Would a typical dealer, let's say a Class III dealer, know how to register a firearm that had previously not been registered?
A. Probably not. I mean, the form ultimately was to be registered on was an ATF Form 1. And that's not a form that -- that's a manufacturing form. And, of course, a dealer is not manufacturing and probably wouldn't be familiar with it. Plus, you can't download it off -- I don't think you can download it off the ATF website. So you'd have to order it if you knew

that was the form that you needed to use, order from NFA, BATF.
Q. So even if a dealer heard about the change in the law, it wouldn't be -- the common next step wouldn't be to go find a new form?
A. No, no. I assume -- I think probably some dealers thought the fact that they had it logged into their books might have been enough, but there's no mention of what you should do. And that's kind of interesting that it doesn't say to use an ATF Form 1 and send that in, and you don't need to send a 200-dollar tax with it. You don't need law enforcement signatures and so forth on the back.
Q. Okay. So the typical forms the dealer would use would be Form 3 or 4?
A. Yes, Form 3s and 4s, maybe some 5s for law enforcement.
Q. And those -- sorry.
A. Okay. Go ahead.
Q. And those forms would not be the proper form to register a firearm that you're not transferring to someone else?
A. Right.
Q. And I think you mentioned a Form 1, and that's to make and register --
A. Yes. That's if you're going to make one firearm into an NFA weapon of some type, whether it's a silencer or machine gun or whatever, you would file that form.
Q. That's for someone who doesn't have a manufacturing

license?
A. Right.
Q. And requires payment of tax?
A. Manufacturer would use a Form 2 instead of 1.
Q. Okay. Moving on, are you familiar with grenade launchers?
A. Yes.
Q. And how is a grenade launcher registered?
A. Well, they are registered like a firearm. The receiver -- the frame has a serial number on it. And then if it uses a barrel size that falls under DD classification, which is usually 40 millimeters, or rifle barrel, then you file a Form 1 and register one yourself, or you can, you know, buy them.
Q. And is a grenade launcher a destructive device?
A. Yes.
Q. Tell us generally who can possess destructive devices.
A. Well, destructive devices are similar to any of the other, you know, items. You've got the launcher and the explosive portion, and the launcher is -- the mount could be a separate weapon, shoots flares, tear gas, smoke. I mean, you've got all of these practice ranges, you've got all of these things you can shoot in as well as grenades. And those can be owned by individuals or dealers.
Q. So if you want to possess a destructive device, you can file -- I mean, you can submit a form to ATF for approval as an individual?

A. Yes.
Q. And are there licenses that also allow certain dealers to possess destructive devices?
A. You've got three DD types, getting back to the original Form 7. You've got an 08, which is a destructive device dealer. It doesn't include the destructive device ammunition, ammunition being the grade -- the grenades and the reference to a grenade launcher. A type 09 is a manufacturer of destructive devices. And, you know, it states destructive devices and ammunition for destructive devices or armor-piercing ammo. And then you've got your type 11, which is an importer. That includes the launcher, the grenades, and importation of armor-piercing.
MS. CASSINELLI COUCH: Your Honor, is this --
THE COURT: Yeah. I was going to say, let's take a break. How much longer do you think we have?
MS. CASSINELLI COUCH: Not very much longer. Maybe 15 -- 10, 15 minutes.
THE COURT: Let's do this. Let's take -- I hate to break you up in the middle of your direct. But we've been going about an hour and 50 minutes. So let's come back at five after 3:00. We'll be in recess until five after 3:00.
(Recess at 2:49 p.m. until 3:05 p.m.)
MR. HENDRIX: Your Honor, may we address the Court?
THE COURT: Yes.

MR. HENDRIX: Our next witness is Peggy Cryer. And I expect I'm going to be a minimum of two hours on direct with her. It's also going to be fairly tedious. And, I mean, I could take my clothes off and do a tap dance, but it's still not going to be interesting.

THE COURT: So you want to start on Monday?

MR. HENDRIX: We would.

THE COURT: That's fine.

MR. HENDRIX: Can we cut Ms. Cryer loose?

THE COURT: You can tell her she can go.

MS. WHATLEY: What time do I need to tell her to return on Monday?

THE COURT: It depends on -- I don't think we'll have to have anything to take up Monday morning.

MS. WHATLEY: We shouldn't.

THE COURT: 9 o'clock.

MS. WHATLEY: 9 o'clock.

THE COURT: Is that all we needed to take up?

MR. HENDRIX: That was it. We just needed to know --

THE COURT: We can bring the jury in. Thank you.

(Jury enters the courtroom.)

THE COURT: You may continue.

MS. CASSINELLI COUCH: Thank you.

BY MS. CASSINELLI COUCH:

Q. We were talking about destructive devices. And how many

types of licensees can possess destructive devices?
A. Well, licensees would be dealers. You've got an 08, 09 and a 10.
Q. So three types of licensees?
A. Yes.
Q. And I think you also said individuals could submit a form for approval as well --
A. Yes.
Q. -- who don't have a license?
A. (Nodding head.)
Q. Do you know how many destructive device licenses Arkansas citizens have?
A. Not as in individuals. I know there's 14 destructive device business licenses in the state.
Q. Excuse me. Say that one more time.
A. There's 13 or 14 destructive device manufacturers, dealers, or importers in the state. Most of them are in Camden.
Q. Okay. And can a licensed dealer, Class III, possess or own a destructive device?
A. Yes. You've got to define which destructive device you're talking about. If you're talking about launchers --
Q. Well, generally what's the ATF rule on that?
A. Well, the ATF rule is that they are transferred like other NFA items. If it's an explosive, then you have to have an

explosive license in addition, which is a separate entity.
Q. Well, for instance, the grenade launchers. If you're a Class III dealer, you're licensed to deal in NFA firearms, but since that's a destructive device, how do you, as a dealer, possess it legally?
A. Well, ATF has -- I don't know if it's a ruling or a reg, but they allow the occasional transfer of a destructive device for a nondestructive device dealer. I believe you have to be a Class III. And it's for collection, you know, purposes. And they don't have a quantity or anything listed as to how many. It's just occasional transfer. And that's how Class III dealers a lot of times will transfer and possess some destructive devices is because they are allowed this occasional use or collectible clause.
Q. So it's an ATF judgment if you submit the form?
A. Yeah.
Q. Do you have destructive devices even though you don't have a license to --
A. Yes.
Q. And have you ever been denied when you were submitting the forms to possess the destructive devices?
A. No.
Q. Do you have any idea how many destructive devices are registered in this country that are not military?
A. Oh, probably several million. They are extremely common

with agencies.
Q. Are you familiar -- well, you mentioned the different things that can be fired out of a grenade launcher.
A. There's a whole lot of things. You've got -- of course, you've got high explosive rounds, and you've got buckshot and bean bags and rubber balls and flares and stun grenades and smoke grenades, tear gas. I mean, there's a whole list of things that are fired from them that are not, you know, grenades, high explosive grenades.
Q. And are you familiar with M406, the 40 millimeter M406 grenades?
A. Yeah, it's the grenade for the -- usually shot in the M203 --
MS. CASSINELLI COUCH: May I approach?
A. -- M203 grenade launcher.
BY MS. CASSINELLI COUCH:
Q. I'm showing you Government's 98g. Do you recognize those?
A. Yes.
Q. Okay. And this right here?
A. That's a high explosive round.
Q. Do you know how those are typically packaged for --
A. They come in a wooden box. I think there's 72 to a case, and they are in bandoleers and broken up into smaller sections. But they are, you know, shipped in wood crates.
Q. 72?

A. I think 72 is a case, what a case would be.
Q. And this right here, do you recognize what that is?
A. Yes, that's a practice round. You can always tell those because they've got a blue tip on them.
Q. Are you familiar with an MK3A2 hand grenade?
A. I'm familiar with it, yes.
Q. Can you tell me from right there what this is?
A. No.
Q. Why not?
A. It looks similar to just about every type of grenade -- be nonlethal grenade. It can be a flash bang. It can be a smoke grenade. It could be tear gas. There's three or four types of tear gas. They are all cylinders, have a spoon and a pin. And from a distance, they would look very similar. And they come in different colors, but generally the colors are not industry-wide. I mean, you've got a manufacturer and he'll make his -- he'll distinguish between smoke and tear gas with his colors, and some other manufacturer would have a different color scheme.
Q. Are all of those items you mentioned generally the same size, shape?
A. Yeah. That's 5.43 by 2.17 height and width, so it's about five-and-a-half inches by two-and-a-quarter. And if you look at them line -- if you look at that lined up with a lot of the law enforcement nonlethal grenades, I mean, they vary just a

little bit, maybe a little taller, you know, a little fatter, but they -- from a silhouette standpoint, that is not a unique shape.

Q. What -- just generally tell us what the different types of hand grenades there are.

A. Well, you've got your fragmentation and you've got pineapple grenades that were used --

MR. GORDON: Your Honor, I'm going to object. We're getting way beyond this witness's realm of knowledge.

MS. CASSINELLI COUCH: Your Honor, he's just going to testify to the general categories that the other witnesses have already testified to.

MR. GORDON: And, again, he has no experience whatsoever in explosives, in the military, or anything. This is beyond his realm of knowledge.

MS. CASSINELLI COUCH: I object to that.

THE COURT: He can testify as to how to identify them. He said he sells them or has come in contact with them a number of times. He can testify as to what they look like. Now, what they do is a different story.

MS. CASSINELLI COUCH: Well, Your Honor, I think that he has demonstrated knowledge in his dealings with law enforcement when he purchases them for law enforcement that he knows what the purpose of a fragmentation, a concussion, smoke, a flare. We're not going to --

MR. GORDON: Your Honor, as far as I'm aware, law enforcement doesn't have pineapple grenades and things like that that she's asking him about.

THE COURT: He can testify about identifying those grenades. Now, you can take that up on cross-examination.

MR. GORDON: I will.

BY MS. CASSINELLI COUCH:

Q. So fragmentation, general categories --

A. You've got fragmentation, pineapples, called lemons, baseball -- they are different shapes, and normally they'll have ball bearings or chunks of metal or -- those are used by the military.

Q. Tell me the different categories and purposes.

A. Well, you've got fragmentation --

MR. GORDON: And, again, Your Honor, we're going into how these things are used, their effect. This witness -- he read stuff on the internet.

MS. CASSINELLI COUCH: You know, I object to him saying this out loud because he knows it to be inaccurate from our previous hearing --

THE COURT: I'm going to mistry this case, that's what I'm going to do, with both parties. Now, we know to come to the bench when we have argument to make. So let's cut it out. This witness can testify as to identifying those grenades. That was my ruling. Now, when we get into everything that all

of these grenades do, he doesn't have the expertise in that. But he can identify the different types of grenades, what he sees and what his knowledge is. Let's stick to that.

MS. CASSINELLI COUCH: I think I'm -- may I approach?

THE COURT: You may.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: We're simply having a communication issue because this is --

THE COURT: No communication issue.

MS. CASSINELLI COUCH: -- with my --

THE COURT: Listen to me. I'm going to stop this now. He testified that for a living, what he does, he's identified thousands of these. I think that's what his testimony was. He hasn't thrown them, he can't testify how far he can throw it and how far it will blow. He can't testify to any of that. Listen to me, please. You're trying to start an argument with me, and I'm not ruling against you.

MS. CASSINELLI COUCH: I'm sorry. I'm just frustrated.

THE COURT: What he can't testify to is all of the specifics of each one, but he can testify these blow up, those -- these look like these, those look like those, you can't tell them apart. I think that's what he's saying. There are hundreds of these things -- he didn't say hundreds. He said there are many of these things that all look alike and you

can't tell one from the other by looking at them. I think the evidence in this case is people looked and saw some in the garage, looked and saw some in a box that looked like these. And I think the testimony was they are unique. Normally you don't have grenades that look like this MK whatever it is. And what he's testifying is, no, that's not true. My opinion is, there are a bunch of them. Now, I don't want you to go into a lot of detail with the witness about every capability of all of these weapons because this witness said he does not know.

MS. CASSINELLI COUCH: I want to be clear about this. I'm not asking him for those types of details. What I'm asking for is I'm --

THE COURT: Basic characteristics, what they do?

MS. CASSINELLI COUCH: Can I explain?

THE COURT: Yes.

MS. CASSINELLI COUCH: Mr. Hahn, Mr. Le, all testified fragmentation grenades, fragments, concussion grenades are to kill people.

THE COURT: Of course.

MS. CASSINELLI COUCH: That's what I'm trying to get at. I'm not trying to ask him --

THE COURT: Can he testify about that?

MS. CASSINELLI COUCH: That's where I'm going.

THE COURT: Everyone who has walked in the courtroom has testified --

MS. CASSINELLI COUCH: That's what I'm trying to do, not anything more than that.

THE COURT: He can say the same things they said.

MR. GORDON: They've thrown them and played with them. He's read about them.

MS. CASSINELLI COUCH: That's not actually true. He goes to the law enforcement agencies and watches them throw them. That's not true.

THE COURT: He said he has not done that. I think his testimony was that -- I don't know what his testimony was about whether he has seen other people do it. I think he testified about reading up on it and doing some background research on it. And he can identify them because he buys and sells them, and he has to know what he sells and the capacity of them when he sells them. He can testify to that. As to what does it look like when you throw it, I don't know that this man can testify.

MS. CASSINELLI COUCH: I'm not trying to ask that. I'm saying, communication is between he and I. I'm trying not to get there and I'm trying to divert him from the fragmentation.

THE COURT: You have the right on cross to say, "Have you been in the military?" "No." "Have you gone out and thrown them like Hahn?" "No." That's for cross-examination. He testified, "I buy and sell these things. This has this

capability. This has this. I have to know this to be able to sell it."

MR. GORDON: But he's not buying and selling grenades, maybe the flash bang, but not the pineapple grenades, not the concussion, not the fragmentation. That's all military stuff.

MS. CASSINELLI COUCH: But they are in the business and they know that a concussion grenade in general does this.

THE COURT: He can testify generally about it now, but he can't get into details. And that's my ruling. You start getting into details, how far away will this blow and all of that, he can't testify about that.

MS. CASSINELLI COUCH: I don't want --

THE COURT: He can testify about this type of grenade blows up and it fragments. He can do that.

MS. CASSINELLI COUCH: And I want --

THE COURT: It would be almost like a doctor who has a specialty in one area, but who knows enough about another area because he's read up on it and done studying in medical school. He can testify to a limited degree in other areas. He's not limited specifically to testify about one little narrow thing. He has to put it in context, and I think that's what he's about to do.

MR. GORDON: It's just -- I mean, there's not been one word of this contact with MK3A2s, pineapple grenades.

THE COURT: He said he hasn't had any contact.

That's --

MR. GORDON: That's why he shouldn't be talking about this stuff.

MS. CASSINELLI COUCH: Under your theory, I would always have to call a government agent to testify about the general characteristics.

MR. GORDON: No, someone that's done more than read about it on the Internet.

MS. CASSINELLI COUCH: He's been involved in it 30 years and talked to law enforcement officers.

THE COURT: He can testify to this. The problem now would be to go find somebody who would be willing to come into the courtroom like Hahn or like -- who's the other man?

MS. CASSINELLI COUCH: Le, the fisherman.

THE COURT: They are not coming in here to testify for the defendant. You would never be able to testify about these areas, who has had that type of experience, because the nature of what they've been doing is illegal. This guy has only done the legal stuff, and so he's --

MR. GORDON: And I agree, but his involvement is with the law enforcement. They don't throw MK3A2s, they don't throw grenades.

THE COURT: He can testify about general characteristics, as you said, a fragmentation, fragments.

MS. CASSINELLI COUCH: May I lead him on that?

THE COURT: No, because I don't get the impression he's going to go down that path anyway. I think the objection was not to his response. The objection was to the question you were asking him because I can understand from Mr. Gordon's point, we had a ruling and he doesn't want this witness to start getting into a bunch of stuff --

MS. CASSINELLI COUCH: I do, too.

MR. GORDON: -- reading --

MS. CASSINELLI COUCH: I'm trying not to. I didn't --

THE COURT: He doesn't want this guy reading a Wikipedia article testifying and this jury believing he's an expert.

MS. CASSINELLI COUCH: Of course, lately, that's pretty accurate. Have you heard?

THE COURT: No. Well, let's not do that.

MS. CASSINELLI COUCH: If I can lead, I'm not trying to get in a case that --

MR. GORDON: I will not object to leading.

(Proceedings held in open court as follows:)

BY MS. CASSINELLI COUCH:

Q. Mr. Norrell, we were talking about grenades.

A. Okay.

Q. And there are categories, as I understand it, fragmentation, concussion, and smoke, flare, flash bang; is that right?

A. Right.
Q. Okay. Can you tell us what generally the purpose of a fragmentation grenade is?
A. It's to kill. It's antipersonnel grenade. It blows up pieces of metal in all directions.
Q. What about the purpose of a concussion grenade?
A. It's a shock wave, and it's also -- purpose is antipersonnel, it can kill.
Q. Layperson terms, antipersonnel --
A. Antipersonnel means it's used against a person. In other words, I believe I could say that would be the term --
Q. It means it's used to kill?
A. Yes, lethal versus nonlethal.
Q. Is the fragmentation grenade designed to kill a larger area?
A. Yes. It blows chunks of metal, ball bearings, you know, whatever things it's filled with.
Q. And a concussion grenade is designed to kill a smaller area?
A. Yeah.
Q. How about flash bang grenades?
A. Flash bangs are diversionary grenades. They are used by police departments and also sometimes called stun grenades. And they throw them into a room and it flashes very bright. And the shock wave disorients people. And the SWAT team, you

know, would enter the room immediately. But it's nonlethal.
Q. So that's what law enforcement would use to clear a room?
A. Right.
Q. How about a smoke grenade?
A. A smoke grenade would be to create either signaling, it could be to create a shield, visual shield. And they come in different colors. And, you know, the police department would throw those maybe if they were going to enter a house or something.
MS. CASSINELLI COUCH: May I approach, Your Honor?
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. I am showing Mr. Norrell what has been previously marked, but not admitted, as Defendants' 19 and 20, as well as what I'm going to mark as Defendants' 43 through 50. And if you could flip through those?
A. Okay.
Q. What are those?
A. Well, they are different types of nonlethal grenades.
Q. Are you familiar with all of the nonlethal grenades in those photographs?
A. I'm familiar with all of these. I have not seen the one with the holes in the inside, but I've seen these others.
Q. Okay. You're familiar with those. And are they generally the same size and shape of --

A. They are very close to that.
Q. Okay.
THE COURT: Hold on, Ms. Couch. Have those been received?
MS. CASSINELLI COUCH: No, Your Honor. I move to admit them.
THE COURT: Have you shown those to the government?
MS. CASSINELLI COUCH: Yes, they have a copy.
MR. GORDON: Your Honor, can I see copies with numbers on them just so I can follow along, or can I borrow those so I can write numbers on my copies?
MS. CASSINELLI COUCH: We can do it together because I haven't written numbers on them either.
MR. GORDON: No objection, Your Honor.
THE COURT: They are received.
(Defendants' Exhibits 19 and 20, and 43 through 50 received in evidence.)
BY MS. CASSINELLI COUCH:
Q. Okay. Mr. Norrell, what is this?
A. It's a flash bang. It's a brand of flash bang, CTS; a number of companies that make these devices of this brand.
Q. Are you familiar with these?
A. Yes. I'm -- I have not thrown one, but I have seen these, yes.
Q. Are these some of the things that you -- I don't know what

the word is -- broker to law enforcement agencies?
A. Sometimes, yes.
Q. And is this generally the same size, shape, and color as --
A. Generally, yes.
Q. How about that one?
A. It's a diversionary grenade. It's another way of saying stun grenade.
Q. And is that also generally the same size, shape, and color as the MK3A2?
A. Yes, generally.
Q. And when we say generally, how much difference are we talking in the --
A. You may have a half an inch or less difference in height and a quarter-inch or less in diameter, just depends on the manufacturer.
Q. And in order to tell what type of grenade it was, would you have to have a label?
A. Yeah, you really need a label.
Q. Okay. How about those two?
A. There we go. That's a flash bang, and I can't make out the second one. The image is too blurred.
Q. Some kind of nonlethal --
A. Yeah, it's -- yes, I would think so. It doesn't -- it's too blurred to read, and that's why labels are real important.

MR. LASSITER: What was the exhibit number?

MS. CASSINELLI COUCH: 43.

BY MS. CASSINELLI COUCH:

Q. 44?

A. Okay. You've got a smoke and then you've got a CN smoke. And CN is the name being it's got tear gas and smoke in it.

Q. And those are a little smaller?

A. Yes.

Q. But same shape?

A. The same cylinder shape.

Q. How about this one?

A. It's a CN, it's a tear gas.

Q. Also generally same size and shape?

A. Yes.

Q. How about this one?

A. That is a practice stun grenade, it runs off CO2. The cartridges are used in pellet guns, got those in there, and they explode and make a similar sound as a stun grenade. And it's less dangerous and cheaper to practice with those for agencies.

Q. Also generally the size, shape, and color?

A. Uh-huh.

Q. How about 47?

A. That's CS gas, a flash bang, and incendiary, which means it's got phosphorus in it and it just burns real bright.

Q. Also generally same size, shape, and color?
A. Yes.
Q. Ignore my No. 8. These are a little smaller. Are these generally the same thing we've been talking about?
A. Yes, they may look smaller. They may be just the pictures. You can see the bottom two are actually tall. But, yes, that's a particular brand of tear gas, and, you know, stun grenades and so forth. It's got the descriptions underneath it describing what they are as far as content. You can't tell that from this.
Q. Some are a little taller on here?
A. Uh-huh.
Q. Generally same size, shape, and color?
A. It's a taller cylinder than it is wide.
Q. And all of these that we're looking at, are they different manufacturers and some of the same types of --
A. Yes.
Q. -- grenades?
A. Uh-huh.
Q. So different manufacturers might have different colors?
A. Right.
Q. This is 49.
A. That's a drawing. It's, you know, a yellow smoke grenade, and they maintain --
Q. And it looks like it tells us how wide and how tall it is?

A. Yes. That's five-and-three-quarter.
Q. So pretty close to the MK3A2?
A. Yes, it's about a quarter-of-an-inch, a little over a quarter of an inch taller.
Q. And 50?
A. Tear gas.
Q. Also --
A. 5.7 inches.
Q. So all of these -- these are just examples, right?
A. Yes.
Q. I mean, there are tons more out there; is that correct?
A. Yes.
Q. Moving on --
A. Okay.
Q. -- last two things. In your business, in your experience, have you purchased or arranged the purchase of ammunition cans? Let me show you. I thought we might have it in here.

MS. CASSINELLI COUCH: May I approach?

THE COURT: You may.

MS. CASSINELLI COUCH: I am showing him Government's Exhibit 100s.

THE WITNESS: Okay.

BY MS. CASSINELLI COUCH:
Q. Are you familiar with the items --
A. Those are ammunition cans.

Q. And are those types of cans frequently sold at gun shows?
A. That's correct.
Q. And in your experience, when someone sells them maybe at a gun show, do they usually have or do they sometimes have one out of a group, a lot, or a bunch?
A. They could have either. I mean, the government sells those quantities, and your contractors -- and you bid, you put bids out, and you buy, you know, pallets of those. And so a seller may bid out at the Little Rock Air Force base and buy a few pallets of cans or maybe some other place.
Q. So if somebody bid on some cans and got a whole group --
A. Uh-huh.
Q. -- would they resell them that way or, I mean --
A. I mean, they are bulky, so you fill a truck with them and you take them to gun shows and sell them. Of course, they are sold by catalog companies on the Internet also.
Q. So if there's a gun show in Little Rock, let's say, and there were some ammunition cans sold there, would it be likely that there would be a lot of cans of one lot number that that dealer had bought?
A. There really could be because a person normally would have a huge pile of those, had to buy them at a wholesale level, which means they bought them in some type of quantity.
Q. And, lastly, do people who collect firearms, deal firearms, also collect literature manuals and books about

firearms?
A. Oh, of course.
Q. And are those manuals, books, sold at gun shows?
A. They are sold at gun shows and over the Internet, and you probably find them at your book stores some of the manuals. The military prints a lot of those manuals.
Q. And they sell them?
A. Yes.
Q. And they are for sale at gun shows?
A. Yes.
Q. Is that typical for somebody who is in the business to collect those?
A. Yeah. If you're actually collecting, you bought a special item, you would very likely want to have the manual that goes with it.
Q. Would you only have manuals for things that you owned?
A. Not necessarily, no.
Q. And you could buy manuals for items that you didn't own?
A. Right.
MS. CASSINELLI COUCH: May I approach?
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. Defendants' 21, 22, 23, 24, 25 -- I think that's a 27 -- 28, another 27, 30 and 32, 31, will you flip through those for me?

A. Okay.
Q. What do those appear to be?
A. Well, they are different manuals, but more than that, some of them are historical books from Barnes & Noble. And they are arms of the world. And, I mean, they are hard covers. And then I saw some manuals in there. Some of those may have been military published manuals.
Q. How about this picture?
A. Well, that yellow looks like a military manual. You can tell by the paper, it's got the document number at the top. It looks like it's partially covered up.
Q. And did you say some of those appear to be the military type manuals?
A. Yes, I would think that the yellow one.
Q. How about that?
A. That could be, too. Generally the paper is a little less yellow than that, but that's a possibility. Maybe a reprint of a military manual.
Q. Do you know whether or not Dr. Mann owned that weapon?
A. I believe he did, a SAW. I would have to go back and look at the list. There's so many of them, that I'd have to look at the model numbers.
Q. There's another one. Does that appear to also have the same type of manual in it?
A. Yeah, that could be the same one from earlier.

Q. Do these all appear to be manuals that a gun enthusiast might --
A. Uh-huh.
Q. -- have if they are into gun collecting?
A. Yes.
MS. CASSINELLI COUCH: May I have a moment, Your Honor?
THE COURT: You may.
MS. CASSINELLI COUCH: No, further questions.
THE COURT: Mr. Gordon, cross-examination?
MR. GORDON: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. GORDON:
Q. Good afternoon, sir.
A. Good afternoon.
Q. I wanted to make sure we all understand who you are. Your name is John Norrell, correct?
A. Yes.
Q. And you do own a gun business, correct?
A. Yes.
Q. And you also have another job?
A. Yes.
Q. You work for a health insurance company, correct?
A. Yes.
Q. Okay. And tell this jury how much military experience you

have.
A. I have very little.
Q. Would it be fair to say --
A. I have a business located in Jacksonville by the Air Force Base, came in contact with military personnel.
Q. So that counts as military experience?
A. Uh-huh.
Q. It does? Living near an Air Force Base?
A. No. I'm just explaining that.
Q. Tell this jury how much military experience you have.
A. I don't have any.
Q. Tell this jury how much law enforcement experience you have.
A. Not as a law enforcement officer. Those are my customers. So I have affiliations and relationships and exposure to law enforcement.
Q. So essentially what qualifies you to come in here and talk to this jury is that you have a federal firearms license and you operate a gun business, correct?
A. Not exactly. I mean, I have quite a history of manufacturing in areas of firearms that go beyond a regular firearms dealer.
Q. And you've been hired by Dr. Mann to testify on his behalf, correct?
A. Through his attorneys, yes.

Q. Have you ever done business with Dr. Mann before?
A. No.
Q. How much are you being paid for your testimony today?
A. 150 an hour.
Q. When were you first hired to work on this case?
A. It's been probably a year ago.
Q. Okay.
A. June, I guess, of last year.
Q. Are you only going to be paid for the time that you spent here in court?
A. No. I've been paid for research --
Q. Okay.
A. -- reading.
Q. All right. Is that a flat fee, or hourly?
A. It's hourly.
Q. And how much are you making an hour?
A. $150.
Q. Do you get double time or anything for actual court time?
A. No.
Q. When did your court time start today?
A. It started when I came here.
Q. Okay. Not when you started testifying, but when you arrived at the courthouse?
A. Yeah.
Q. What time did you get here?

A. I got here probably -- I don't know -- it was around 10:30, I believe.
Q. And have you been paid any money so far?
A. Yes.
Q. How much?
A. Oh, probably 2- to $3,000.
Q. How much?
A. 2- to 3,000. I don't know the exact amount. I'd have to look at an invoice.
Q. And will that cover all of the research that you've done, or do they only owe you for your time here in court today, or do they owe you for more in addition to that?
A. No, time in court today.
Q. How much do you think they would have paid you if you had told the jury that you thought this gun was not the one that was registered to Dr. Mann?
A. Well, that's not my opinion. I'm being asked to give an objective opinion.
Q. An objective opinion, not subjective?
A. No.
Q. Okay. Are you really interested in telling -- giving this jury reliable information?
A. Yes.
Q. Okay. Tell me when you talked to Lloyd Hahn.
A. I haven't talked to Lloyd Hahn.

Q. Why not?
A. There's no need for me to talk to --
Q. There's no need? If you're coming in here to tell this jury whether or not this is the gun that is registered to Dr. Mann on these forms, don't you think it would help to talk to the man who built it?
A. Well, I'm going by the approved ATF form, NFA approved the transaction.
Q. And that ATF form says it was manufactured by Lloyd Hahn, correct?
A. Correct.
Q. And you never once bothered to pick up the phone and call him?
A. No, I did not.
Q. Did you go with Dr. Mann's attorneys when they drove to his house to interview him?
A. No.
Q. Did you ever go up there and talk to him?
A. No, I didn't.
Q. Why not?
A. There was no need. I'm looking at the gun and the paperwork.
Q. There's no need?
A. Not for my -- not for my opinion based on the paperwork and the firearm.

Q. Okay. Stainless steel, sometimes the magnet sticks, sometimes it doesn't, right?
A. Right.
Q. Sometimes you can color it, sometimes you can't?
A. Right.
Q. So wouldn't it help in giving your opinions to this jury to actually talk to the man who built it to figure out how he did it so you could give them reliable information? Wouldn't that have helped?
A. Well, I'm looking at the firearm as it is, as it's presented to me.
Q. You're guessing?
MS. CASSINELLI COUCH: Your Honor, I think he's answered these questions.
THE COURT: This is cross-examination. It's overruled.
BY MR. GORDON:
Q. You're guessing?
A. At what?
Q. At whether or not that is the firearm that was manufactured by Lloyd Hahn that is covered in these ATF forms?
A. I'm not guessing. I'm looking at the approved form, and there is a firearm with that serial number on it.
Q. Have you ever manufactured a firearm?
A. Yes.

Q. When you manufacture it, don't you stamp your -- the name of your business and a serial number on there?
A. Well, the serial number goes on the receiver. The manufacturer's name does not have to go on the receiver. It can go on the barrel. And that may or may not be the original barrel.
Q. Do you see a manufacturer's stamp anywhere on this firearm?
A. I see the serial number.
Q. I'm not asking about that.
A. No, I don't see the name of the manufacturer on it.
Q. Have you ever chicken scratched a serial number underneath the top cover?
A. That's actually pretty common in the industry to using engravers. Probably a third of the machine guns out there right now are -- have vibrating engravers that are -- serial number.
Q. Chicken scratch like that?
A. Well --
Q. Haven't you gotten in trouble, sir, for not doing your serial numbers correctly?
A. Pardon?
Q. Haven't you been written up for not doing your --
A. I've done the serial number incorrectly before, got the number reversed.

Q. How many times?
A. Oh, probably two or three times in 28 years on a serial number where I would get a letter or something out of sequence.
Q. And didn't you -- on one of those, didn't you respond saying that you would make sure that you did it the right way to the right depth like you're supposed to?
A. Well, the depth requirements didn't come until 2001 on that gun, and that predates that. But, yes, you have depth requirements after 2001, three-thousandths-of-an-inch and minimum of a sixteenth-inch.
Q. Tell me about this firearm. You said it was from the 1950s?
A. Yes, 1950s. It's Russian made. It could be -- several countries made them. It's a belt fed 7.62.
Q. Belt fed. This tripod is actually meant for laying down on the ground and shooting with it, correct?
A. Right.
Q. And it's pretty heavy, right?
A. Absolutely.
Q. Not real convenient for running with; correct?
A. Right.
Q. Sometimes it takes two guys to operate it?
A. Could.
Q. Tell me what in the world a sheriff's office in 2001 -- why they would have any interest in this firearm as to

demonstrate it for --
A. You would have to ask the sheriff's department. If they provided a letter, that would be their responsibility.
Q. You testified on the USAS-12 that you didn't hear about the change in the law or you vaguely remember it, but you didn't have one at the time. So you didn't pay much attention to it, is that fair to say?
A. I just heard about it.
Q. Okay. And you testified that, in your opinion, an individual with that shotgun probably would not have heard about it, about the change in the law?
A. I don't know how an individual would have, because they would not be connected to communications with BATF.
MR. GORDON: Your Honor, I would ask the Court's permission to play Government's Exhibit 144a.
THE COURT: You have permission.
(Government's Exhibit 144a played in open court.)
MR. GORDON: I ask the Court's permission to play 145a.
THE COURT: It's granted.
(Government's Exhibit 145a played in open court.)
MR. GORDON: 149a as well, please.
(Government's Exhibit 149a played in open court.)
BY MR. GORDON:
Q. Sound like the person in those calls knew he should have

registered the USAS-12?
A. I would think he does now.
Q. And you testified about an open letter to all FFLs from April 2001.
MR. GORDON: May I approach, Your Honor?
THE COURT: You may.
BY MR. GORDON:
Q. I'm going to hand you what's been marked as Government's Exhibit 240.
A. Okay.
Q. Do you recognize that as the open letter that you testified about?
A. Yes.
Q. And this is the letter notifying all FFLs about the registration requirement on the USAS-12?
MS. CASSINELLI COUCH: Let's approach.
(Bench conference reported as follows:)
MS. CASSINELLI COUCH: Well, I just want it to be clear that I gave him this letter. I think he said that. He can identify it. But I want to make sure he makes that clear, I didn't give it to him with that attached --
MR. GORDON: I'm just going to offer it. I'm not going to have him do anything about it until it's testified about.
MS. CASSINELLI COUCH: I showed it to him, and I want

him to know this, and I don't know that he's seen this.

MR. GORDON: Are you going to object to it?

MS. CASSINELLI COUCH: You said you're not going to offer it? Is that what you just said?

MR. GORDON: I am going to offer it. I'm not going to question him about --

MS. CASSINELLI COUCH: Yes, I would object to -- he didn't testify to identifying it that he received it from the FFL. He recognized it because I gave it to him.

THE COURT: Okay. Well, he can testify about it, can't he? He can testify and say, "I didn't get this"?

MS. CASSINELLI COUCH: I don't care. I don't want to attach that because I didn't attach that.

THE COURT: He can identify it, but -- let me ask you this. If he didn't receive it when counsel gave it to him, how does he identify it? He identifies it as a document counsel gave me. I'm just asking. I guess there's no objection so I can receive it. But I don't know --

MR. GORDON: There was a --

MS. CASSINELLI COUCH: I guess I would object for that reason.

THE COURT: I don't know how he gets that document if counsel gave it to him.

MR. GORDON: That's fine. I won't offer it.

THE COURT: I'm saying you can have people identify it

and say: This is what we have, other people. I don't want it coming through him.

(Proceedings continued in open court as follows:)

BY MR. GORDON:

Q. Now, Mr. Norrell, you've provided the parties with a resume, correct?

A. Yes.

Q. And it identifies you as a consultant and expert in firearms?

A. Yes.

Q. Correct?

A. Yes.

Q. Not explosives?

A. Not explosives.

Q. And your -- tell us what your familiarity is with this MK3A2.

A. Other than reading about that particular grenade, that's a military grenade, not something I would be exposed to.

Q. Okay. And you researched it in preparation for your testimony in this case, correct?

A. Well, yeah, primarily the dimensions.

Q. And then the same thing with 40-millimeter hand grenades, correct?

A. Yes.

Q. Have you ever --

A. Not owned one, no.
Q. Have you ever handled a real MK3A2?
A. No, I have not.
Q. Thrown one?
A. No.
Q. The defense has put in some pictures here. Did you select these pictures?
A. Some of them I did. Others, that one, I did not.
Q. Okay. Are you telling the jury that this -- the flash bang in Government's Exhibit 19 is that big?
A. No.
Q. Okay. Did you bring any real ones with you?
A. That's just -- no, I did not.
Q. Why not?
A. I don't have one. That's something law enforcement would keep in their inventory generally.
Q. Okay. You think it would be more helpful for the jury to see a real one than a picture that's not actual to size?
A. Well, yes.
Q. Defendants' Exhibit 20, do you have a real one of those?
A. No.
Q. Defendants' Exhibit 43, the flash bang in the top left is the same flash bang in Defendants' 19, correct?
A. Yes.
Q. And did you testify that you don't even know what the one

next to it is?
A. Well, there's no -- you can't -- the markings are illegible.
Q. So you don't know what it is?
A. No, it's one of these many types of grenades obviously.
Q. Defendants' Exhibit 44, you said that these are smoke grenades?
A. Well, yeah, both of them are smoke. The one on the right has got CN, and that's a form of tear gas mixed in with the smoke.
Q. And you said these are a little smaller?
A. Well, they've got two-and-three-quarter-inches. You're speaking of the diameter of those.
Q. Defendants' Exhibit 45, have you ever seen a real one of those?
A. Oh, absolutely.
Q. What color are they?
A. They are kind of a dark gray.
Q. Have you heard of Barking Dog Studios?
A. No.
Q. No. Okay. See down here at the bottom where these pictures came from the Internet from a game called Global Ops? Do you have any other pictures from online video games that you want to show the jury?
A. No.

Q. Okay.
A. Those are representative --
Q. How about a Mohawk grenade?
A. A Mohawk?
Q. Do you think Defendants' Exhibit 49 is helpful for the jury?
A. Well, it's a drawing of a smoke -- of a typical smoke grenade canister.
Q. Of all the devices pictured in these defense exhibits, how many of them are made of a fiber body?
A. Maybe none of them.
Q. Exactly none of them, is that more accurate?
A. I would just guess -- most of them have a metal container on the outside.
Q. Most, or all of them?
A. I would say most.
Q. You don't know, do you?
A. No, I don't know what the container is on most of those.
Q. And you testified about flash bangs. That's one of the pictures, Defendants' 19, correct?
A. Right.
Q. And a flash bang, that is actually a very accurate name for this type of device, correct --
A. Correct.
Q. -- because all it does -- it's got flash powder in it?

A. Right.
Q. And that flash powder, when you throw it in a room, it gives off a really bright light that will blind you, correct?
A. Correct.
Q. And at the same time, there's a bang, a really loud bang, correct?
A. Correct.
Q. But you testified about a shock wave?
A. That was a concussion grenade I was talking about.
Q. So you know then that a flash bang is not designed to push people over or knock them over, correct?
A. No, to -- no.
Q. It's just a really loud noise and a bright flash to disorient them?
A. Correct.
Q. But it's not designed to physically move them --
A. That's correct.
Q. -- by overpressure, correct?
A. Right.
Q. And none of these flash bangs are designed like that, correct?
A. No, on purpose.
Q. That would be a concussion grenade, correct?
A. Correct.
Q. Mr. Norrell, have you ever filed false documents with ATF?

A. Filed false documents?
Q. Yes, sir.
A. No, but, yes, I've had documents filed where I didn't have the -- in '86 where I didn't have some of the items completed.
Q. Isn't it true in 1986 you filed 26 Form 2s trying to register machine guns? And on those 26 forms, you listed -- and those are for the manufacture of machine guns, correct?
A. Correct.
Q. And you filed 26 forms in 1986 telling ATF and the United States government that you had manufactured 310 firearms, correct?
A. Right.
Q. And of those 310 firearms, you had really only made six of them, correct?
A. No, not exactly. I had -- for example, on the M2 carbine components, I had put the serial number on the trigger housing, for example. I had all of the parts. They asked me to reregister them. I reregistered them the next day and submitted the forms and registered. They told me that the serial number needed to go on a lever or one of the other parts rather than the --
Q. Weren't you cited as follows: "Licensee filed 26 Forms 2 during the period of April 11th through April 21st, 1986, which listed a total of 310 firearms as having been manufactured when, in fact, only six firearms had been completed. Licensee

understands that from this date, May 2nd, 1986, there are to be no firearms listed on ATF Form 2 which have not been completely manufactured or remanufactured"?

MR. GORDON: May I approach, Your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. And then you signed below that, correct?

A. Yes.

Q. The reason you did that was because this was right before the law changed in 1986 outlawing machine guns?

A. Correct.

Q. And what you wanted to do was get as many machine guns as you could manufactured before that date because those are the ones that were going to be valuable, and you wanted to get the most profit out of it that you could, correct?

A. Well, yes.

Q. It's all about the money, isn't it?

A. Well, it is in the business end, but those were guns that I just reregistered the next day and put serial numbers in the correct places.

Q. Okay.

A. And had inspection, and they went through.

Q. But you were willing to falsify information in order for you to make money?

A. Not deliberately falsify because I put a serial number in

the wrong location. And I had been putting it there for seven or eight years on the trigger housing. And when I had the inspection, they told me it could not go on the trigger housing; it had to go on some other type of part.

Q. I know you have a firearms business. Do you also collect firearms?

A. Yes.

Q. How many do you have?

A. Oh, maybe 100, 150.

Q. Okay. Is it fair to say that collecting guns can be an obsession?

A. It can for some people, yes.

Q. And you can understand how someone would become obsessed with firearms, correct?

A. Yes.

Q. And is it possible for someone who is obsessed like that -- have you seen it where they cross the line and started to go into things that they shouldn't have?

A. I've heard of that.

MS. CASSINELLI COUCH: Your Honor, I object. This witness -- it's kind of speculative. He's not really asking a question.

THE COURT: That's overruled. He's an expert. He's been in this area for awhile.

BY MR. GORDON:

Q. Correct? That happens, doesn't it?
A. Yes.
Q. People will have all of their books nice and neat in order, but then off paper, they are doing stuff they shouldn't be doing, correct?
A. That can happen, yes.
MR. GORDON: No further questions.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. CASSINELLI COUCH:
Q. That can happen, what Mr. Gordon asked you --
A. Yes.
Q. -- right, in any area of anything that anybody becomes obsessed with?
A. Correct.
Q. You're not aware of the ATF finding dozens and dozens of unregistered firearms at Dr. Mann's house, are you?
A. No.
Q. Let's deal with this 1986 issue. I believe it was your testimony that you placed a serial number in the wrong place and you were notified by ATF that it was incorrect and you redid it correctly, filed the form the next day, and they were approved?
A. Yes. They asked for a photo and then a letter from the customer that you re-engraved the serial number.

Q. And I suppose everybody in the business probably tried to get their machine guns manufactured before the law changed?
A. Oh, absolutely, yes.
Q. If you're trying to make money, then --
A. Yeah.
Q. -- wouldn't you be a good business person for doing that?
A. Yes.
Q. But you didn't do anything deliberately illegal to do that?
A. No.
Q. And there was some mention, while we're kind of on the serial number thing, I think you said that you've made mistakes on serial numbers before?
A. Correct.
Q. Is that something that just happens?
A. It just happens. It's human error. You get a couple of numbers reversed and engrave it, and later you realize that. And then you -- with NFA weapons, you contact NFA, and, like I said, provide a picture and a letter stating -- showing that you re-engraved the serial number.
Q. Sort of like the S and the 5 problem that you talked about the NFA having?
A. Yes.
Q. Mr. Gordon has made a whole lot of money -- it's all about money. You've been paid hourly?

A. Uh-huh.
Q. And your payments were current until probably this week?
A. Yes.
Q. You're not getting any more or less based on what you say up there, are you?
A. No, I'm not. I assume most people here are being paid.
Q. And what did you tell me you view your role as an expert witness as?
A. Well, my role as an expert witness is to give my opinion based on my experience as to what the forms are, what they are used for, and looking at that weapon. If that firearm had been shipped to me and had the serial number on it and it matched the form, then -- and ATF approved it, then that would be acceptable.
Q. Not for or against --
A. No.
Q. -- anybody? And is it fair to say that you've told me things I didn't like over the past year?
A. Yes, I have. Yes, I have.
Q. And you're still sitting here?
A. Yes.
Q. He asked you if you had done business with Dr. Mann. And I don't know if you have or not. But if you had years ago, would you know for sure?
A. No. I mean, no, I haven't. I didn't know he existed.

I've never met him or talked to him.
Q. But if you had done a transaction 15, 20 years ago, you probably wouldn't --
A. I probably wouldn't remember it, no.
Q. You've not done any business with him in the recent past?
A. No.
Q. He also asked you about your military experience and law enforcement experience. And you have not been in the military, right?
A. Right.
Q. And you've not been a law enforcement officer?
A. Correct.
Q. But you are a consultant for the Department of Defense, are you not?
A. I did that for awhile.
Q. And you have testified for the ATF as an expert, right?
A. Yes, I did in Portland, Oregon.
Q. They thought you were good enough without your military experience or law enforcement experience, right?
A. Well, that's right. Let me explain that. I was first called as a witness, and then it developed into the expert testimony on manufacturing and resources needed.
Q. So while they were there -- were they prosecuting a case?
A. They were prosecuting a case, yes.
Q. So while you were there as a witness, they realized you

had the specialized knowledge and they wanted you to testify about the process of manufacturing as an expert?
A. Right.
Q. And I think we already mentioned that they also -- the ATF also contacts you to do liquidations?
A. Yes, or the court does, and orders that to be done, and ATF has the firearms, and I pick them up and they are transferred to me.
Q. Now, I assume they do that because they trust you and think that you do things correctly?
A. Could be. It could be that it's just a court ordered activity by the court. The federal court in Dallas appointed me as a liquidator in a bankruptcy trial.
Q. When ATF allows you to do liquidations, could they chose somebody else?
A. Well, they aren't really the ones choosing. It's the court or, you know, someone else, but they are, I guess, the regulator and possessor of those firearms, and if they are ordered to be released, then --
Q. And you've worked with them to dispose of --
A. Yes.
Q. -- I guess what could be hundreds --
A. I've picked over a thousand machine guns up from ATF.
Q. At one time?
A. Yes. Did that in Dallas in about 2002 or '3. It was from

the federal bankruptcy.
Q. Back to your law enforcement or military -- or the law enforcement and military issue, are you familiar with the procedures one has to go through to get an ATF employee to come testify?
A. Meaning get an ATF employee -- for ATF to get an employee to testify? I'm not sure --
Q. No, for a defendant. Do you know that I can't just subpoena an ATF agent and have them show up here?
A. I believe that's probably the case.
Q. It's not that easy, is it?
A. No.
Q. Now, he also talked to you about whether or not you talked to Lloyd Hahn. Were you ever asked to talk to Lloyd Hahn by me, I guess?
A. No. We talked about that. And you decided that you would approach him. And then the issue of him having some other problems came out. And that just kind of -- that ended any conversation that I would want to be having with him.
Q. Were you given immunity to testify here today?
A. No.
Q. You don't need immunity, do you, because you haven't done anything wrong?
A. That's correct.
Q. And given what you know about these records and everything

we've looked at here today, do you think those things are more reliable, or a person who has immunity and who has violated numerous, numerous federal criminal statutes?

MR. GORDON: Your Honor, I'll object to argumentative.

THE COURT: That's sustained. He can't answer that question.

BY MS. CASSINELLI COUCH:

Q. Well, as an expert, would you take the word of someone who admittedly had not --

MR. GORDON: And, again, Your Honor, this is argumentative.

THE COURT: It's sustained that he can't ask -- that's ultimately going to be a question for the jury. And this witness can't testify.

MS. CASSINELLI COUCH: May we approach?

THE COURT: You may.

(Bench conference held as follows:)

MS. CASSINELLI COUCH: Your Honor, he repeatedly implied that Mr. Hahn's word was the bottom line and that he should have talked to Hahn to find out the answers, so I think I'm entitled to say, "What's more reliable: The document and the NFRTR, or someone who walks in here who is testifying against the paperwork and to his own benefit?" As an expert, I think that he's entitled to say, "Hey, I've been in situations with ATF where I'm liquidating" --

THE COURT: I agree with you. And I agree with everything. I agree with your whole line of testimony about his work he's done with ATF, the work he's done with the government, DOD, the question about it being reliable, "You don't need immunity, you're not like the others who came in here with it, you're more reliable." But when you start asking him the ultimate question, normally experts can give opinions about the ultimate question about their expertise.

MS. CASSINELLI COUCH: Sure.

THE COURT: But he doesn't have expertise in that. And whether it's more reliable what he says because he doesn't have immunity, because another witness has immunity --

MS. CASSINELLI COUCH: I did not intend for those two things to go together. What I want to ask him, "As an expert in this field who has to determine the reliability of paperwork and what kind of matches what, what's more reliable: A person who has a reason not to say one thing, or the piece of paper" --

THE COURT: Okay. So you're not saying --

MS. CASSINELLI COUCH: I didn't mean immunity.

THE COURT: -- his testimony versus what Hahn's testimony is, which is more reliable? You're not asking that question?

MS. CASSINELLI COUCH: No.

THE COURT: What's the response to her position that

she should be able to ask, "Which is more reliable: The paperwork, or Lloyd Hahn"?

MR. GORDON: I think you nailed it right on the head before. I mean, it's the exact same thing. She's getting his opinion on that. He's not a psychologist. He's not a --

MS. CASSINELLI COUCH: He can give his opinion --

MR. GORDON: -- firearms guy.

MS. CASSINELLI COUCH: -- based on the paperwork and still --

THE COURT: Here's the problem. He's testified on one hand that paperwork is not always correct. Hold on. And then he testified that, "I rely on this paperwork and the -- I'm looking at the guy, he's got 1442 on it, the paperwork says 1442. I don't see -- I didn't see a need to go talk with Lloyd Hahn." The prosecution crosses him on the fact that whether you want to talk to Lloyd Hahn, what seems to open up the door, but then if he comes back and says -- he's already come back and said essentially that, "We were going to talk to Lloyd Hahn, but then problems came up so we couldn't," which led the jury to believe y'all were going to try to talk to Lloyd Hahn. Now, to ask him the next question about the paperwork being more -- you've heard of the -- you heard about the paperwork is reliable. Now you're trying to show the paperwork would be more reliable than Hahn.

MS. CASSINELLI COUCH: Two things. It's the NFRTR

that's not reliable. The paperwork is reliable. So when they sample -- when an ATF agent comes to the house and they have their thing and it's wrong, they rely on the paperwork, the form, and they fix the registry. Those are two different things on the reliability issue. As far as him opening the door, he says, "We were going to talk to Lloyd Hahn, but I didn't" --

MR. GORDON: I surrender. We are wasting so much time here, it's not worth it. I surrender.

MS. CASSINELLI COUCH: I think as an expert, he should be able to say, "I didn't need to talk to Lloyd Hahn because his information wasn't going to provide me anything."

THE COURT: He said that -- you can follow up on that. He said that to Mr. Gordon, he had the guns and the paperwork, he didn't need --

MS. CASSINELLI COUCH: I think as an expert he should be able to say, "Lloyd Hahn wasn't going to give me any valuable information because he wasn't trustworthy. And it doesn't match" --

MR. GORDON: When he says Lloyd Hahn is not trustworthy --

THE COURT: Since you withdrew the objection, let's get back to it.

(Proceedings continued in open court as follows:)

BY MS. CASSINELLI COUCH:

Q. Mr. Norrell, since you had the paperwork and given what you know about Mr. Hahn, was there any value in you talking to Mr. Hahn?
A. I didn't think it was prudent for me to do that.
Q. And now that we're here, does your opinion change at all?
A. No.
Q. Do you think he would give you anything that you need to know? Would your opinion change based on anything he said to you right now?
A. No.
Q. On the manufacturing information, I think you mentioned that the manufacturer's information doesn't have to -- doesn't have to be the same place as the serial number; is that right?
A. Yeah. The serial number has to go on the receiver, but the manufacturer's name can be on the receiver or the barrel.
Q. And the barrels can be changed?
A. Yeah, barrels.
Q. And regardless if the manufacturer's information is not on the weapon, whose responsibility is that?
A. That is the manufacturer's responsibility.
Q. So if I went to Wal-Mart and bought a firearm and it didn't have the manufacturer's name on it and I took it home, who is in violation?
A. It would be the manufacturer. It would be an issue between ATF and the firearm manufacturer.

Q. The phone calls that you listened to, did those phone calls -- the phone calls I heard indicated a person who was aware at the time they made the phone call of the registration requirement.
A. Yes.
Q. And I believe the lawyers were discussed on those phone calls, were they not?
A. What now?
Q. The lawyers?
A. The lawyers were discussed?
Q. You may not know the name of the lawyer. In the phone call, does Dr. Mann talk about calling ATF and ATF telling him, "You don't have to register it until you transfer it"?
A. Yes, he did.
Q. And I think in both of those. If Dr. Mann had called ATF between 1994 and early 2001, would that response from ATF have been inaccurate?
A. Well, I don't know that there was a -- there wasn't any information out there at that point on a cutoff date or anything, so it depends on who he spoke to. I would assume if he called pretty close to when the ruling was made, there may have not been decisions made on possibly what needed to be done to register it.
Q. So you're not surprised to hear that somebody called and got that information?

A. No.
Q. And based on the ruling that we've looked at in 1994, that wouldn't necessarily be wrong?
A. Correct.
Q. Also, he talks about another gun. Let me ask you this. Does it happen ever that guns get mixed up on repairs, or, like I think you said, a serial number got backwards, mistakes like that? Do those happen?
A. Oh, yes.
Q. Like maybe you send one off and someone sends a different one back?
A. Absolutely. You can do that.
Q. And can you clear that up with ATF pretty easily?
A. Yes.
Q. You mentioned earlier also that the USAS was in Dr. Mann's log book; is that correct?
A. Yes.
Q. What section of the log book was it in?
A. It was in with the semi-autos. He has his book broken down into -- puts his machine guns and silencers together. He puts his handguns as a separate listing. Puts, you know, semi-auto rifles separate, and kind of breaks them down into types of firearms, which is not too uncommon to do that.
Q. And does he have a section for NFA weapons and other sections for nonNFA?

A. Yes.
Q. Was that in the nonNFA section?
A. It was in the nonNFA section.
Q. Have you also looked at the records he submitted to his insurance provider --
A. Yes.
Q. -- the insurance for the weapons?
A. Yes.
Q. And was that gun listed?
A. Yes, it was listed on the list.
Q. You are not an explosives expert?
A. No.
Q. You do not have a destructive device license?
A. No.
Q. Many of these things that we've discussed today are not destructive devices; is that right?
A. Some of them, yes.
Q. And do you think you have to be an explosives expert to know what one looks like and what color it is and what size it is and generally --
A. Probably not. It's just cosmetics.
Q. And you do buy and sell for law enforcement agencies these types of items, right?
A. Yes, I have them drop-ship from the manufacturer to --
Q. Do you talk to those law enforcement agencies about those

items?
A. Yes.
Q. So you're familiar with them that way?
A. Oh, yeah. They tell you what they are needing.
Q. And you --
A. And you go find it. You call manufacturers. You try to find what they need at a good price.
Q. And have you gone to those agencies sometimes when they've used them or packaged them?
A. I've seen them -- I've been down to ALETA, which is the Arkansas Law Enforcement Training Academy in Camden. They use them down there pretty frequently, and also out at the law enforcement range on Arch -- Arch Street.
Q. And these photographs we've looked at today are just demonstrative, right?
A. Yes.
Q. And there are tons more?
A. Oh, it's -- every company makes its own versions of all of these.
Q. Different --
A. They typically follow the same appearance of a canister that is taller than it is wide and then it has a spoon and a pin, and then of course the firing mechanism.
Q. Different colors?
A. Different colors, different labels.

Q. Some different materials?
A. Yes.
Q. And you're not -- you're not suggesting that these photographs that we've shown are all of them or --
A. No.
Q. -- any specific one, but they are examples?
A. No.
Q. And, in fact, this doesn't look anything like the picture that we looked at earlier of a 40-millimeter, does it?
A. It's different than the one in the picture.
Q. It's the same size and shape, right?
A. Yes.
Q. But it's not the same, right?
A. Right.
Q. In fact, this isn't a loaded MK3A2 either? It's demonstrative, isn't it?
A. Yes.
Q. We don't actually know what the precise grenade looked like that was used on that tire, do we?
A. I don't know. I'm not involved --
Q. You don't have any idea --
A. No.
Q. -- what was --
A. No.
Q. -- attached to that, right?

A. Right.
Q. Your testimony is limited to what looks like --
A. It's just cosmetics of comparing these different types of grenades.
Q. And I didn't ask you to bring any, did I?
A. No.
Q. Probably be a little unsafe?
A. I would think so. You wouldn't want anything in the courtroom like that that's live.
Q. And this one is not live?
A. Yeah.
Q. And the pictures and your testimony have been clear enough that you don't need all of the different canisters; is that right?
A. I think so. Just a cosmetics feel for what they look like.

MS. CASSINELLI COUCH: Thank you.

THE COURT: Anything further?

MR. GORDON: No, Your Honor.

THE COURT: Anything final?

Okay. You can stand down.

Ladies and gentlemen, this concludes our fourth week. I have been assured that we will be finished sometime next week. So I think I told you when we got started we would go four weeks. Well, jury selection took a week, and we're three weeks

into the testimony. I thought it was going to be four weeks total. And I think I might have represented to you when you first came on that it would be four weeks total. Well, I'm going to modify that and say four weeks of testimony. So now you can't trust me either.

You can stand down, Mr. Norrell. You don't need to hear all of this blathering.

Here's what we're going to do. We're going to go home and get a good weekend of rest. We're going to stay away from the news. We're going to stay away from the newspapers. We're going to stay away from everybody who -- see, now people aren't asking you or telling you about the case. They are asking you why is it going on so long. I know how that goes. But what you're going to do is keep doing what you're doing. Tell people we're going to be out of here next week. I believe we will. Tell people that you can't talk about it. You can't talk to each other about it. That you won't be able to talk about it until after you have gone back in the jury room and everybody has gotten ideas from each other and have talked it through. And then once you've decided and we have a verdict one way or the other, then you can talk about it.

Last thing. Thank you very much for doing everything you're doing. Thank you for not talking to the lawyers. Thank you for not talking to the witnesses because we've had a lot of them in and out. Thank you for not -- for just doing your job.

I'm going to tell you this. I really appreciate you. I will say, later this afternoon, I saw some people looking a little sleepy-eyed. And all of you looked like you're kind of glazed over a little bit, but that's what three weeks of testimony will do to you. I will also say that what I noticed is that people are still writing, people are still paying attention. Some people are talking, I'm not going to say who, and whispering in each other's ears and that type of thing, but that's not bad. That shows that you're still alert and you're still awake and you're still paying attention. And I'm going to tell you, I really, really appreciate you. We need you for one more week. So I'm going to ask you, hang tough, be strong. Come back on Monday rejuvenated. And I will shut up and we'll be in recess until Monday at 9 o'clock.

(Weekend recess at 4:38 p.m.)

C E R T I F I C A T E

I, Judith A. Ammons, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 9, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

RANDEEP MANN (1) and
SANGEETA MANN, a/k/a SUE MANN (2), August 2, 2010
Little Rock, Arkansas
9:01 a.m.

Defendants.

TRANSCRIPT OF TRIAL - VOLUME 14
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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[Continued]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants Present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

Elaine Hinson, RMR, CRR, CCR
United States Court Reporter

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(Proceedings continuing at 9:01 a.m.; jury not present.)

THE COURT: How many witnesses do we have in the building that we can get sworn in this morning?

MR. HENDRIX: I think just Ms. Cryer, and she already has been.

THE COURT: We can bring the jury in. Is there anything else to take up? I guess not. We can bring them in. Do we need to swear her back in? I don't think she was admonished that she would remain under oath. I guess she still is. She's been sworn in once in the case.

(Jury present.)

THE COURT: Who is taking this witness? Ms. Couch? Ms. Couch, call your next.

MS. CASSINELLI COUCH: No, sir. Mr. Hendrix. But I think we have a stipulation first. May I proceed?

THE COURT: You may.

MS. CASSINELLI COUCH: "Stipulation of facts. The United States Attorney for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person and through their counsel, hereby agree and stipulate as follows.

"The NFA branch of the Bureau of Alcohol, Tobacco, Firearms and Explosives has no record of having received NFA-related documents from Lloyd Hahn or Hahn Machine Company upon the expiration of Mr. Hahn's federal firearms license.

"In May 2009 Mr. Hahn turned over copies of all NFA-related

documents he had in his possession to Special Agent David Oliver, which did not include an acquisition and disposition book," signed Michael Gordon, Assistant United States Attorney; Randeep Mann, defendant; Jack Lassiter, attorney for Randeep Mann; Sangeeta Mann; and Tim Dudley, attorney for Sangeeta Mann.

THE COURT: The defense and the government have stipulated; that is, they have agreed that certain facts are as counsel have just stated. You must therefore treat those facts as having been proved.

Call your next.

MR. HENDRIX: Peggy Cryer.

PEGGY CRYER, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

THE COURT: Ms. Cryer, we were out here debating whether I needed to swear you back in, but I decided not to. You just remain under oath.

THE WITNESS: You are going to trust me.

THE COURT: We are going to trust you.

THE WITNESS: I will say, I don't feel well today, so we'll go for that.

DIRECT EXAMINATION

BY MR. HENDRIX:

Q. Ms. Cryer, this will be low stress. It will be a bit time-consuming, so make yourself comfortable. And if you need to take a break, just let us know, and we'll get you taken care of.

A. Sounds good.
Q. Again, your name is Peggy Cryer?
A. Yes.
Q. You are the executive secretary for the Arkansas State Medical Board?
A. That's correct.
Q. And you testified, what, six, eight, nine months ago, it seems like, in this case?
A. It seems like, but it wasn't quite that long.
Q. Ms. Cryer, what I want to do, and take some time with you today, is I want to go back over Dr. Mann's history in front of the board and get some more detailed information from you.
A. Okay.
Q. And then we'll talk about two or three other topics.
A. Okay.
Q. Do you have -- do you have Dr. Mann's board certification? Do you have that with you?
A. No, I do not.
Q. If not, I have it here, and I'll work with you on the electronic monitor to make sure everything is accurate.
A. Okay.
Q. And first, let's go through, Dr. Mann applied for his Arkansas medical license in 1995. Does that sound right to you?
A. It sounds right. But it would be at the bottom of that page.

Q. And here's what I want to do. This would be my copy. But I'm referencing what I believe is Government's Exhibit 80. And this is an Arkansas State Medical Board license. Is that correct?
A. It's an application.
Q. An application. Pardon me. And it's for Randeep Singh Mann. Correct?
A. Yes.
Q. And then the application was received October 28th of 1994. Is that correct?
A. Yes.
Q. Okay. Then we know actually -- and now I'm referring to the board verification that's already been introduced as Government's Exhibit 82. Can you see that, Ms. Cryer?
A. Yes.
Q. Is it big enough?
A. Actually, it would be better if it were just a little bit bigger.
Q. Better?
A. That's better.
Q. Okay. And I've marked it on here. It looks like the date of action was March 9th of 1995. And he appeared. And it says, "Randeep Mann, a foreign graduate, appeared before the board requesting a permanent license. Upon a motion by Dr. Williams, seconded by Dr. Zini, the board voted unanimously to grant Dr.

Mann's request."

So it was March of 1995 that he received his Arkansas license. Is that correct?

A. Yes.

Q. I'm going to go back to our application and go over a few things with you. Part of the application process is, one, the board wants to know has this doctor been licensed in other states. Is that correct?

A. Correct.

Q. And Dr. Mann shows that in paragraph 23, looks like he was licensed -- MD is Maryland. Is that correct?

A. Correct.

Q. And he received his license in Maryland in 1987. Is that correct?

A. Yes.

Q. It also looks like Missouri, MO. Is that correct?

A. Correct.

Q. Received his medical license there in 1989?

A. Correct.

Q. Then again, in Tennessee, received a medical license in Tennessee in 1992. Is that correct?

A. That's correct. I will say that this is what he has on his application. This is not the verification of that. So I'm assuming that that is correct, but it's not the verification.

Q. And let me skip ahead, and I'm going to come back to that.

Part of the application process also is the applicant is asked questions, for instance, like paragraph 27. "Has any medical licensing board ever placed your license on probation, suspension, or has it revoked a license or certificate it had granted?" And he marked "no." Is that correct?

A. Correct.

Q. 28: "Have you ever been ordered to appear before a state medical board for any reason other than licensure?" And he marked "no"?

A. Correct.

Q. And 29: "Have disciplinary procedures ever been initiated toward you by either a medical board or hospital?" And he marked "no"?

A. Correct.

Q. Now, I'm assuming, once you get an application in, there's a vetting process. Is that correct?

A. A what process?

Q. Vetting, v-e-t-t-i-n-g. By that I mean, there's an investigation. You look into it to confirm the accuracy --

A. Yes.

Q. -- of the information. Is that right?

A. Yes.

Q. So we assume that it was confirmed that, in fact, he was licensed in those three states before applying for an Arkansas license. Correct?

A. Yes.
Q. And it was also confirmed that he didn't have any other disciplinary actions ever by those other states. Correct?
A. That's not what this says. But I'm assuming that that's correct. The verification itself would be what would indicate that. This is what he indicates.
Q. Okay. And are you talking about the verification -- you are talking about our board verification here?
A. No. I'm talking about the verification from the individual state.
Q. Have you had a chance -- did you review those?
A. Not really.
Q. And are you aware of any problems that he had had before?
A. No.
Q. Okay. So again, on March 19th, there's nothing to dispute the accuracy of the information on that.
A. Correct. That I'm aware of, correct.
Q. So again, in 1995, in March, he appeared here. And the board had looked through and investigated his application and unanimously approved him for an Arkansas state medical license. Correct?
A. Correct.
Q. Now, I'm going back to his board verification. And I believe this also has already been introduced as Exhibit 82-A by the government. But what I want to do is go through 6/5 of '03.

And just to make sure we're all on the same page, here's the first page of the board verification. I'm going to zoom out so you can see it in its entirety. Okay? Then on page 2 -- page 1 ends with 3/9/95, him getting his license. And the next action on the board verification at the top is dated 6/5/2003. Is that correct?

A. That's correct.

Q. And this was an emergency order of suspension. Is that right?

A. Yes.

Q. And it was upon a motion by Mrs. Britton, seconded by Dr. Baker, the board unanimously voted that an emergency order of suspension and notice of hearing be issued to this physician. Is that correct?

A. That's correct.

Q. So the first adverse action, according to the application, that it had been verified, and according to the board verification for the Arkansas State Medical Board, the first adverse action that had ever been taken against Dr. Mann was on June 5th, 2003. Is that correct?

A. It does appear that way.

Q. And to go through this in a little bit more detail than in your prior testimony, the emergency -- an emergency order of suspension and notice of hearing is issued when there's been a complaint. Is that right?

A. When there has been a complaint and the board feels that there's a possibility of harm to a patient, so they take immediate action.
Q. Right. And that's what happened in this case. Correct?
A. Yes.
Q. And that was what's previously been introduced as Government's Exhibit 82. That's the emergency order of suspension and notice of hearing. Right?
A. Yes.
Q. And this is the one you testified to earlier that was -- it's fairly comprehensive. Right?
A. Yes.
Q. Many sort of allegations in it?
A. Yes.
Q. And this is the one that resulted in the 2003 hearing. Correct?
A. Yes.
Q. Okay. And we'll get to that. Now, going back to the board verification, so that emergency order of suspension was issued June 5th of 2003. And it was based on this complaint. Correct?
A. Correct.
Q. Okay. It looks like the next thing that happened was June 17th of 2003. The emergency order of suspension was lifted. Correct?
A. Correct.

Q. License returned to active. In addition, the board ordered this physician not to prescribe medications that would require a DEA permit pending the disciplinary hearing in this matter. Correct?
A. Correct.
Q. And so what has happened is is apparently the board, based on the complaint, entered an emergency order suspending his license to practice.
A. Correct.
Q. Is that right? But then for some reason, I guess, between June 5th and June 17th, for whatever reason -- and I'm going to ask you if you know what reason -- it lifted the emergency order suspending his license to practice and said, no, you continue to practice, your DEA is suspended pending the hearing. Is that right?
A. The board cannot suspend his DEA. I don't know whether to correct you on that or not.
Q. Feel free.
A. The board cannot suspend a DEA. The board can only tell the physician not to utilize it. So, yes, and that is what happened. The board said, you may -- they will release the suspension, but we do not want you to utilize your DEA.
Q. And to make sure that that's clear is -- a DEA permit is necessary from the Drug Enforcement Administration in order for a physician to prescribe controlled substances. Correct?

A. Correct.
Q. And controlled substances, a lot of doctors prescribe them, notably pain management doctors. Correct?
A. Correct.
Q. So in order to be that type of physician that can control, that can prescribe controlled substances, the DEA issues that person a permit?
A. Correct.
Q. The board has no control over that. Right?
A. That is correct.
Q. Okay. That's the relationship between the doctor and the DEA.
A. Correct.
Q. But the board can set its own conditions for the licensure of the doctor. Correct?
A. Correct.
Q. So it can say, we're going to take some action against you if we find out essentially you've gone behind our backs and gone to the DEA and tried to get a permit back. Right?
A. Correct.
Q. So going back to June 17th then, the emergency order of suspension to practice medicine was lifted. And then it said, don't go use your DEA.
A. Correct.
Q. And then August 8th of 2003 is the next entry for Dr. Mann.

And it reads that "Dr. Mann appeared along with his attorney, Drake Mann, to request that the board discontinue the section of the emergency order of suspension and notice of hearing that states Dr. Mann is not to write prescriptions that require the use of his DEA permit pending the disciplinary hearing that is scheduled for the October 2003 meeting and instead accept the terms of the Drug Enforcement Administration memorandum of understanding to which Dr. Mann has agreed to abide. After discussion and upon a motion by Dr. Zini, seconded by Mrs. Britton, the board voted to maintain the current terms of the emergency order of suspension and notice of hearing. There was one vote opposed to this decision."

A couple of quick questions. So that helps us explain -- the DEA has a thing called a memorandum of understanding. Correct?

A. Yes.

Q. And a memorandum of understanding is -- because the DEA controls that permit, it has its own relationship with the doctor.

A. Yes.

Q. And in this case, if you've seen it or not, this is the memorandum of understanding that the DEA entered into with Dr. Mann. And I believe I got it from your file. Have you seen it before?

A. I don't recall. But I'm not saying it wasn't from our

file. It probably was.

Q. It looks like it would be in your file?

A. Uh-huh.

Q. Okay. Just to read this, this is from the DEA to Dr. Mann.

"This document shall serve as a memorandum of understanding between Randeep S. Mann, M.D.," registration, so forth, "and the Little Rock district office of the DEA, U.S. Department of Justice. This agreement is voluntary and will cover a period of six months beginning on Monday, May 12th, 2003, and concluding on Friday, November 14th, 2003."

"The following provisions are agreed to by both parties. One, Dr. Mann agrees to cease prescribing or administering of Schedule II controlled substances for the period agreed to, with the exception of a specific number of special-needs patients documented as needing methadone for pain. Records of these patients will be open to DEA investigators for verification."

Paragraph 2: "Dr. Mann agrees not to prescribe or administer Schedule III hydrocodone tablets or liquid unless that medication is indicated as the best possible choice for the patient."

And then paragraphs 3 and 4 say basically, if you screw up, we'll revoke your DEA license.

Now, to discuss that, so with Dr. Mann's relationship with the DEA as a DEA permit holder, as a result of the complaint, apparently DEA came in. And what it said was, we're going --

let's enter into a voluntary agreement, DEA and Dr. Mann. And the terms were, we're going to kind of watch over your DEA permit for six months. Correct?

A. Uh-huh.

Q. And it's going to limit the types of controlled substances that he can prescribe. Right?

A. Correct.

Q. But again, it has exceptions for if you have any special-needs patients that need methadone, that's fine. Don't do hydrocodone if it's not the best possible choice for the patients. Right?

A. Yes.

Q. Okay. So what happened then on August 8th of 2003 -- oops. And if you just kind of want to scan it, I'll summarize it. Essentially what happened is Dr. Mann and his attorney came in and said, okay, now that we've got this issue about you suspending my license figured out and you've lifted that, let's talk about the suspension of my DEA permit. Would you do it under the terms of the DEA memorandum of understanding? That's correct?

A. Uh-huh.

Q. And the board said, no, we just don't want you prescribing medications at all, period?

A. Correct.

Q. Do you by any chance know who the one person is that voted

against it?
A. I do not.
Q. And so that sets the groundwork. Right? In this process then, the complaint has been filed, and you've sort of worked through these technical issues about what exactly you can and can't do, Dr. Mann, pending this disciplinary hearing.
Ms. Cryer, I think in your testimony earlier -- and I know Dr. Pierce had talked about an Arkansas Supreme Court opinion that said you can't discipline a doctor unless there is expert testimony. Is that right?
A. I know that we -- I know that we don't discipline someone without expert testimony. As far as referring back to the specific -- the document, I would not know that. But, yes, we always have an expert witness to testify on behalf of the board.
Q. Right. And again, we'll get into this a little bit more. But as I understand it, one, the Arkansas Supreme Court has said, when it comes to doctor discipline, in order to substantiate complaints, the board, or the board's attorney rather, would need to present evidence from another doctor, an expert in that field?
A. Correct.
Q. And then, in particular, in the specialty of pain management, that's actually -- the Arkansas Legislature passed an act --
A. Correct.

Q. -- that said that exact same thing unique to pain management specialists. Right?
A. Correct.
Q. And so, during the course of that -- we're going to talk about that act in a little bit. But it was actually passed after Dr. Mann's first board hearing. Is that right?
A. I believe it was.
Q. So while not required under the legislation, because it wasn't required exactly at that point, the board did, in fact, hire an expert to review Dr. Mann's patient charts. Is that right?
A. Yes.
Q. And that was a Dr. William Ackerman. Right?
A. I believe it was, yes.
Q. And what happened is, is in anticipation of the hearing and to make sure that the expert witness rules and so forth are complied with, the board hired a William Ackerman, who is a pain management specialist. Is that right?
A. Yes.
Q. And this also came from your file. And this is a letter dated July 14th, 2003.
A. Correct.
Q. To the Arkansas State Medical Board from William E. Ackerman, III, M.D.?
A. Correct.

Q. And it shows his expert qualifications. He's a fellow, American Academy of Disability Evaluating Physicians, independent medical examiner, diplomate, American Board of Anesthesiology and so forth. Is that right?
A. Correct.
Q. And I believe in here he had also said he had been on the faculties of the -- as a member of the American Society of Addiction Medicine, fellowship-trained pain medicine physician, and a previous pain medicine faculty member at the University of Cincinnati and Kentucky and so forth. And he establishes qualifications. Right?
A. Yes.
Q. And so what happens in this process, in this process or these processes, is then the board, through subpoenas and so forth, will gather the various patient charts from the doctor and provide them to the expert opinion -- to the expert for review. Is that correct?
A. Correct.
Q. And so the expert is given a box of documents essentially?
A. Correct.
Q. Review it, and give us your opinion. Right?
A. Correct.
Q. And so that's what happened with Dr. Ackerman. He was given a bunch of documents, a bunch of patient charts, and he reviewed them apparently in July of 2003 in anticipation of the

hearing. And he rendered an opinion in writing to the board. Correct?

A. Correct.

Q. And his opinion was, "My reviews" -- "My review of these records does reveal irregularities. I do not feel that the medications prescribed by Dr. Mann, either Schedule II or Schedule III opioids, were appropriate for the majority of the pathologies that I reviewed for each of the cases furnished for my review." Is that correct?

A. Correct.

Q. And I believe his opinion continues. "It is my medical opinion that the overall prescription practices of Dr. Mann are not consistent with an individual who has been adequately trained in pain medicine. However, I do not feel that ignorant malpractice is at issue here. Because of the utilization chronically of strong opioids, I feel there are irregularities in the information that I have reviewed for the Arkansas State Medical Board that are consistent with actions that are grossly negligent." Correct?

A. Correct.

Q. So that was Dr. Ackerman's written opinion based on the documents that he had received and he had reviewed. Correct?

A. Correct.

Q. And then we go to -- the hearing for Dr. Mann is then scheduled for October 3rd of 2003. Is that right?

A. Correct.
Q. And let's talk about that process so the jury understands it. A medical board hearing, any sort of board hearing, they are administrative hearings. Is that right?
A. Yes.
Q. And they are different from these sort of proceedings. Right?
A. Yes.
Q. It's not a criminal case. In other words, Dr. Mann doesn't have a right not to testify and that sort of thing. Right?
A. Correct.
Q. And there is an attorney that's hired by the board, a man named Bill Trice. Right?
A. Correct.
Q. And while not a criminal case, he essentially serves as a prosecutor?
A. Correct.
Q. Right? The doctor can have his own lawyer and so forth. Right?
A. Correct.
Q. Then the board, the 14 members of the board, sort of sit as the judge and jury?
A. Correct.
Q. Right? Now, let me get into this a little bit more. It doesn't have the formality of these proceedings. So the board

members, which would be the jury, are free to ask questions at any time and so forth. Right?
A. Right.
Q. And so what happened in this case is Mr. Trice, the board's attorney, actually called Dr. Mann as the first witness. Is that right?
A. I don't remember that, but I wouldn't be surprised.
Q. Okay. He would be free to do so?
A. Yes.
Q. Right? And you were there at the board meeting. Right?
A. Yes.
Q. And it was a typical board meeting in the sense that Dr. Mann was called. He was questioned by Mr. Trice. Correct?
A. Uh-huh.
Q. He was then questioned by his own lawyer, Mr. Mann. Correct?
A. Uh-huh.
Q. And just so everybody is clear, if this has ever been a question --
A. No relation.
Q. The two aren't related. Two different Manns.
A. Yes.
Q. Then the board members, if you remember, asked various questions. Is that right?
A. Correct.

Q. Okay. And then it was later on during that process, after Dr. Mann had testified, that Dr. Ackerman was called as the expert witness for the board. Right?
A. Correct.
Q. Now, before we get to that, I wanted to ask you, do you remember during that hearing, the 2003 hearing, an issue come up in Dr. Mann's testimony about pseudoaddiction?
A. I don't truthfully recall that. That does not mean it didn't happen. I just -- I don't recall that. I wouldn't be surprised if it did.
Q. The board hearings are transcribed? Is that right?
A. Correct.
Q. And the government has introduced a certified transcription of the October 2003 board hearing as Exhibit -- Government Exhibit No. 93. I'll read some of this and see if it refreshes your recollection.
A. Okay.
Q. Dr. Mann is testifying, and it's Mr. Trice asking him.
"Doctor, we're going to focus on Count VI. And I would ask you, Doctor, Count VI on page 3 deals with the patient identified as JK?
"Dr. Mann: That's right, sir.
"Question: Did you have a patient" --
MS. WHATLEY: I'm sorry. Can you tell me what page you are reading?

MR. HENDRIX: Oh, I'm sorry. It's, depending on which one you go by, 35 at the top or 42 at the bottom.

"Question: Did you have a patient by that name?"

MR. HENDRIX: Ready?

MS. WHATLEY: Yes.

BY MR. HENDRIX:

"That's right.

"Question: Doctor, did you prescribe methadone for this patient?

"Answer: I did, sir.

"Question: Did the patient have an addiction problem?

"Answer: No, sir.

"Question: Did the patient die of an overdose on the 18th of June 2002?

"Answer: That's right, sir.

"Question: You were not aware of any addiction problems that this patient had?

"Answer: Pseudoaddiction.

"Question: Pseudoaddiction. What does that mean, sir? You've used that twice now.

"Answer: I explained it last time. I'll do it again, because this term is probably going to come up again.

"Question: Does that mean an underlying pain and also abusing the medication?

"Dr. Mann: There is no abusing. It is under treatment of

pain whereby the patient supplements whatever they are getting from their physician, getting medications from whatever means they can."

And it goes on. And it's Chairman Jouett at the time. Dr. Jouett is actually chairman of the board at that time. Right?

A. Yes.

Q. Okay. If you remember then, Chairman Jouett sort of takes up this thing and says, "Well" -- and, again, he is talking to Dr. Mann. "Well, another thing I would like to ask you was, you talked constantly about pseudoaddiction."

"Dr. Mann: Yes, sir.

"Chairman: If you are dealing with someone who has a pseudoaddiction, then there must be the real thing out there called an addiction. Would you mind telling me what an addiction is in your definition?"

Then Dr. Mann goes to try to explain. "Well, addiction will be the patient taking the medication for nonmedicinal purposes, such that it would cause them significant harm, with the patient administering the medicine in a compulsive uncontrolled manner."

The conversation continues on.

"Dr. Mann: Undertreated pain, with the patient obtaining medicine from elsewhere to treat the condition.

"Chairman Jouett: And you wouldn't get withdrawal from pseudoaddiction. Right?

"Dr. Mann: Yes, you will.

"Chairman Jouett: Oh, you will?

"Dr. Mann. Yes, sir.

"Chairman Jouett: Well, then that's kind of like an addiction, isn't it?

"Dr. Mann: No, no, no, no. What you're talking about now is tolerance.

"Chairman Jouett: What I'm talking about is an addiction, and you're trying to deny there is such a thing."

Dr. Mann says, "No."

Now, so you recollect the issue about pseudoaddiction?

A. I do recollect the word "pseudoaddiction." I did not know whether it was this meeting or another meeting. But, yes, I do recollect that.

Q. Finally -- and this gets to Dr. Ackerman -- Dr. Ackerman. So then Dr. Ackerman is called. And I gathered it was sort of right as he was being called, and I'm referring to -- I'm going to use the numbers at the bottom of the page, transcript page 203. Dr. Ackerman is now there, and Chairman Jouett brings up the theme of pseudoaddiction. "Dr. Ackerman, while we're getting ready to talk to you, but, you know, I'm just a country doctor, and I've been around awhile, and I don't keep up with the physiology."

Then there's this little conversation that has to do with the transcript and so forth, and then he picks it back up.

"And I remember in the years past that, in fact, some of them go way back, that occasionally folks would come in having convulsions and hallucinations. And I declare, the psychiatrist thought that they were addicted to stuff. Was that an addiction, or was that a pseudoaddiction, you reckon?"

And this is Dr. Ackerman. "That could have been a withdrawal. I don't know if it is an addiction or a pseudoaddiction."

"Chairman Jouett: Well, can you have a withdrawal without being addicted to the medication, you reckon?

"The Witness: You can have a withdrawal without being addicted to the medication. I see patients that are on hydrocodone that will have a withdrawal, but they are not, by definition, addicted.

"Chairman Jouett: So all of that material that we thought in years past is not true anymore?

"Dr. Ackerman: Well, some of it is true. That's why we have the American Society of Addiction Medicine now that's pretty much, I think, the governing body of saying, okay, here is substance abuse."

Now, my point in all of this is this. You -- at that time -- I don't know if it is still true or not. Were any of the board members pain management specialists?

A. I don't believe so.

Q. And, again, pain management is a specialty, a subspecialty

of the practice of medicine. Right?
A. Correct.
Q. And now we know, to skip forward, they have actually created a committee just for pain management. Right?
A. Yes.
Q. Okay. And I think we'll talk about that a little bit more, but to stay on the issue of Dr. Ackerman. And the issue that's been raised in this trial is that Dr. Ackerman sort of suddenly changed his opinion in midstream. And I want to go through -- and you remember this.
A. Uh-huh.
Q. You were sitting in there. And here's where that begins. Dr. Bell, who is another member of the board. Right?
A. Uh-huh, yes.
Q. Is questioning Dr. Ackerman. And he says, "Dr. Ackerman, from reading the material that you submitted, it seemed to be pretty definite that in almost every case that you felt that there was really pretty distinct evidence of overprescribing or prescribing drugs that didn't need to be given. Today I get the idea that you're a little less definite about that. In other words, you said sometimes it depends on --"

"Dr. Ackerman: Yes, less definite. Because we heard from Dr. Mann in his report."

And again, just to be clear, prior to his testimony, he had only had the patient charts that the board had given him to

review.
A. That's correct.
Q. That's when he came up with his written opinion in July. Right?
A. Correct.
Q. Dr. Ackerman continues. "Now, somebody that has to review these as an expert, or with any legal case, you get a big stack of information and so forth. And looking at it superficially and saying, yes, this is an overprescribing, this is -- for example, you know, there are some cases of under-prescribing that come before the board and so forth."

"And that's the import for being here and being here with this group and being here with Dr. Mann is to hear what Dr. Mann is saying about these patients.

"And that's the problem with pain medicine. It's not in black and white. You know, the person that's sitting there with the patient, it's a whole different ball game than sitting here and saying, okay, here is what the records show. It's" -- and he continues. "In an old pharmacology book, or in the PDR" -- that's the *Physicians' Desk Reference*. Right?
A. Yes.
Q. -- "it says give hydrocodone four hours, and what dose do you give. And that's -- you know, it says pharmacologic nonsense. The patient has to be seen and has to be evaluated. And that's what I gained today from listening to him.

"Dr. Bell: But this board is going to rely in some measure, not totally, but in some measure on your opinion as an expert in pain management.

"Yes.

"Dr. Bell: And I think it would be helpful if you would give us an idea of your overall opinion about the totality of the practice of review, the ones that you reviewed.

"Dr. Ackerman: My overall opinion, and when I'm concerned is, is methadone for the addiction, Demerol in the office.

"The rest of the cases with the opioids, there are some instances definitely of overprescribing, and there are so many of them that seem to be appropriate. And there is not a consistent pattern of saying, yeah, this physician is definitely overprescribing, you know, for the patient.

"But, yes, there are some, you know, some instances in here. And that's the advantage of being here and listening to a physician discuss why that particular medicine was given. That's the art of medicine. You know, it's not an exact science where we say this is what we're going to give, and you can't go to the pharmacology books.

"Having taught pharmacology in the medical school to students, having taught residents, having taught fellows, that it's an art, and it's something that has to be taught to somebody. It's not black and white, saying, oh, you're prescribing too much.

"The problem is -- and you're starting to see more and more in the literature -- it's under-prescribing. And that's what's getting people sued, you know, in the hospitals."

And then Ms. Dennis comes in. Ms. Dennis is a public member of the board. Right?

A. Correct.

Q. "Am I hearing you say that, in looking at the records that you were given of Dr. Mann's, that your review was one thing, but hearing him testify causes you to alter that a little? Is that --

"The Witness: That's correct.

"Dr. Ackerman: I mean, hearing from an individual that's seeing the patient versus a big stack of information with three-quarters of it I can't read, and here is the patient given OxyContin, given methadone and so forth.

"Methadone is a good drug. And you've got to remember, there is no ceiling effect to opioids, as opposed to NSAIDs and other types of drugs, except for the alpha/kappa receptors." And he kind of continues to talk about alpha/kappa receptors.

So the point of this rather boring exercise is that Dr. Ackerman changed his opinion, but he changed it based on more information that he was able to obtain. Is that correct?

A. That's what he says.

Q. And what he was saying is, one, I was able to hear from Dr. Mann and hear him describe his practice.

A. Correct.
Q. And then, two, I actually got legible copies --
A. Correct.
Q. -- of charts. I was not there. I've read this transcript. Is it fair to say that the overall tone of this hearing was professional, it was conducted in a professional manner?
A. I would say so, yes.
Q. Nobody was yelling at Dr. Mann?
A. I don't believe so.
Q. Dr. Mann wasn't yelling at anybody?
A. I don't believe so.
Q. This hearing went on for quite some time, didn't it?
A. Correct, correct.
Q. Yes, ma'am. Do you remember the testimony by a woman named Amanda Virden?
A. No.
Q. I'm looking at page 158 of the transcript. This is questioning --

MS. WHATLEY: Mr. Hendrix, I need the page number at the top.

MR. HENDRIX: Oh, you want the top? 150.

BY MR. HENDRIX:
Q. She is testifying. And this is actually Mr. Mann asks this woman: "Now, the board ordered you to come here because it's accused Dr. Mann of having sexual relations with you. And I

want the record to be clear. Is that true?"

"Answer: No, sir. No, it's not.

"Question: Now, before you were served with the subpoena, you were visited by law enforcement officials, weren't you?

"Yes.

"Describe for the board what happened."

And she explains. "The ones that came and saw me were Chris Ridenhour, Tony Haley, and Warren Newman."

"Yes. Do you know which law enforcement agencies each one works for?

"They are all supposed to be drug task force, I guess."

She continues. "And all they -- all they wanted to do, to talk to me about was, they wanted me to work for them. And they told me if I could get Dr. Mann, they would give me $500, or anyone else. And if I testified, I would get $500 a person."

"Question: All right. Has anyone in law enforcement ever approached you with a similar arrangement like that before?

"Answer: Yes. Chris Haley and -- no, Chris Ridenhour and Tony Haley. It's been over a year and a half ago, sat my mother and I down and told us that if we would say we had had sex with him they would give us money.

"Question: When you say 'him,' you mean Dr. Mann?

"Dr. Mann.

"So over a year ago, law enforcement officers approached you and said that they would pay you $500 if you would say you

had sex with Dr. Mann. Is that right?

"Yes, sir."

Do you recollect that?

A. Yes.

Q. And there was testimony in there about how local people -- and Warren Newman is with ATF -- trying to set Dr. Mann up. Correct?

A. That testimony was there, correct.

Q. Now, was it at the end of the hearing that there was a bit of a dialogue with Dr. Pierce? And Dr. Pierce -- the scene that I have in my mind is sort of wagging his finger at Dr. Mann and saying, I'm afraid -- the proof is not here, but I'm afraid you are going to be back in front of the board?

A. I don't -- as far as time frames and which meeting things happened, sometimes it all runs together to me.

Q. Do you recollect that event?

A. I really don't recollect it. But it doesn't mean it didn't happen, but I don't recollect it. I do remember it being said, "Dr. Mann, I do believe you will be before us again." I actually thought that it was maybe Dr. Jouett.

Q. It might have been Dr. Jouett?

A. It could have been, yes.

Q. Okay. And I'm hearing you say you are not sure whether that happened in the 2003 hearing --

A. Right.

Q. -- or, as we know now later, the 2006 hearing?
A. That's correct.
Q. But I gather it was not something that was -- I'm hearing you remember it, so it must not have been some `sort of crucial dramatic moment, or you would have remembered something.
A. There have been times that this has been said often to other physicians. So when we're picking out specific ones, that's what I don't remember. It may be said for another physician for another reason.
Q. I understand.
A. So it's not an isolated --
Q. It's sort of a common occurrence in front of the board what you would expect in situations like this?
A. Yes, yes.
Q. Not unique to Dr. Mann?
A. Not necessarily unique to Dr. Mann.
Q. Okay. Now, after all that testimony and that sort of comprehensive complaint, it results in an order dated October 10th of 2003. Is that correct?
A. Yes.
Q. And here is that order. And we can do it two ways. This is the actual order that was entered. Correct?
A. Correct.
Q. And it would also be reflected on the board verification for that same date. Right?

A. Yes.
Q. And I'll just read the pertinent portions from the order to make sure. So following the hearing, it was found: "From the pleadings, evidence introduced, testimony of the witnesses, the board finds that:

"Randeep Singh Mann, M.D., has admitted in testimony that on several occasions he has prescribed either Schedule II amphetamines or Schedule III methamphetamines for various patients for treatment of narcolepsy, hyperkinesis or attention deficit disorder with or without hyperactivity and has prescribed the same on a second and subsequent occasions without obtaining a second opinion from a licensed physician confirming the diagnosis of the condition treated and confirming the controlled substance as the recommended regimen of treatment, all as required by Regulation 7."

Could you please tell us what Regulation 7 is?
A. Regulation 7 is set out -- a regulation set out by the board that allows a physician to treat or prescribe to a patient with these types of symptoms one time without having a second opinion. After that, they have to have someone, another physician, concur with them that that is the appropriate medication. There is a way to come before the board to ask for an exemption from that, meaning that they would not need that second opinion. But that's what Regulation 7 is.
Q. So if you have a kid that has ADHD, and you take them to

the doctor, they will prescribe Adderall. Adderall is one of the substances that's used to treat ADHD, I guess. Is that right?

A. Don't hold me down to certain medications, if that's what the regulation says.

Q. Ritalin, Adderall, that sort of stuff. And those are methamphetamine or amphetamine-based controlled substances.

A. Right. Ritalin is not under here. But the Adderall, I believe, is.

Q. So what it says Regulation 7 is is that, Doctor, you are free to prescribe that kid the medicine that he needs. But when it comes to a second time --

A. Correct.

Q. You need to go get an opinion from another doctor.

A. Correct.

Q. Although there are some exemptions to that.

A. Correct.

Q. Now, do you know, do our surrounding states have similar regulation, or is that sort of unique to Arkansas?

A. I do not know.

Q. Okay. And our order says that Dr. Mann admitted to this. Correct?

A. Correct.

Q. And what he admitted to was, I didn't even know about Regulation 7. Right? And I did, I prescribed Adderall, and I

didn't the second time go get another opinion.
A. Correct.
Q. He came in, he said, "I'm sorry. I didn't know about it." Correct?
A. Correct.
Q. Paragraph 3 then is the next. It says, "Randeep Singh Mann has admitted to Investigator Jim Moss, and the records that have been introduced into evidence confirm, that for various patients he has prescribed methadone for patients exhibiting addiction when, in fact, he is not licensed by the federal and state authorities to treat addiction by the administering of methadone."

Now, Dr. Mann is a pain management specialist and with a DEA permit can prescribe methadone. Correct?
A. He can.
Q. And as we've just read from Dr. Ackerman's testimony, he said methadone is a good drug and useful. Correct?
A. Yes.
Q. But what this means is, is if you know the person is a drug addict, don't do methadone unless you have -- you are a federally licensed methadone clinic. Right?
A. Correct.
Q. A methadone clinic, I know there's one down on South University. They are clinics for people with drug addictions to go, I need help. Methadone is a way to wean me off my drug

problem. Right?
A. Correct.
Q. So all this is saying is, well, he knew some people were addicted. He was not that clinic. Correct?
A. Correct.
Q. But he prescribed methadone?
A. (Witness nods head.)
Q. Now, the case goes on at that point, and Dr. Mann appeals. Well, I need to get to the sanction part. So after this sort of long hearing with a bunch of strange accusations about sex with patients and all this sort of stuff, ultimately, after hearing all the evidence, it results in just a finding of those two issues. Right?
A. Correct.
Q. The Adderall issue and the methadone issue.
A. Correct.
Q. Then the -- there it is. Discipline imposed. "As a result of the above violations of the Medical Practices Act, the license to practice medicine in the State of Arkansas of Randeep Singh Mann, M.D., is revoked. Said revocation will be stayed for so long as Randeep Singh Mann, M.D., complies with the conditions of stay for a period of five years, to include" -- and before I get into those, I think this is abundantly clear. But a revocation stay means you keep your license?
A. That's correct.

Q. But we're just going to pull -- there are conditions you have to abide by.
A. That is correct.
Q. And number one is, to just kind of skate through this, he will go to Vanderbilt University and get some continuing education courses. Correct?
A. Correct.
Q. Two is that he will attend a continuing education course on the prescribing of scheduled medication for chronic pain.
A. Correct.
Q. That he will -- continuing education courses on the treatment of depression?
A. Correct.
Q. He will forfeit his DEA permit and refrain from prescribing scheduled medication for one year and appear before the board to request the board's permission to reapply for the DEA permit.
A. Correct.
Q. Then he has to pay money?
A. Correct.
Q. So number four goes back to what you and I were talking about earlier. Again, the DEA permit is the DEA's business. But you can make it a condition of practicing medicine here that you have to come before the board to ask the DEA for the permit back. Right?
A. Correct.

Q. Now, Dr. Mann appealed that. Correct?
A. Correct.
Q. And it kind of wound its way through the process. And it ultimately resulted in a second order. Is that right?
A. Yes.
Q. That second order, does this look like it's dated June 4th, 2004?
A. Correct.
Q. And it sort of just comes and settles these problems. Right?
A. Correct.
Q. And all it really says is -- there it is. I won't continue to bore everybody with reading it word for word. But the bottom line is, look, dismiss your appeal. Correct?
A. Uh-huh.
Q. It will find only one thing, a violation of Regulation 7?
A. Correct.
Q. So the whole methadone clinic thing gets wiped off the table. Right?
A. Correct.
Q. Then it says at this point we consider you've got all your continuing education that was required. Right?
A. Correct.
Q. Pay us 7,500 bucks?
A. Correct.

Q. And you are free to come back and get your -- you are free to go to the DEA and get your permit back.
A. Correct.
Q. Now, there's another thing that happened. Right around that time, then Dr. Mann filed a lawsuit. Correct?
A. Correct.
Q. And this has been admitted as a government exhibit already. But he filed a lawsuit in federal district court here against the board. Right?
A. Correct.
Q. And what that lawsuit had to do with, we go all the way back to June 5th of 2003 and June 17th, when the board issued an emergency order of suspension. Then on June 17th of '03 that suspension got lifted. And they said, but your DEA permit is going to be suspended until the hearing. The lawsuit involved that issue. Right? Do you recollect?
A. I would have to read this again to understand that or to know that.
Q. Sure. And I'll go through it with you very briefly. Paragraph 5 of the complaint says, "On an Internet website that they control, defendants intentionally caused publication of the following on or about Thursday, June 6."

It says, "Randeep Mann, emergency order of suspension," dated June 5 of '03.

"Through another page on the Internet website that they

control, defendants caused publication of the following on June 6th. No appearance.

"Upon a motion by Ms. Britton, seconded by Baker, the board unanimously voted that an emergency order of suspension and notice of hearing be issued."

Then it goes down to paragraph 3 and says, then also on the website it says "returned to active on June 17th of '03; emergency order of suspension 6/5 of '03." So the lawsuit was about those things that got published on the board's website. Right?

A. I thought the lawsuit was about what that just said, and that was the timing of the posting of the information rather than the DEA.

Q. Right.

A. I maybe misunderstood you. I thought you were connecting that with the DEA.

Q. Oh, no. It had to do with -- if I understand the lawsuit, it had to do with -- the board originally said, you are suspended from practicing medicine --

A. That is --

Q. -- and then went, oops, that's not right. And that's where the lawsuit came from.

A. Right.

Q. Is under paragraph 16, it says, "The Administrative Procedures Act provides that no suspension of a license is

lawful unless the agency first gives notice and an opportunity for a hearing, except in the case of emergencies."

A. Yes.

Q. Okay. So it had to do with that technical part.

A. That's correct.

Q. That's what that lawsuit was about.

A. That's correct.

Q. And I think there actually ended up being -- I thought Dr. Mann -- I think what happened -- and tell me if I remember this right -- that because that thing gets published on the website and hospitals and insurance companies look at it --

A. Correct.

Q. -- they saw this order that said Dr. Mann's license to practice medicine is suspended.

A. Correct.

Q. When, in fact, it wasn't. So he continued to practice. And when he went to the hospital to get paid, they went, you are suspended. We're not going to pay you. And when he went to the insurance carrier to get paid, the insurance company went, we're not going to pay you. The website says you were suspended from practicing medicine. Is that right?

A. That's basically correct.

Q. I think Dr. Mann and Mr. Trice then got it worked out with the board helping Dr. Mann get this squared away by letting -- I think a letter was sent out to the insurance companies, no, we

screwed up. He wasn't suspended from the practice of medicine.
A. Right.
Q. Pay him.
A. He had not been notified himself.
Q. Right.
A. The board had voted the suspension. The staff put it on the Internet, but he himself had not been served, so it was a technicality that way. The staff messed up.
Q. A technicality, but in the sense that also then he was not getting paid for his services.
A. Correct. That affected him, yes.
Q. Right. Then he and the board collaboratively worked through that.
A. Yes.
Q. And got notice out correctly. Okay. Now, that sort of -- I'm doing this a little bit chronologically. That kind of takes us to the end of 2004. And it appears to me the next significant thing, I'm going to look at the board verification. I'm going to April 6th. So we've gone through 2005. And now let's jump to 2006. And on the board verification, there's no appearance, but there's an action dated April 7th, 2006. A discussion was held. That's where there's an appearance -- when a doctor doesn't appear, the board still discusses the matters in front of it.
A. Correct.

Q. And that's what this means?
A. The initial discussion, the physician is not there.
Q. And this is a discussion number, No. 04-232, regarding Dr. Mann. "Upon a motion by Dr. Beck, seconded by Dr. Zini, the board voted unanimously that an emergency order and notice of hearing be issued to this physician. The board is aware there are additional records to be reviewed pertaining to this case which could result in additional charges being filed if the reviewer's report warrants." Correct?
A. Correct.
Q. And this was what ultimately leads to the 2006 hearing. And there are allegations of overprescribing controlled substances to patients. Correct?
A. Yes.
Q. And initially that allegation is, sort of that same thing, it's I'm a -- he's a pain management specialist, but he is prescribing controlled substances to people he knew or ought to know are drug addicts. Right?
A. Correct.
Q. Okay. Now, that hearing was held in July of 2006. Right?
A. Correct.
Q. And it also lasts -- how long did it last? Do you remember?
A. I do not.
Q. A day or two?

A. I do not know.
Q. I'm taxing your --
A. I'm sorry. They all run together after a while.
Q. I understand. I completely understand. Do you recollect this? And I'm showing you the transcript that's already been introduced by the government, and this will be Volume 2. There's a volume before this. But they go through testimony and so forth. And then, I guess, it's the start of the next day, July 6th, of -- pardon me -- July 7th of 2006 at eight in the morning. Mr. Trice, the board's lawyer, comes before the board and says "before" -- can you read that?
A. Yes.
Q. "Before we resume -- Mr. Chairman, before we resume the hearing, Drake Mann, the attorney, and Dr. Mann, approached me initially last night and then again this morning, making the following offer to the board to resolve this and all other issues pending between Dr. Mann and the board."

Then he sets out what Dr. Mann's offer to resolve this is. He says, "He is requesting that this matter be ended, that he be permitted to retain his license, but that he will forfeit his DEA and his ability to prescribe scheduled medication in the future and that he will reimburse this board the full costs of this investigation and hearing of $18,038 within one year from the date of the order."
A. Correct.

Q. And you recollect, that's the offer that Dr. Mann and his attorney made, and there's three propositions there.
A. Yes.
Q. I get to keep my license, I'll give up my DEA, and I'll pay you $18,000. Correct?
A. Yes.
Q. Now, that ended up getting rejected. Right? I'm going to find it for you.
A. Okay. Thank you.
Q. Here it is on page 18. "Dr. Jouett: We've got a motion on the floor."
"The motion does not pass."
A. Okay.
Q. And so then -- and this is what's come out in the testimony, is the hearing continues, but then an offer, another offer, is made.
A. Correct.
Q. So let's skip to that offer on page 63 of Volume 2. And this is the offer that was accepted.
"Mr. Trice: The proposed consent order is that Dr. Mann will acknowledge violation of Regulation 2.4, that there would be as a sanction an ongoing revocation with a stay, the conditions of that stay being, in effect, that he would not have nor seek a DEA in the state of Arkansas, that he would pay to the board within one year the board's costs of $18,038, that he

would not hire physicians or advanced nurse practitioners to circumvent the failure to have a DEA so that he might could prescribe in another manner for the patients, that he would exclude from his treatment of patients in the future all those chronic pain patient management and that he -- that this consent order would also resolve all issues pending between Dr. Mann and this state medical board."

A. That's correct.

Q. So that offer that got accepted contains those three critical components that Dr. Mann offered earlier.

A. Yes.

Q. Which was, I get to keep my license.

A. Correct.

Q. And this allowed him, it's a revocation and stay. Correct?

A. Uh-huh.

Q. I give you my DEA, or I won't go get my DEA.

A. Correct.

Q. I won't go behind your back and go get a DEA permit, and I'll pay you $18,000.

A. Correct.

Q. So it's exactly like the first offer. It had those exact same elements. Correct? Then it just sort of flowered it up with some other stuff --

A. Correct.

Q. -- of you won't hire another doctor to prescribe medicines.

Right?
A. Correct.
Q. And I think there was one other. Oh, and that there was an actual admission of a violation of 2.4. Right?
A. That's correct.
Q. Okay. So it wasn't a radically different offer than Dr. Mann originally made. Right?
A. Correct.
Q. Again, you sat through this hearing. Right?
A. Correct.
Q. Again, was it in your opinion conducted in a professional manner and in a professional tone?
A. Correct.
Q. I saw you hesitate, and I think I know where you are going. There was some contentiousness between the board -- some of the board members and Dr. Mann's lawyer. Right?
A. I thought it was the other way around.
Q. That Dr. Mann's lawyer was being contentious with the board. Whichever, there was some tension there between the lawyer and the board. Right?
A. Yes.
Q. Didn't, in fact, Dr. Mann actually apologize for his lawyer at one point?
A. That I don't recall. It doesn't mean it didn't happen, but --

Q. Okay. Let's go back over this thing, and let's -- I kind of want to give the jury a solid, as best as we can do reading the written word, a sense of the atmosphere of this thing. Unfortunately, this will be time-consuming. But we make the original offer. Dr. Mann made this original offer. Right?
A. Correct.
Q. You've already gone through that. On page 5, it's Dr. Bell that says, "I want to move that we accept the offer." Right?
A. Correct.
Q. And you go down a little bit, and it's Ms. Britton. And Ms. Britton is a public member. Right? She's not a doctor?
A. That's correct.
Q. And so the board knows -- so the board knows. So the jury knows, these are political appointments. Right?
A. They are appointed by the governor, right.
Q. So Ms. Britton says, "I move we go forward." And what does that mean?
A. That means that she moves that we continue the hearing.
Q. And she doesn't want to accept the offer?
A. That's right.
Q. Going down on page 6, she expresses it again. "There are a number of people that are deceased, and I think we need to go ahead and proceed with the hearing." So she's stating her position pretty clearly at that point. Right?
A. Correct.

Q. "Dr. Bell: The reason I -- the reason I make the motion and support the concept, Dr. Mann is a good doctor. He cares for a lot of indigent and near-indigent people in a very underserved area. And with the exception of the narcotics issue and the overprescribing issue, there's never been any other issue that the board has been aware of or that we in that general area have been aware of.

"And I believe by accepting this that would take away the population that seems to seek out Dr. Mann because of his propensity for supplying scheduled drugs. And within a very few months, that element would no longer be a part of his patient population. And I think he can get back to doing what he really can do best, taking care of people that are ill that don't have the need for scheduled narcotics. I think it would be in the interest of the people of Arkansas to do that."

So we're framing up what's happening here is you have Dr. Bell, who is saying, I think this is a good offer. We should take it. And you have the public member, Anne Britton, saying, no, let's go forward. Right?

A. Correct.

Q. I think Dr. Bell continues on. "And I think that Dr. Mann, either willingly or unwillingly" -- pardon me. This is Dr. Simmons. Excuse me. Pardon me.

"Dr. Simmons: And I think that Dr. Mann, either willingly or unwillingly, got caught up in this, trying to provide care.

And if you look at each individual case, the people misappropriated -- now, you can count the pills, you can do all that, and the people did die. And I'm sorry that they died. But I agree with Jay. I think the guy is a good doc. He got caught up in a --in an unfortunate part of the population that we don't deal with."

Mr. Trice, who is the board's lawyer: "Let me say one thing. And this will hold whether you take this offer or not. We are not alleging in this charging document, nor can we prove, that Dr. Mann prescribed and thus caused the death of any of these patients. That is not what you have charged him with."

"You have charged him with prescribing for conditions that didn't warrant it, especially taking into consideration their abuse history that he was made aware of."

So again, it continues to frame what's this debate here about this offer. And Ms. Britton again: "And I'm also going to say, we haven't heard all the evidence."

Mr. Trice says, who is the board's lawyer, right: "You've heard nearly all of the evidence in the board's case." In other words, Mr. Trice is saying, I'm about done presenting my case to you?

A. Correct.

Q. Then here's where the first we hear from Dr. Pierce.

"Dr. Pierce: Would it be appropriate to hear from Dr. Mann?"

So what Dr. Pierce is saying is, I'm thinking about this. Would it be okay, or let's see what Dr. Mann has to say. Is that fair?

A. Yes.

Q. So Dr. Mann says: "And, actually, you know, my problem here is kind of unique. I'm the only solo internist in town. Dr. Jones was another independent physician. He's not there anymore. Dr. Kelly Meyer had to shut down and moved to Dardanelle, so that in Russellville today, I'm the only independent primary care provider not associated with the big clinics, with the two big clinics in town." He goes further. Do you know what the two big clinics are in town?

A. I don't.

Q. Millard Henry?

A. Millard Henry, and I don't know the other one.

Q. He continues. "I don't deal with other primary care providers. Patients I evaluate, I refer on to specialists. There's a clause in the hospital that says your particular reference have to come from physicians in your own specialty. So they have to be internal medicine," because he's an internal medicine specialist?

A. Correct.

Q. "All the internal medicine physicians are at Millard Henry Clinic. They were reluctant or did not write letters that would warrant a physician to get hospital privileges." So what he is

saying is is the big clinic in town, Millard Henry, is being anything but cooperative. Correct?
A. That's what it sounds like, yes.
Q. And do you know -- Millard Henry Clinic is a big clinic in Russellville. Right?
A. Yes.
Q. And it has actually branches, I think, in Fort Smith -- it's a big clinic.
A. It is a big clinic.
Q. And one of the doctors in Russellville with Millard Henry is a doctor named Finley Turner. Correct?
A. I don't recognize that name.
Q. You do not recognize the name Finley Turner. So then you wouldn't recognize the fact that Finley Turner was married to the mayor of Russellville, a woman named Rae Turner?
A. No.
Q. Okay. All right. We're continuing on in this process. So the subject is still the debate. Are we going to accept this offer or not? And apparently you have Bell, Dr. Bell, and some others that are supporting it, Ms. Britton saying no. And Dr. Jacks, who is another board member, comes in.
"I've also -- we weren't privy to any of the communication you had with this counselor." He is referencing Mr. Trice.
A. Correct.
Q. And I gather that means the discussion that Mr. Trice and

Mr. Mann had, we weren't privy to it.

"There's a difference in my mind between permanent revocation of a DEA and some action we're taking today that may be overturned six months from now.

"Dr. Beck: Or two years from now because we've all term limited, and then all of a sudden there's different board members. And in two or three years he could come back here, and all of us or some of us will be different." And that's another part of the board process. They are term limited. Are they six years?

A. Six years.

Q. Six-year terms. And after six years, you have to step off, and the governor appoints somebody else. Is that correct?

A. After two terms of six years.

Q. Two terms. So you can serve 12 years, but then you have to --

A. That's correct. They let them go for 13 years, but two terms.

Q. Ms. Britton comes back to, "I think we need a full hearing." So after all this discussion, she's still resistant to accepting the offer. Right?

A. Correct.

Q. This is where we were at earlier. Then it's Dr. Jouett. "We've got a motion on the floor." And what he is saying is, the motion is to accept this offer. He can't get the full vote,

so the motion does not pass. Correct?
A. Correct.
Q. And at that point, the hearing continues on. There's more testimony. Then we get to page 43 of that transcript. Again, it's Mr. Trice. Apparently there had been a break, and then Mr. Trice: "Mr. Chairman," referring to Dr. Jouett, "before we proceed with the hearing, there is another offer that's been presented to me to present to the board."

"Dr. Mann would acknowledge a violation of Regulation 2.7, the overprescribing of scheduled medication, and that the proposed sanction in his consent order and that this order would resolve all problems pending before the board."

He sets out what we talked about already. Correct?
A. Correct.
Q. And then Dr. Pierce says: "Would his practice still entail pain management in the way of blocks or what?"

And Mr. Trice: "Well, he can't use the DEA. I mean, if you don't have a DEA, you can't maintain a drug -- drugs within your office, and you can't prescribe them. I mean, whatever the DEA power is, he won't have it."

Further on, then Dr. Pierce has a question. "And a permanent revocation without a time limit?"

"Mr. Trice: In other words, his licensure," meaning his medical license, "it's permanent in the sense that his license is revoked with an ongoing stay that he can only -- the

revocation goes into effect if he ever asks or seeks a DEA in this state."

So again, continuing to discuss that, and Ms. Britton: "I'm concerned with his level of medical judgment. I move that we go ahead and continue with the hearing." So she's still resistant to all of this. Correct?

A. Correct.

Q. Then Dr. Bell: "It seems to me to be a pretty good offer."

"Dr. Bell: I'll move that we accept the offer."

Then Ms. Britton again: "Well, I -- I'm very concerned about his judgment in patient care. And it seems like, from reading the records, that there's been a number of times where patients have dictated the care. We've heard from a witness yesterday who was pretty much dictating his care. And I don't think that that is fair to the people of the state of Arkansas, to not conduct a full hearing, because --"

And then Dr. Simmons: "What more do you want? Do you want just total revocation?"

"Ms. Britton: Well, I think we have to hear the rest of the hearing before we can, can go with that, don't we?

"Dr. Simmons: Well, we've heard everything that our lawyer has to say.

"Ms. Britton: I know. But we haven't heard everything that the other side has to present.

"Dr. Simmons: How is that going to change things?

"Ms. Britton: I don't know. But I'm not going to go for a deal like that. I think the people of Arkansas deserve better. I think, you know, we've -- you run along, and we've had cases where we've tried to work with people, and we've tried to work with Dr. Mann before. And I don't see, so far, that anything that we have done and recommended that he follow up with has changed anything. And we've talked about this, and that is my concern. Where is he going to refer patients out that -- for pain management?"

And then Dr. Jacks: "Could you read the offer to us again?"

And at that point he reads the offer. So clearly this thing is being framed up as, it sounds like there's a full contention of the doctors that are understanding the nature of the practice, they are understanding the evidence, and are advocating that this offer be accepted, but Ms. Britton is just opposed to it. Right? She's throwing the wrench in the machine.

A. I don't know that all the board members were for the offer. But those that you've listed that say that they are --

Q. Right.

A. They were. But, you know --

Q. We'll get there. On page 51, this is Dr. Pierce. "I think it's -- I think it is so unfortunate that the deaths have occurred, that it's tragic. The whole situation is unfortunate,

that Dr. Mann didn't obtain a better understanding until this year from his previous appearance before the board."

Dr. Pierce continuing: "But I think that perhaps this proposal is a means of allowing resolution, at least to the overprescribing issue and abuse issue, but allowing Dr. Mann to continue to practice medicine in the Russellville area. Is there any agreement on pain management?"

"Yes.

"Mr. Trice: He will exclude -- will he exclude pain management from his practice?"

And Mr. Mann, who is Dr. Mann's lawyer, says, "Yes, chronic pain management."

"Ms. Britton: Where is the resolution that he -- the patients we've got and their families?

"Mr. Trice: Pardon?

"Ms. Britton: I'm just --

"Dr. Pierce: The resolution is that he's no longer going to be prescribing narcotics or medicines that should result in further death. And he's admitted to overprescribing. And, as Mr. Trice says, we can't relate their deaths directly to his overprescribing.

"Ms. Britton: But we -- as the source --

"Dr. Simmons. The what?

"Ms. Britton: We deleted that from the charges yesterday, didn't we?"

Go further down.

"Dr. Simmons: Anne" -- and that's Anne Britton he is referring to. Right?

A. Yes.

Q. "The 2.7 issue, you know how hard I am on that. But the last time that wasn't proven.

"Ms. Britton: Well, I agree. But I still can't get over the fact that there are a number of people who have lost their son, their daughter, spouse, whatever. And the doc -- all of this is connected back to this physician.

"Dr. Beck: I'm sure there will be lawsuits.

"Ms. Britton: I don't care about that. I care about protecting the people in Arkansas.

"Dr. Tommey: But this does do away with his ability to practice medicine requiring narcotics and -- and as permanently as needed. And his ability to circumvent this has been limited. I think it serves a good purpose."

So it's ever increasing --

A. Correct.

Q. -- you get the sense that the doctors are going, Anne, what are you doing? Then finally, we get to Dr. Pierce's position.

"The only thing we gain by not accepting this offer would be for the board to revoke his license without stay. Okay? I mean, not accepting this offer is saying that the board is moving for the total revocation of his license.

"Dr. Zini: I understand.

"Dr. Pierce: As the offer stands, he will not do pain management, he will not have a DEA, he will not try and circumvent by use of other care providers."

Then we finally end up with the proposal that was made and accepted. So now, having gone through that, is it fair to say that the majority of the doctors, including Dr. Pierce, were in favor of that resolution? Correct?

A. Yes.

Q. And it was Ms. Britton that chose a different tack. Is that correct?

A. Yes.

Q. So at the conclusion -- and this is a board verification 7/7/06. "Mann appeared in response to an emergency order of suspension and notice of hearing. Dr. Mann was present with his attorney, Drake Mann. After testimony and discussion, the board voted upon a motion by Dr. Bell, seconded by Dr. Simmons, to accept the following proposal." And that's the proposal I won't read again and bore us all a fifth time.

A. That's correct.

Q. It says then the motion passed seven to two.

A. Correct.

Q. So I take it Anne Britton voted against it?

A. I'm assuming, yes.

Q. I would assume so too. Do you know who else did?

A. No, I do not.
Q. It wasn't Dr. Pierce. Are you aware of that?
A. No. I'm not aware of that.
Q. You are not?
A. No.
Q. Well, you can say from the tenor of his position he was advocating for that resolution. Right?
A. Oh, no. Yes.
Q. Okay. I'm almost exhausted.
A. You read well.
Q. Well, thank you very much.
MR. HENDRIX: I don't know if we're in the mood for a break. I'm at a natural stopping point. I don't know if it's too early or not.
THE COURT: Let's push on a little longer.
MR. HENDRIX: Okay.
BY MR. HENDRIX:
Q. Do you need anything to drink?
A. No. But I would love to blow my nose.
Q. Please feel free.
A. Excuse me.
THE COURT: Let's push on to about 10:45.
THE WITNESS: I can go a little longer.
BY MR. HENDRIX:
Q. Summer cold?

A. Summer cold.
Q. Now, mention has been made -- and I gather it's part of the government's case of motive -- that Dr. Mann prior to this 2006 hearing asked two of the board members to recuse, to step aside from hearing it. Is that right?
A. Yes.
Q. And that was Dr. Jouett and Dr. Pierce. Right?
A. Correct.
Q. And I believe those have already been introduced. This is the motion for Dr. Jouett to recuse. I believe it's already been introduced as Government's 82-G1. And it has something to do with maybe he's going to be a witness?
A. Yes.
Q. Okay. Then you have the Dr. Pierce motion to recuse introduced as Government's 82-G2. And it's based on what you and I talked about that he allegedly said. I don't care what the expert had to say, that he believed Dr. Mann, regardless of the evidence, had overprescribed and feared he would be back in front of the board.
A. Okay.
Q. That's your recollection then from -- that happened in 2003. So prior to 2006, Dr. Mann's attorney asked both Jouett, Drs. Jouett and Pierce, to step off the case?
A. Correct.
Q. And they did not. Correct?

A. They did not.
Q. Okay. That brings us then chronologically, I think, to the close of 2006. We've got now that proposal that Dr. Mann offered to the board and that ended up getting tweaked, got accepted by the board. Correct?
A. Correct.
Q. And just to be clear, then his sanction -- again, this was all what he agreed to. "As a result of the above violation of the Medical Practices Act, the license of Dr. Mann to practice medicine in this state will be revoked. Said revocation will be stayed for so long as Dr. Mann complies with the following conditions." He will surrender his DEA. Right?
A. Yes.
Q. "Further, Dr. Mann will refrain from prescribing any scheduled medication for patients in the state as well as the legend drug Ultram."
A. Correct.
Q. Dr. Mann will exclude from his practice any chronic pain management patients. He will not hire other people to do it. Right?
A. Correct.
Q. Okay. Then did he appeal that?
A. Yes.
Q. Okay. And that sort of wound its way through the process too. Right?

A. Yes.
Q. Okay. Then the next thing is Dr. Mann asks the board to have permission to go to the DEA to get his DEA permit back. Right?
A. Correct.
Q. And let's go through those. And the first one I saw was -- let's go back. What's the date of the order? The original -- the date of the order was July 28th of 2006. Right?
A. Yes.
Q. But you go back to his license -- his DEA permit had been suspended for longer than that. Correct?
A. Can you put the verification --
Q. Yeah. I was looking for -- somehow -- here it is. So I guess is it April 7th of '06 upon motion by Beck, seconded by Zini, the board voted unanimously an emergency order and notice of hearing be issued to the physician. The board is aware --
A. Yes.
Q. So was the permit suspended at that point?
A. When you -- could you put that back up, please?
Q. Sure.
A. When you do not have an active license, your DEA is automatically -- you have to have an active license to utilize the DEA.
Q. So for the DEA component, his -- he didn't have the --
A. Ability to use it.

Q. -- ability to use his DEA beginning on April 7th of 2006?
A. Yes.
Q. And that remained -- I say suspended in quotations.
A. Yes.
Q. Through the hearing?
A. Yes.
Q. And then through the resolution of the hearing?
A. Yes.
Q. So it had been already quite sometime. Right?
A. Yes.
Q. So on May 8th of 2007 -- this has been introduced as Government's 84-A -- Dr. Mann writes the board and requests an appearance before the board. Right?
A. Correct.
Q. And he says, "I would like to request an appearance before the board at the next scheduled board meeting in June of '07. I have been under sanction for over a year now," meaning I haven't had my permit for over a year now, "and have not been able to perform any invasive procedures such as endoscopies, cervical, thoracic or lumbar spine epidural injections, which would require conscious sedation. Due to the restrictions, I have not been in a position to reapply for hospital privileges. I continue to be off the majority of the insurance plans."

"I do not know if the board considers this request of mine a viable option. If this is not viable, I do not want to take

up the board's valuable time wastefully. Please inform me of the board's decision. If you have any questions, please contact me."

So he makes his first request. He's been without his DEA permit since April of '06, so it had been 13 months. Right?

A. Correct.

Q. And he is simply asking, can I come in front of the board --

A. Correct.

Q. -- and ask you. Then this was also admitted as Government's 84-B, and it was explained. Juli Carlson is your assistant?

A. Correct.

Q. And she writes a letter to Dr. Mann dated May 17th. "This is to confirm that, as requested, you have been scheduled to appear before the state medical board during the June '07 meeting. Your appearance has been set for June 7th of '07."

Third paragraph: "The staff is unable to tell you whether your appearance would be of benefit to you. However, we have scheduled you for the above-listed time to discuss your request with the board."

A. Correct.

Q. So there would be a discussion, come in, invite him in to say, how are we going to address this issue?

A. Yes.

Q. So he appeared on June 7th of '07. Correct?
A. Correct.
Q. And here's our board verification of that meeting. "Dr. Mann appeared to discuss the current status of this Arkansas medical license. After discussion and upon a motion by Dr. Dudding, seconded by Mrs. Britton, the board voted unanimously to accept Dr. Mann's appearance for information only." In other words, he came in, said his peace, and they went, we're listening, and we'll let you know. Correct?
A. Correct. Or actually it means that they will not take -- they just took it for information only. They didn't take any changing action on that.
Q. Let me address this issue with you. Somewhere during the course of the trial or something, there's been a notion raised that if Dr. Mann ever even asked for his DEA permit back he would be automatically revoked, that revocation, if you ask for it, you are automatically revoked. That's simply not true, is it?
A. No.
Q. Well, we know that it can't be true, because he's asked for it. He's appeared before the board, and the board didn't go, oh, you get automatically revoked just for asking. Right?
A. (Witness nods head.)
Q. Okay.
A. Are you saying I testified to that?

Q. No, ma'am. It came up in another place.
A. Okay.
Q. Okay. So what happens as a result of that, they just take it for information. Correct?
A. Correct.
Q. Okay. Then the next thing is, I believe, June 20th of '07, he writes back. And this time it's to Dr. Pierce specifically. And he says, "I appreciate your giving me the opportunity to appear before the state medical board at the hearing." And he was referencing the June 7th appearance?
A. Correct.
Q. "I was given an opportunity to present a gist of the events which transpired at the hearing of July 6 and 7 of '06 and events in the community that have transpired since.

"An issue was raised regarding my not having met the guidelines which were set down by the state medical board at the previous hearing; namely, my not yet having reimbursed the board for the sum of $18,038 for legal fees incurred by the board during my case. My motion to reapply for a DEA number was hence denied.

"I submitted a check in said amount on June 7th of '07," blah, blah, blah, blah. I would appreciate you getting me back on the agenda so I can reapply, essentially that letter. Right?
A. Uh-huh.
Q. So apparently in the June 7th hearing one of the things is

we're denying you. But one thing you haven't done is you haven't paid us yet. Right?
A. Right.
Q. So he pays and goes, can I come back in and ask?
A. They didn't deny him -- they just raised the issue that he had not paid that. That was not the reason they did not vote.
Q. Right. And that's the sense that I get. As you are sitting around the board, you have the doctor, and you are all discussing it. One issue, Doctor, is you haven't paid.
A. Correct.
Q. You haven't met all of the criteria from the previous order.
A. Correct.
Q. And one obvious one is we don't have $18,000 from you.
A. Correct.
Q. So he paid it. Right?
A. Correct.
Q. And then so he asks again. Correct?
A. Correct.
Q. And I believe this would be the August 2nd, 2007. There was an appearance. He came before the board again, requesting permission to reapply for a DEA permit. Upon a motion by Dr. Beck, seconded by Mrs. Britton, the board voted unanimously to deny Dr. Mann's request and informed him that it would not happen in the near future. Right?

A. Correct.
Q. So that shows the nature of the conversation --
A. Correct.
Q. -- that went on in that. And somebody apparently went, don't come back anytime soon.
A. Correct.
Q. Then as confirmation of that -- this is introduced as Government's 85-C -- was the actual letter that you wrote to Dr. Mann that "This letter serves to confirm the decision of the medical board. The board took notice to the information you provided regarding your request for a DEA permit. However, after careful review, the board discussed and voted not to grant this request."
A. Yes.
Q. So that would have been in August of '07. Then fast-forward to the end of 2007. And he writes the board on December 19th. "I would like to request an appearance before the board in or around April of 2008 regarding a change in status pertaining to my DEA license restrictions. I have nothing new to request other than what I have already presented to the board previously."

"If I am wasting Dr. Pierce's time, it would not hurt my feelings for you to turn down this request. It would not only keep from wasting his time, but mine as well. If there are any further questions, please feel free to contact me."

It's significant that he said, "I would like to be put" -- he is asking this in December. But isn't it significant that he is saying, could you put me on your agenda for April of '08?
A. Yes.
Q. Because that would be a two-year anniversary?
A. Yes.
Q. And the board -- I'm not saying it's exclusive to the board. We all sort of like to work in round numbers. It wouldn't make any sense to come back in front of the board and say it's been 17 1/2 months, can I have my DEA permit? It makes sense if it's one year or two years or three years. Right?
A. I'm not sure that's why he chose that specific date, but I hear what you are saying.
Q. And it is for April. And he would have been suspended for two years by April of '08. Correct?
A. Yes.
Q. Okay. That ends 2007. To 2008 then, you wrote a letter to him on January 11th of '08. Correct?
A. Correct.
Q. It recognizes, we've received your letter of December 19th of '07?
A. Correct.
Q. It says, you can come and appear and see us again in the February 2008 meeting. Right? "We will notify you approximately two weeks after that meeting the board's

decision."
A. Right. Your letter will be presented, your request.
Q. So does he end up appearing then?
A. I don't believe so.
Q. Yeah. Here it is. Yeah. So there's no appearance?
A. Correct.
Q. In other words, on that meeting, it was his December letter was submitted.
A. Correct.
Q. "Upon a motion by Ms. Britton, seconded by Dr. Dudding, the board voted unanimously to inform Dr. Mann that they are not interested in addressing his DEA permit at this time."
A. Correct.
Q. I believe there's -- then you confirmed that in writing to Dr. Mann. Correct?
A. Correct.
Q. You say, "Dr. Mann, the Arkansas State Medical Board voted at the February 7th, 2008, meeting that they would not address your request to have your DEA permit reinstated. Should you have any questions, please feel free." Correct?
A. Yes.
Q. Now, that's the letter that he got of the formal action taken by the board. Right?
A. Yes.
Q. So when it says -- where it says they voted unanimously to

inform that they are not interested in addressing the DEA permit at the time, he wasn't there for that. This was a no appearance. Right?

A. That is correct.

Q. Okay. So all he knew was that the letter that you've got saying it didn't say anything about we're not interested. It just said it was denied at that time.

A. Right.

Q. So that's how it ends, I guess, or -- no. We're at the beginning of 2008, and then another lawsuit is filed. Right? And the government has introduced that as Government's 83-B1.

A. Yes.

Q. And this was a complaint that Dr. Mann's attorney filed in federal district court. Right?

A. Yes.

Q. Okay. So he -- and I'm sorry. It's dated May 30th of '08. Correct?

A. Yes. I'm not sure if -- there's one that he filed -- yeah, that's correct. There's one that he filed that I never actually received that I've never been served on. I don't remember if it was this one or another one.

Q. 2009 maybe?

A. Okay.

Q. After he was arrested?

A. Okay.

Q. Okay. Yeah. This one is a complaint that his lawyer filed talking about, I've been discriminated against essentially is what it says. And that thing limps along. And then it's December 5th. We're getting close to the end of the year of 2008.

Look at the December 5th, '08, meeting. "Randeep Mann. Upon a motion by Dr. Atiq, seconded by Dr. Cogburn, the board unanimously voted to advise Dr. Mann that they will consider allowing him to reapply for a DEA permit after he has been without it for three years." He can request to appear at the June '09 meeting. So despite this lawsuit -- and I think we're going to find out here in a little while that it's not uncommon for the board to get sued. Right?

A. Correct.

Q. Okay. So it's December 5th of that year. Even though there is a pending lawsuit, there's a motion by Dr. Atiq and Dr. Cogburn saying, Dr. Mann, you can come back and reapply for your permit. You will be at your three-year anniversary. The next time we can meet with you is June of '09. Correct?

A. Correct.

Q. Of course, then we know the unfortunate circumstances of what happened is there was a February meeting. Dr. Pierce, obviously, was not there because of the explosion on February 4th of '09.

And you wrote Dr. Mann a letter December 11th of '08 that

confirmed the board voted to deny your request at this time and to allow you to appear at the June '09 meeting, at which time you will have been without a DEA permit for three years.

A. Correct.

Q. That sort of concludes 2008 for us. Then we begin 2009. And we obviously know what happens in February of 2009. In January; is that right, was there another complaint filed against Dr. Mann?

A. It was either late December or early January. I know the letter to investigate I think was early January. But I probably received the information a little bit before that.

Q. I want to spend a little bit of time talking to you about how that whole process works in general.

A. Okay.

Q. And people complain about their doctors every day. Right?

A. That's correct.

Q. And it is hardly uncommon for any state medical board to receive lots of complaints?

A. That is correct.

Q. And there's a process in place for how to deal with complaints. Right?

A. Correct.

Q. So a complaint may come in from a patient or a family member, and the board looks at it. And one option is just to go, this has to be dismissed. It does not rise to the level of

anything actionable. Right?
A. Correct.
Q. So the board just looks at the complaint?
A. Correct.
Q. Dismissed. No evidence here to suggest a violation of anything. Right?
A. That is correct.
Q. If there's -- if the board doesn't just automatically look at it and go, this has no merit, then the next step is they can ask -- send that complaint to the doctor and ask the doctor to respond to it. Correct?
A. Rather than me answer your question, may I tell you how it is?
Q. Please.
A. There are -- when the board receives a complaint, a written complaint, from a patient or anyone about a physician, the board will take that letter or that complaint and will automatically send it to the physician and ask for a response.

There are times, however, when a complaint has to do with maybe sex with a patient or drugs. Maybe it's overprescribing, or it may be the fact that they themselves are on drugs, that that does not automatically go before the board, nor does it automatically go before asking for a response. An investigation oftentimes -- if it appears very valid, I will say, we need to send this to the investigators to investigate it before it goes

to the board. So it's not always one way. I'm not saying what you were saying is wrong, but it's not always as clear-cut as what you were saying.

Q. Right. And so what I'm gathering you are saying is -- and I can kind of go through this process of here's an initial line. If it fails to meet it, it gets dismissed. And then here's the second process. I'm hearing what you say is the board doesn't have a sort of strict regimen on how it deals with complaints. Correct?

A. They have a strict regimen -- you are correct, I guess. You are correct, but you are not correct.

Q. That's about typical.

A. I'm not explaining that well. There are some things that, let's say, if they seem to be immediate harm to a patient, then the staff would automatically call for an investigation. Probably at that point we would notify the chairman that we're doing this or that we're, you know, not doing this. But we have some specific processes we use. There are some things that you sometimes go outside that process, so --

Q. Okay. And to see if we can arrive at a basic notion here, it's some complaints come in that are so frivolous there's nothing needs to be done about them except for them to be dismissed and the person notified, I'm sorry, but your complaint that your doctor showed up late for your appointment and made you wait in the waiting room for an hour and a half, that's not

a violation of the Medical Practice Act.
A. It's not a violation, but the physician did have to respond to it.
Q. And so that is a situation where a letter may have gone out from you to that physician?
A. Yes.
Q. Saying here's the complaint, why don't you respond to it?
A. That's correct.
Q. And then it will go in front of the board.
A. And the board will dismiss it. The staff makes no decision as far as validity at all.
Q. Right. Now, then there are some complaints that come in that deserve an investigation.
A. Correct.
Q. Okay. And let's talk about that process. When an investigation -- well, let me take one step back. You are not saying that every time there's a complaint that comes in the doctor is notified and asked to respond in writing immediately. Correct?
A. That is correct.
Q. Okay. So there are some occasions where a complaint comes in, the doctor is not notified about it, the board hires the investigator?
A. Correct.
Q. From the Department of Health?

A. Correct.
Q. Right? And you guys have subpoena power. Right?
A. Correct.
Q. So you will issue a subpoena to the doctor for the complaining patient's medical records or whatever are the pertinent medical records from the doctor. Right?
A. Correct.
Q. What I want to talk to you about is how that process works. When a subpoena is issued, how does that work? Assume we're in a situation where the doctor has not received a letter from the board about the complaint. A subpoena has been issued. And I'm sorry. What's the investigator's name?
A. There are several of them. But Jerry Jones is in charge of that particular department. But there's several investigators.
Q. What's another name?
A. Current or old?
Q. Probably -- well, back at this time.
A. Jim Moss was one. That's who I think you are referring to.
Q. That's exactly who I was thinking of. So when that subpoena is issued, "Doctor, give us these patient medical records," would Jim Moss typically serve --
A. Yes.
Q. Okay. Does he just show up at the doctor's office?
A. Yes.
Q. And says --

A. Yes.
Q. "There's an investigation going on, and I need to look at your records regarding patient AB"?
A. Yes.
Q. Okay. All right. And let's look at that in this case. So apparently a complaint had come in, as you testified, probably close to the end of '08. And on January 5th of '09, you -- there you are -- wrote to Jerry Jones. Right?
A. Correct.
Q. Who you just mentioned over at the Department of Health. And it says, "Dear Mr. Jones, pursuant to" the law --
A. Right.
Q. -- "you are hereby requested by the state medical board to conduct an audit and investigation on the above-mentioned physician," who is Dr. Mann, "in order for the board to determine whether there has been a violation of the Arkansas Medical Practices Act. Please provide a written report of this information to the board as soon as you can."

Now, there is no letter that's gone to Dr. Mann.

A. Correct.
Q. Okay. So assumably he does not know this. At least there's no formal notification from y'all's end. Right?
A. There's no formal notification. That doesn't mean he probably doesn't know about it or could know about it.
Q. But that would require you and me to guess and speculate.

Right?
A. Yes.
Q. And we don't want to do that.
A. Okay.
Q. Okay. Then the next thing is here's the subpoena we were talking about, and it's dated January 30th of 2009. Right?
A. Okay.
Q. And you are able to issue that subpoena. Right?
A. Correct.
Q. And it's a subpoena to Dr. Mann, subpoena duces tecum, which that means for records. Right?
A. Correct.
Q. "Dr. Mann, you are hereby ordered to provide to the state medical board or any authorized representative thereof copies of any and all medical records on file at your facility pertaining to the list of patients to be provided at the end of the copying and investigative process. This subpoena is issued pursuant to the Administrative Procedure Act." That's a typical subpoena?
A. It is.
Q. All it's saying is, Dr. Mann, we need some patient records from you.
A. Correct.
Q. Typically that's what would go to Jim Moss?
A. It goes to one of the investigators, yes.
Q. To an investigator. And the investigator typically would

take it to the doctor's office and say, here's the subpoena, I need to make copies of these records.

A. That's what he would do with the subpoena, yes.

Q. Right. And proof of service, what it shows us is -- I cannot -- do you know whose name that is?

A. I believe it is Jim Myatt.

Q. Oh, Jim Myatt, M-y-a-t-t?

A. Something like that.

Q. Okay. So it's Jim Myatt is the investigator. And what this shows is proof of service. "I have this 18th day of February 2009 at office duly served the within by showing the original and stating the substance thereof to the within named, Dr. Mann, as I am therein commanded." And it's by him -- I assume that's 9:40 a.m.?

A. I think so.

Q. Okay. So this is where then Investigator Myatt -- Dr. Mann, there's no letter generated from the state medical board that says a complaint has been filed against you and we want you to respond.

A. Correct.

Q. The next thing we know is the subpoena is issued January 30th. Right?

A. Correct.

Q. Then the next thing we know, that Investigator Myatt shows up at Dr. Mann's office with it on February 18th of 2009.

Correct?
A. Those are the things that we have documented, yes.
Q. Now, I think there might have been two complaints. There's been evidence of a Rita Barthelme -- Barthelme -- does that sound --
A. I don't know how to pronounce it. RB.
Q. To your knowledge, a family member of hers wrote to the board complaining about overprescribing. Correct?
A. I do not recall that Rita herself made a complaint. I recall that her family member made a complaint, made several complaints.
Q. Okay. And, again, that complaint was not sent to Dr. Mann at that time and said, give us a written response.
A. That is correct.
Q. There was another one, a Daisy Edberg. Does that sound right? And this was a letter that went -- this is one where it said, Hey, Dr. Mann, I have a complaint from you from this woman. Why don't you respond in writing. Correct?
A. Correct.
Q. Then the date on that is February 20th of '09. Correct?
A. Correct.
Q. Then you wrote Dr. Mann on April 13th of 2009 and said: "The state medical board addressed the complaint registered against you by the above-referenced individual at their April '09 meeting. After examining the information, it was the

vote of the board that there was no evidence of a violation of the Arkansas Medical Practices Act. Therefore, no disciplinary action was taken. For your records, we have enclosed a copy of the correspondence." Correct?

A. Correct.

MR. HENDRIX: Your Honor, I'm at a fairly natural stopping point.

THE COURT: We can take a break. Let's take 15 minutes and come back at 11 o'clock. We'll be in recess until 11 o'clock.

(Recess from 10:44 a.m. until 11:01 a.m.; jury present.)

THE COURT: Mr. Hendrix, you may continue.

MR. HENDRIX: Thank you, Judge.

BY MR. HENDRIX:

Q. Ms. Cryer, earlier we had talked about the specialty of pain management.

A. Yes.

Q. And one of the things I think you testified to in your previous testimony, and that you and I covered a little bit of it, is that it was, I think, in 2003 that the legislature stepped in and passed a thing called the Chronic Intractable Pain Treatment Act. Is that right?

A. Correct.

Q. Of 2003. And it's what -- this would have been after -- pardon me -- Dr. Mann's first hearing in 2003 that the

legislation was passed. And part of what that act by the state legislature did was set up a separate committee for the state medical board. Correct?

A. Correct.

Q. And it's the pain management committee. Is that right?

A. Correct.

Q. And this issue of pain management, I know we've established that at the time -- and I don't know whether there are now or not. But there weren't anyway any doctors on the board that were pain management specialists. Correct?

A. Not that I recall. I don't think so, huh-uh.

Q. I didn't think so, and I wasn't entirely sure. But I think that's right. So then the act set up this separate committee that is of pain management specialists. Correct?

A. Correct.

Q. And the need for that -- I just kind of want to frame the issue for the jury as to why that happened. It's -- pain management, prescribing controlled substances, controlled narcotics especially, to people that are in dire pain, has been, I think, really, for about ten years now, been the subject of a lot of debate, has it not?

A. Correct.

Q. Both in the state and nationally?

A. Correct.

Q. Correct? And let me read a few things to you and ask if

this frames the debate accurately.

A. Okay.

Q. And I'm quoting. "This is an issue," talking about pain management, "with many sides and concerns. I," the doctor I am referring to, "I try to make sure all sides are heard and respected in our discussions. There's a lot of disagreement as to how to balance narcotic use for the nonterminal chronic pain patient. The treatment of cancer patients or any patient with a terminal illness has a well-established consensus. Treat the patient's pain with as much medicine as necessary."

It continues on. "The real debate becomes with the treatment of chronic nonterminal pain patients," in other words, ones that aren't --

MS. WHATLEY: Your Honor, may we approach?

THE COURT: You may.

(Proceedings at the bench as follows:)

MS. WHATLEY: I'm going to object on relevance. She's not a pain management doctor.

MR. HENDRIX: He is a pain management specialist, and the problems have arisen in the pain management area. Actually, the government brought this up originally when she had testified, and she had mentioned chronic intractable pain. I think it's important for the jury to understand that this is a specialty. They are hearing overprescribing. It's important to put it in the context of this is a debate that there are many

different opinions on.

THE COURT: How is she qualified to testify about it?

MR. HENDRIX: I'll ask her this. This comes from -- who I'm quoting is the head of the Arkansas pain management specialists, and I'm almost done.

THE COURT: She's not a physician. She can't testify as to --

MR. HENDRIX: That's true.

THE COURT: -- overprescribing. She can testify that's what was alleged against him. She's sitting there typing it up. I know that's what was said. To start getting into the specialty itself --

MR. HENDRIX: I'm not getting into any of the overprescribing. It's just in order to frame the policy debate so the jury understands pain medicine is a specialty that has a lot of debate. I'm not going to ask her any medical opinions or anything like that. It's not a medical issue. It is simply a public policy.

THE COURT: You can ask her about what she knows about the board, how many of these cases come up and that type of thing. To start getting into the specialty of pain management, I will sustain the objection as far as that goes.

Now, was there anything else?

MS. WHATLEY: This whole line of questioning, Your Honor, we've already established that the original allegations

were for overprescribing. He ultimately had agreed in 2006 that he had overprescribed. So whether or not there's a debate among different doctors as to what's overprescribing and what's not overprescribing, I don't think that's relevant to the issue before the jury.

THE COURT: Here's the thing. Initially I let the government get into the discussion of the medication and of the board procedures to establish motive. I think -- I say cross, but your examination this morning gets into providing all of the background to this, putting it in perspective to everything. Now dealing with the specialty of pain management, I don't know how that advances the case at all. What does that do?

MR. HENDRIX: Here's where ultimately --

THE COURT: How is it relevant?

MR. HENDRIX: One of the points this is concluding was -- it's from a Dr. Roman that's head of the pain management committee that we're talking about. And one of the things he says is, because it's so little understood, you get complaints in from family members who really don't quite get it. And that's sort of directly relevant to Jeanice Brown as a family member making a complaint.

THE COURT: That is to address the lady who came in here to make the complaint on behalf --

MR. HENDRIX: Right.

THE COURT: On Ms. Barthelme.

MR. HENDRIX: Who made it sound like, oh, my god.

THE COURT: To essentially provide some counter-testimony to her testimony, that it's not uncommon for family members in the pain management area --

MR. HENDRIX: Right.

THE COURT: -- to complain.

MR. HENDRIX: In other words, Ms. Brown came in and painted this picture of, oh, my god, what a horrible, awful doctor, and he's a drug dealer, and he doesn't know how to best render medical services to my sister. This just simply goes to show it's a subject of debate. It's really a matter between physician and patient.

MS. WHATLEY: Ms. Cryer is not going to testify to that. He can get Dr. Roman to testify here as opposed to Dr. Roman's hearsay.

THE COURT: I think getting her to talk about what Dr. Roman said -- how do you think that's a hearsay exception?

MR. HENDRIX: One, I'm not offering it clearly for the truth. I'm saying, are you aware of this? Are you aware of the debate? If you don't want me to quote, I can talk to you. You are aware of the consensus --

THE COURT: You can ask her those questions.

MR. HENDRIX: That's fine.

THE COURT: But you are going to be stuck with whatever answer she gives.

MR. HENDRIX: Not a problem.

THE COURT: Sustained to the extent I've discussed earlier. But you can ask her what she knows. And if she knows something, she can explain it.

MR. HENDRIX: Okay.

THE COURT: I would rather not be here 20 minutes talking about pain management --

MR. HENDRIX: And me reading.

THE COURT: -- with this witness. She's not a doctor. She's somebody who takes down what goes on at the meeting. She can relate it to us. That's the extent of what she knows.

(Proceedings continuing in open court as follows:)

BY MR. HENDRIX:

Q. I think where we were, Ms. Cryer, is we're talking about what's really a social policy debate that's been going on for about a year or about a decade, I think now, about pain management. Right?

A. That's correct.

Q. And the debate centers on you can almost put people in groups on this debate, can't you?

A. (Witness nods head.)

Q. There are people that take a sort of conservative approach that the use of -- we have through our drug companies very powerful narcotic pain relievers. Right?

A. Correct.

Q. And there's one segment that has a very conservative approach to pain management. Right?
A. Correct.
Q. And another faction that has a more liberal view of that. Correct?
A. Correct.
Q. And ultimately what we're talking about is there's a certain amount of subjectivity in what we're dealing with. Here's what I mean. When I go to my doctor's office, I see the chart, the pain chart, that says one through ten. And the one has the little thing, and the ten is my head is exploding. And it's my job as the patient to give the history of this pain to the doctor, and he goes, are you on a one or a ten or somewhere in between. Right?
A. Correct.
Q. And that's dependent on my opinion of how painful things are to me. Right?
A. Correct.
Q. And my view of how painful something is is different from your view.
A. Yes.
Q. What may hurt me a whole lot may be fairly insignificant to you. Correct?
A. Correct.
Q. So that sort of frames this issue. And tell me if you

agree with this and that you are aware. It's when it comes to nonterminal people that are in pain; in other words, nonterminal meaning you are not going to die; terminal and chronic, for instance, meaning you have cancer, and you are going to die in six months, how do you treat that person's pain.

A. Correct.

Q. If I'm nonterminal, what's appropriate for my doctor to do to help alleviate my pain. Is that right?

A. Say that last part again.

Q. When I'm nonterminal, I'm not going to die, but I am in a lot of pain. Right?

A. Correct.

Q. It becomes an issue between me and my doctor about what's the proper prescribing.

A. Correct.

Q. How much to give me of something that's going to relieve my pain but also has side effects. Right?

A. Correct.

Q. Okay. And in that debate, I think one of the things -- as a result of that debate, the Arkansas -- it spread nationally. Then the Arkansas Legislature stepped up to the plate in 2003 and recognized the significance of this debate. Right?

A. Correct.

Q. And they passed the Chronic Intractable Pain Treatment Act. Correct?

A. Correct.
Q. And it set up that separate committee of pain management specialists in order to deal with that. Right?
A. Correct.
Q. Because they understand all that. Right?
A. Correct.
Q. A family practitioner is necessarily not going to be involved in that because they are not a pain management specialist. Right?
A. Correct.
Q. Okay. Have you found, and to your knowledge has the committee found, that a lot of times complaints are made by family members of the doctor's patient?
A. Are we talking specifically this case?
Q. Pain management. Pain management in general.
A. I wouldn't -- I would not say it that way. I would say that sometimes people make complaints when they feel their family members have been receiving too much medication. But I can't connect that necessarily with pain.
Q. Let me see if you agree with this notion. The most common complaint we see on this committee comes from patient family members.
A. Yes.
Q. Okay. And that's what Rita Barthelme -- that was a complaint that came from a family member. Right?

A. It came from a family member, right.
Q. Who is not in the best position to determine the adequacy of care.
MS. WHATLEY: Objection, Your Honor. She doesn't know what Ms. Brown's position is.
THE COURT: That's sustained.
BY MR. HENDRIX:
Q. Okay. Next topic. It's been alleged in this case that Dr. Mann had a contentious relationship with the state medical board which provided him a motive to hurt or injure or kill Dr. Pierce. And part of that is the history that you and I've been through already, that he's filed lawsuits against the board. Do you understand that?
A. (Witness nods head.)
Q. And you and I mentioned this earlier. He's not the first doctor to have filed a lawsuit against the board. Correct?
A. There have been others.
Q. Are you familiar with James R. Baber's lawsuit against the board?
A. Yes.
Q. And you are familiar with one that's outstanding right now, the American University of Antigua and its students against the board?
A. Yes.
Q. And you are aware that Dr. Lonnie Harrison had also filed a

lawsuit against the board. Right?
A. Yes.
Q. And those are three examples. Are there others that you are aware of?
A. There have been some other physicians. I think Denise Oldenberg filed a suit against the board.
Q. So again, it's not uncommon for a doctor to sue the medical board.
A. It's not common, but it's not uncommon.
Q. Understood. Dr. Mann is not the first one.
A. Exactly.
Q. And Dr. Mann is not the first doctor to have asked one or more board members to recuse from a hearing also. Right?
A. There was another physician that did that also.
Q. I believe that was Dr. Lonnie Harrison? Was there somebody else?
A. I was thinking -- you may be correct about that. But I was thinking it was Dr. Kale.
Q. Okay. Dr. Kale is a pain management specialist. Is that right?
A. He's a pain management specialist.
Q. And he had asked one or more board members to recuse sometime in the past?
A. I think that he did. I may be incorrect about that.
Q. Dr. Harrison, are you aware whether he did or not?

A. I don't recall that. That doesn't mean it didn't happen. I just don't recall.
Q. Understood. And see if it refreshes your recollection. I'm showing you a letter that came from the medical board files to you. Correct?
MS. WHATLEY: Your Honor, if he is going to refresh her recollection, I would prefer that he refresh her recollection, not the entire jury's.
MR. HENDRIX: Fair enough. May I?
THE COURT: You may.
BY MR. HENDRIX:
Q. Just look through that so you will be able to tell the jury what it is, if you will look on the next page.
A. Oh, is this where he asks Dr. --
Q. I think you missed it.
A. Okay. Dr. Dudding. I do recall that.
Q. Does that refresh your memory?
A. I'm sorry. I apologize.
Q. Not at all, not at all. Your memory is that Dr. Lonnie Harrison also is another doctor who had asked a board member, in this case Dr. Dudding, to recuse from his hearing. Is that right?
A. Correct.
Q. Okay. It's not uncommon for doctors to be disciplined and, for instance, their DEA permit to be suspended essentially. I

know we're using a loose term of art.
A. Right.
Q. But then for doctors to come back and several times ask the board to reconsider and ask that they be able to get a permit back. Correct?
A. That's correct.
MR. HENDRIX: May I approach, Your Honor?
THE COURT: You may.
BY MR. HENDRIX:
Q. If you could just flip through those and identify them, and then I'll ask you a couple of specific questions.
A. Do you want me to read them out loud?
Q. I'm going to ask you if you can identify them as the board verifications for those specific doctors.
A. Yes.
Q. Is that board verifications generated by the state medical board?
A. Yes.
Q. Okay. If I can take them, then I'm going to show them to the government, and I'm going to ask the judge to introduce them.
MR. HENDRIX: Ms. Whatley?
MS. WHATLEY: No objection.
MR. HENDRIX: Your Honor, I've marked these as Defendants' 51-A, -B, -C, -D, -E and -F and ask they be

admitted.

THE COURT: Those are received.

(Defendants' Exhibits 51-A, 51-B, 51-C, 51-D, 51-E and 51-F received in evidence.)

MR. HENDRIX: Thanks, Judge.

BY MR. HENDRIX:

Q. There have been -- well, let me step back. The board gets lots of complaints every year against doctors. Correct?

A. Correct.

Q. And I think when I talked to you, when you testified a couple of weeks ago, we had introduced some newsletters that showed the actions annually that have been taken. And I think anywhere between 20 to 40 doctors. Would that be a fair average, say, that get disciplined a year?

A. That would be a fair average, I think.

Q. Okay. And let's talk about a couple of them.

A. Okay.

Q. Do you remember Dr. Richard Clark?

A. I do.

Q. And I showed you what I've marked as Defendants' 51-A. This is the board verification on Dr. Clark?

A. Correct.

Q. Let's talk about Dr. Clark real quick. Dr. Clark is a doctor from West Memphis. Correct?

A. That is correct.

Q. Same place that Dr. Pierce is from. Right?
A. Correct.
Q. This is the doctor that asked to meet with Dr. Pierce personally. Correct?
A. I believe he did. I was not involved in that meeting.
Q. I believe you did have a conversation with Dr. Pierce about this, did you not?
A. Right.
Q. And Dr. Pierce told you that he thought that request was strange.

MS. WHATLEY: Objection. Hearsay.

THE COURT: What's your response?

MR. HENDRIX: Well, I don't know that it's hearsay. I'm asking her about a conversation that she had with Dr. Pierce.

THE COURT: That's sustained.

MR. HENDRIX: I might be leading her.

THE COURT: It's sustained to the extent you asked her to recount what Dr. Pierce said.

BY MR. HENDRIX:
Q. Do you remember a conversation with Dr. Pierce?
A. Yes.
Q. And you remember it being about this Dr. Clark wanting to meet with him personally?
A. Yes.

Q. Tell us what the conversation is you had with Dr. Pierce.
A. I don't --
MS. WHATLEY: Hearsay, Your Honor.
MR. HENDRIX: I'm asking her to recount her conversation that she had with Dr. Pierce.
THE COURT: Well, isn't that a roundabout way to get to the heart of what Dr. Pierce told her?
MS. CASSINELLI COUCH: Maybe we should approach.
THE COURT: You can approach.
THE WITNESS: I don't remember much.
(Proceedings at the bench as follows:)
THE COURT: Why is that not a roundabout way to tell what Dr. Pierce told her?
MR. HENDRIX: I think I can give you two reasons why. One is exactly the same objection we raised earlier to the government about them relating a conversation to which the witness was not a party. Two, it's not being offered for the truth of the matter asserted. It is going to show other people had motive.
MS. WHATLEY: Dr. Pierce has already testified about the conversation he had with Dr. Clark, so therefore Dr. Pierce's conversation with Ms. Cryer is not needed. Number two, he is offering it for the truth of the matter asserted, not to show what Ms. Cryer did or what Dr. Pierce did as a result of it.

MR. HENDRIX: I guess the government's theory would make this implausible situation: You have to put one witness on to say "I said this," then the other to say "I said this" in response. It is implausible.

MS. CASSINELLI COUCH: I was just going to say I think there's going to be an inconsistency in what Pierce testified versus what she says, so that would be another basis for the admission of that statement.

MR. HENDRIX: I guess it sort of also goes back to it's not being offered for the truth, but to show Pierce's subsequent conduct. Here's what the conversation is about, is I thought this was strange, so I'm going to take my son, and then tells her, I'm doing this so in case something happens you will know where I was.

THE COURT: That's what his testimony was. You are saying she's going to say something different?

MR. HENDRIX: No. I'm going to ask her if that's what the conversation was.

MS. CASSINELLI COUCH: His testimony was actually that he didn't think there was anything to fear by meeting Dr. Clark. I think at the end he said, I didn't think he had any motive to do anything other than how to approach the board. I think what she's going to say, it's a little inconsistent.

MR. HENDRIX: It is.

MS. WHATLEY: Dr. Pierce stated it was prudent. No

one ever asked me to do that before, so it was prudent for me to take my son with me.

THE COURT: He had never been asked that, so he took his son, so then there would be somebody there. I guess we can all draw our own inferences why he took his son.

Now, back to the original point, though, about the hearsay, I think I have allowed in some other testimony that was not offered for the truth of the matter asserted, where a person is explaining what happened between or during a conversation between that person and another, where the person was a party to the conversation. And you would ask, Mr. Hendrix, I believe, why is that not hearsay. I said because it was not a third party relaying of events. Anyway, I'm going to overrule the objection. He can ask her. You can ask her. But how far are you going with this?

MR. HENDRIX: Just to that. As I listened to Ms. Couch in her wisdom, I think she has it right. It is framing up as a prior inconsistent statement.

THE COURT: You are not going to start asking her about his conversation with --

MR. HENDRIX: Clark.

THE COURT: Clark?

MR. HENDRIX: No.

THE COURT: Just about her conversation with him.

MR. HENDRIX: That is the entirety.

THE COURT: Okay.

(Proceedings continuing in open court as follows:)

BY MR. HENDRIX:

Q. Where we were is the conversation you had with Dr. Pierce regarding Dr. Clark and he -- Dr. Pierce had told you that he thought the request was strange and was therefore taking his adult son with him. Is that right?

A. I don't think he called it strange. It seems like he used the word "odd."

Q. Odd? Okay. Did, in fact, Dr. Pierce tell you that if something happens he was telling you so you will know where he was?

A. Yes.

Q. Okay. Nothing odd apparently happened?

A. Evidently not.

Q. Do you remember when that was?

A. I do not.

Q. Within the past five years? Past three years? Past -- do you have any sense?

A. I'm sorry. I really don't know. Things like that, I didn't know it was important, therefore I didn't retain the timing, I guess. But I do recall it happening. I just don't recall when.

Q. Okay. And let's look at some of Dr. Clark's history before the board.

A. Okay.
Q. It looks like -- let's see -- it's in 1998. When did he get -- he got licensed -- he is reciprocity, and what does that mean?
A. That means that the fact that he had a license in another state was also added to why he received a license. In other words, he was qualified enough to practice in another state.
Q. Do you know what other state that was?
A. No, I do not.
Q. Okay. I'm going to use -- we've introduced clean copies of the board verifications. It's just easier. I have one that has yellow highlights that will direct you and me to where we need to get quickly. All right. It looks like June 4th of 1998, Dr. Clark appeared due to an order and notice of hearing issued to him. So there had been a complaint filed against Dr. Clark. Is that correct?
A. I'm not positive if there had actually been a complaint, other than a notification someway, maybe even through an ad in a newspaper, that he was running what they called a weight loss clinic.
Q. Got you. So that came before the board that he surrender -- it says Dr. Clark must surrender his DEA permit. Is that correct?
A. Correct.
Q. So he lost his DEA permit in 1998? Right?

A. Correct.
Q. September 17th of 1998, he appeared requesting permission to reapply for his DEA permit. Is that correct?
A. That is correct.
Q. And the board voted unanimously to allow Dr. Clark to ask the DEA for it back.
A. Yes.
Q. So, again, it is not uncommon for a doctor to lose a DEA and then come back and ask for permission to reapply. Right?
A. Yes.
Q. October 6th of 2006, it shows upon a motion of Dr. Beck, seconded by Dr. Smart, the board voted that an emergency order of suspension and notice of hearing be issued to the physician, and Dr. Pierce recused from those things. Right?
A. Correct.
Q. Did they know each other? Is that what the deal is?
A. I don't know.
Q. Putting this now in context, did his concern about the meeting go back as far as 1998, or would that have been more recent? Does that make sense?
A. I don't know.
Q. Okay. Moving forward, for Dr. Clark on December 8th of 2006, it looks like he appeared to request that the suspension of his medical license be lifted. Is that correct?
A. That is correct.

Q. And the board voted unanimously to grant that request as stipulated. In other words, it said, you can request to ask for it back. Correct?
A. That is correct.
Q. December 6th of '06 then, he -- well, there was no appearance, but there was a discussion, and the board voted unanimously to deny this physician's request for reinstatement of a full medical license to practice outside the medical system.
A. Correct.
Q. So to put that in a little better context, he had these problems. He came to the board. They suspended him. And he said, how about this? Give me a medical license, and I'll only practice within the prison system. Correct?
A. That is correct.
Q. And that's finally what got granted on Dr. Clark. Right?
A. That is correct.
Q. Okay. December 7th of 2008, it looks like Dr. Clark appeared. There was an appearance. He requested that his license be unrestricted. Is that correct?
A. That is correct.
Q. The board voted unanimously to allow Dr. Clark to return to the private practice of medicine and accepted Dr. Clark's offer to enter into a consent order stating that he will surrender his Arkansas DEA permit and will not renew the DEA permit without

requesting permission of the board. Right?
A. That's correct.
Q. Now, we're at August 7th of 2008, which is August, September, six months before Dr. Pierce was bombed. Dr. Clark appeared to request that he be allowed to reapply for his DEA permit.
A. Correct.
Q. Upon motion of Dr. Beck, seconded by Dr. Atiq, the board unanimously voted to deny Dr. Clark's request. Is that right?
A. Correct.
Q. Then, finally, October, four months prior to the bombing, the board voted unanimously to advise this physician that the board stands by its previous decision to not allow him to reapply.
A. Correct.
Q. Correct? So within that small -- within six months of the bombing, we have Dr. Clark here, who has lost his DEA permit, and he's coming back to the board and asking for it, and they continue to deny him. Correct?
A. Correct.
Q. Now, do you know whether Dr. Clark still has his medical license?
A. I think he does. But --
Q. Would that tell us here?
A. Yes, it would.

Q. License?
A. He is active, unlimited.
Q. So the board ended up not taking this doctor's license away from him. Right?
A. License, that is correct.
Q. Do you have Dr. Kauffman's, Paul Kauffman's, board verification?
A. No, I do not.
Q. Oh, because I stole them all from you. That's Dr. Clark's. I put him on the bottom.
A. Okay. Do I get to keep these? Thank you.
Q. Let's look briefly at Dr. Kauffman's history. It looks like Dr. Kauffman's history goes back to the board to 1991. Is that right?
A. Correct.
Q. Now, I don't mean to make this a time-consuming process. But I counted that he had 16 appearances before the board. Does that sound correct?
A. That's probably true.
Q. And just to make clear, when we're talking about an appearance, you can appear before the board for several reasons. One is the board can order you to appear on a complaint.
A. Uh-huh.
Q. Right? You can appear for a disciplinary hearing.
A. Uh-huh.

Q. Right? Or they can invite you in to discuss a matter.
A. Uh-huh.
Q. Right? Or you can ask for an appearance before the board to discuss a matter.
A. Correct.
Q. So there are a variety of reasons. Right?
A. Correct.
Q. We have 16 times he was in front of the board. Do you see how many hearings? We may have to work our way through this process. Let's look at June 5th of 1997, June 5th, 1997. Upon a motion by a Dr. Douglas, seconded by Dr. Williams, the board voted unanimously to issue an emergency order of suspension and notice of hearing to this physician. So a complaint had been filed against this physician. Right?
A. Yes.
Q. And is ordering him to come in to either address this or for a hearing. Correct?
A. That's correct.
Q. September 11th, he appears with his attorney regarding the emergency order of suspension, asked that it be lifted until the October hearing. Is that right?
A. That is correct.
Q. And they voted to grant that. Correct?
A. That is correct.
Q. All right. October 17th of 1997 is apparently Dr. Kauffman

has a full hearing. Right?
A. That's correct.
Q. Would you have been at that?
A. Yes.
Q. Okay. Dr. Kauffman appeared due to the -- pardon me -- to the order and notice of hearing. He was represented by an attorney. Prior to the meeting Dr. Baker recused. After listening to the testimony and witnesses and thoroughly reviewing all the information presented upon a motion by Dr. Williams, seconded by Mr. Feimster --
A. Feimster.
Q. Feimster -- the board unanimously voted that there had been a violation of the Arkansas Medical Practices Act. As a result of the violation, the board voted to impose the following sanctions. And his license to practice medicine was revoked. Correct?
A. Correct.
Q. He also had to pay money. Is that right?
A. That's correct.
Q. And it specifically found that Dr. Kauffman may reapply for a license to practice medicine in the state upon providing satisfactory proof to the board of both his skill and mental fitness as required by the Medical Practices Act. Is that correct?
A. That's correct.

Q. Okay. So they took his license away, and apparently he had some mental issues that he was struggling with. Is that right?
A. Had some issues, correct.
Q. Okay. September 17th of 1998, he appeared with his lawyer requesting reinstatement of his medical license.
A. Correct.
Q. The board voted that when all appropriate documentation had been received, he could, upon request, be issued a temporary permit. What's a temporary permit?
A. A temporary permit means that he can practice medicine, and it can be issued between board meetings. However, it takes a full board to grant a license.
Q. Okay. December 4th of 1998, he appeared again with his attorney requesting a permanent license. So again, he was continuing to ask the board to reconsider its previous positions; right, and this time he's asking for a permanent license. Correct?
A. Correct.
Q. Upon a motion by Dr. Zini and Dr. Pierce, the board voted to continue Dr. Kauffman's temporary permit, so they denied his request. Right?
A. Correct.
Q. The board further voted to have an investigation of progress notes, charts, and other pertinent information from the hospital conducted by the Arkansas Department of Health to

determine if Dr. Kauffman was practicing medicine without a license. Does that sound right?
A. That sounds --
Q. So there had been an allegation Dr. Kauffman didn't have his permit but continued -- or didn't have his license but continued to practice medicine. Is that right?
A. I think that was the allegation, but I haven't reviewed that file. So -- but, yes, I think that was the allegation.
Q. Okay. Then we go through a whole series of appearances and nonappearances concerning Dr. Kauffman. And let's move forward to -- let's move to a more pertinent time, December 4th of 2008, which should be on page 12, Ms. Cryer.
A. Should be on page what?
Q. I have it on page 12 of 13.
A. Okay.
Q. So it shows on December 4th of 2008, which would have been two months before Dr. Pierce's bombing, that Kauffman appeared for his Arkansas Medical Foundation update?
A. Correct.
Q. So the jury knows, the Arkansas Medical Foundation is -- is it a committee or an institution of some sort that involves itself with physicians that have drug problems, that sort of thing? Right?
A. That is correct. It is a portion of the Arkansas Medical Society. It is not related to the board. However, the board

utilizes it when physicians have alcohol or drug problems.
Q. Dr. Kauffman's sponsor was also present at the meeting. After a discussion regarding his update report that indicated that he had a positive drug screen, and upon a motion by Dr. Cogburn, seconded by Britton, the board voted unanimously if another violation of his monitoring contract occurs charges will be drafted and a disciplinary hearing will be held. The board further voted Dr. Kauffman should have a psychiatrist provide a progress report to the board prior to the next meeting and requested he return to the February 2009 meeting for an update, again bringing his sponsor with him. Does that accurately reflect that?
A. Yes.
Q. So two months before the bombing, Dr. Kauffman, against the prior orders of the court, had continued to use drugs and had a positive drug screen. Right?
A. Had tested positive, correct.
Q. So in December the board said, one more time, Dr. Kauffman, and that's it. Right?
A. Uh-huh.
Q. And they set him for the February '09 board meeting. Correct?
A. Correct.
Q. Does Dr. Kauffman still have a license?
A. No. His license has been revoked.

Q. It's been revoked for a year. Right?
A. Let's see.
Q. Very last page. Licenses revoked. The board further voted Dr. Kauffman cannot reapply for a license for a minimum of one year.
A. That's correct.
Q. Okay. So he might be able to get a license?
A. Correct.
Q. Dr. Max Odom. Do you have Dr. Odom's board verification?
A. Yes.
Q. October 3rd of 2002 -- are you with me?
A. Yes.
Q. He made an appearance at the request of the board to discuss the details of discussion No. 02-132. After discussion and upon motion by Drs. Baker and Zini, the board unanimously requested prior to rendering a decision in this matter that Dr. Odom take the Vanderbilt University continuing medical education course regarding disruptive physicians, anger management, and to submit to a psychiatric evaluation to be conducted by a psychiatrist of the board's choosing. So Dr. Odom was found by the board to have --
A. Issues.
Q. Sort of ugly issues, I gather.
A. Ugly issues.
Q. And are you aware that the basis for that was a complaint

that he had held a gun to a meter reader's head?
A. I don't recall that necessarily. I do recall that he shot at them through the floor or something.
Q. Do you recall an allegation that he told other doctors that if his medical license got suspended he would, quote, make their blood flow?
A. I don't remember that at all.
Q. Okay. But he was found to be in need of disruptive physician's anger management and in need of psychiatric evaluation. Correct?
A. Yes.
Q. October 7th of 2004, Dr. Odom appeared again in response to an order and notice of hearing. After discussion and upon a motion by Dr. Simmons, seconded by Dr. Bell, the board unanimously voted to continue this disciplinary hearing with the following conditions: Dr. Odom agrees not to practice medicine until he appears back before the board regarding this matter. Dr. Odom will meet with the Arkansas Medical Foundation, report for inpatient evaluation and treatment and follow the guidelines that are recommended. Once he is released from treatment, Dr. Odom will appear before the board to provide proof of his inpatient evaluation and treatment and his ongoing compliance with the medical foundation. Is that right?
A. That's correct.
Q. So again, he is sort of getting a break here. Right?

A. Yes.
Q. April 8th of 2005, there was no appearance. Dr. Odom didn't appear. But the board found out he had moved to a new treatment facility. He was terminated from his last treating facility. And as directed by the board at its previous meeting, the board confirmed that an emergency order of suspension and notice of hearing be issued for this physician. So, in other words, he didn't follow --
A. Correct.
Q. -- the treatment course the board had asked of him to do. Correct?
A. Correct.
Q. And so they suspended him. Is that right?
A. Correct.
Q. And on August 5th of 2005 he appeared. And on the motion of two of the board members, they voted unanimously that there had been a violation of the Medical Practices Act. The official board order further reflects the license to practice medicine in the state belonging to Odom shall remain suspended. Correct?
A. Correct.
Q. And then his problems continued. In October 7th of '05 he's revoked. Is that right?
A. In when?
Q. October 7th of '05.
A. It's revoked, but it's also stayed.

Q. So it's a revocation with the stay of the revocation?
A. Correct.
Q. So he can continue to practice?
A. Correct.
Q. Correct. February 3rd of '06, he appeared for his Arkansas Medical Foundation update. And to make sure we understand this, folks that have the drug problems, they want them -- the board wants them to continue to reappear to monitor their status.
A. That is correct.
Q. Okay. So February 3rd of '06 Dr. Odom appears for his update, and he requests that he be allowed to reapply for a DEA permit. Upon motion of Drs. Jack and Ms. Britton, the board voted unanimously to accept Odom's appearance for information only and requested he return to the April '06 meeting for his next update. The board also requested that Odom ensure that the documentation indicating his compliance is forwarded to the board. The board voted not to grant permission for Dr. Odom to reapply for a DEA permit at this time.
A. Correct.
Q. So another example of a doctor who is wanting to get his DEA permit and just asks the board for an appearance to do so. Correct?
A. Correct.
Q. I believe, am I right, on April 7th -- have I got this right? We just did February 3rd. April 7th?

A. Uh-huh.
Q. They finally allow him to reapply for the permit. Correct?
A. Correct.
Q. Then additional problems apparently happened. On March 6th of '07 an emergency order of suspension is issued. Is that right?
A. Yes.
Q. Now we get into 2008, February. Pardon me. April 8th, another emergency order of suspension is issued, and his license is suspended. Is that right?
A. Yes.
Q. That was April. So that would have been within a year of Dr. Pierce's bombing. And that's the way -- so his license was suspended by that time. Is that right?
A. Yes.
Q. Now, I counted up there were five appearances by Dr. Odom in response to notices of hearings. Does that sound right?
A. That sounds right. I haven't counted them.
Q. Is Dr. Odom the one that got thrown out of the board meeting?
A. I don't recall him being thrown out of a board meeting. He maybe did, but I don't recall that.
Q. And you go to them. You just don't recall that?
A. I don't recall him being thrown out of a board meeting.
Q. Does he still have his medical license?

A. He does.
Q. Do you have James Miller's file? A West Memphis doctor. Is that right?
A. Yes.
Q. Looks like August 3rd of 2007 an emergency order of suspension based on a complaint. Correct?
A. Yes.
Q. Dr. Pierce recused, because I assume he is from West Memphis. Right?
A. Probably that's why he recused.
Q. That would be my guess, yeah. February 8th of 2008, Dr. Miller was represented by his attorney. After a discussion, upon a motion by Dr. Dudding, seconded by Smart, the board voted to accept the offer of Dr. Miller that he will enter into a consent order stating he will surrender his DEA permit. He will not reapply for a DEA permit without getting permission from the board. He will attend continuing medical education courses in the areas of prescribing and boundaries, and he will pay expenses of essentially 10- or $11,000.
A. Yes.
Q. Three votes opposed to that. So that was the disciplinary action on February 8th of 2008. Right?
A. Yes.
Q. On November 4th of 2008, so November, December, January, February, within three months of the bombing of Dr. Pierce, do

you recollect -- do you remember getting a subpoena from the United States Attorney's Office regarding records for Dr. Miller to appear in front of a grand jury regarding Dr. Miller?

MR. HENDRIX: May I, Judge?

THE COURT: You may.

BY MR. HENDRIX:

Q. Does that document indicate to you that November of 2008 there was a federal grand jury investigation going on regarding Dr. Miller?

A. Yes.

Q. And that the United States Attorney's Office subpoenaed Dr. Miller's records that you guys would have?

A. Yes.

Q. Did Dr. Pierce testify against Dr. Miller is question number one. Question number two is, was it in front of the grand jury, or was it in some other matter?

A. I really don't know. I don't recall. I'm sorry. I don't recall.

Q. Does that sound familiar, that Dr. Pierce had testified against Dr. Miller?

A. It doesn't sound -- I don't know. I'm sorry.

Q. You don't know whether it happened or not?

A. I don't know whether it happened or not. That's correct.

Q. Does Dr. Miller still have a medical license?

A. Yes. I think he does, yes.

Q. Denise Greenwood?
A. Yes.
Q. I counted them up. Twenty-three appearances before the board?
A. Probably.
Q. She's been quite a lot, has she not?
A. Yes.
Q. I think at least four full board hearings?
A. Quite a few.
Q. And just so we can put this in reference, there were seven actual appearances by Dr. Mann and two hearings. Correct?
A. Seven actual -- I don't have that in front of me. That sounds right.
Q. With Dr. Greenwood, 23 appearances since 2000. Is that right?
A. Yes.
Q. And Dr. Greenwood had a substantial cocaine and alcohol problem. Is that right?
A. She has had. I don't know about right now. I'm hoping not now.
Q. I beg your pardon?
A. I'm hoping not now.
Q. And her problems have been ongoing since 2000. Right?
A. Yes.
Q. And if we can get down to it, I won't bore everybody with

continuing to read this. I'll let the jury deal with these exhibits. But we get down to the crucial time frame. It looks like because of her problems -- this would be not anything new for Dr. Greenwood. On April 2nd of 2008, another emergency order of suspension was issued, and her license was suspended. Right?

A. Yes.

Q. And she was ordered to come back before the board at the February '09 meeting. Right?

A. Yes.

Q. So she knew that she had to appear and was in trouble with the board and had to come back February of '09. Right?

A. Yes.

Q. If you have that in front of you, it says --

A. Wait a second. '09.

Q. I'm sorry. I have page 6.

A. Okay.

Q. So she did, in fact, appear February 6th of '09?

A. Yes.

Q. Dr. Pierce had just been bombed two days before. Right?

A. Yes.

Q. And had appeared in response to an emergency order of suspension and show cause?

A. Yes.

Q. Upon the motion of Atiq and Smart, the board voted

unanimously there had been a violation of the Medical Practices Act. The vote for any sanctions to impose is passed to a future meeting, then ordered Dr. Greenwood to return in April. Is that right?

A. Correct.

Q. That was the lay of the land for her prior to the bombing. Does she still have a medical license?

A. Yes.

Q. Lonnie Harrison?

A. Okay.

Q. Let's begin on page 2, October 5th of 2000. Upon a motion by Simmons, seconded by Dr. Pierce, the board voted unanimously that an order and notice of hearing be issued to this physician upon completion of the investigation, that the information warrants such action.

Then moving on to the next page, April 6th of 2001, Harrison requested to appear before the board to discuss the details of his case. After discussion, and upon motion by Dr. Douglas, seconded by Williams, the board unanimously voted to allow Dr. Harrison to voluntarily continue his drug monitoring with Physicians Health Committee in lieu of issuing the order and notice of hearing to him. There was no history prior to that, but apparently must be off the board verification, because this would indicate that he has a verified drug problem and is already on some sort of conditions with the board. Is that

right?
A. I think -- I don't recall exactly. But I'm not sure that he himself had a drug problem. I think it was alleged he maybe had a drug problem.
Q. Understood. Let's go to 6/7 of '02. Upon motion by Dr. Baker, seconded by Dennis, the board voted unanimously that this physician has fulfilled his obligations and is released from further monitoring at this time. Again, would that indicate he was under some drug monitoring program?
A. Yes.
Q. Okay. October 18th of 2002 an emergency order of suspension was issued, and his license was suspended. Is that correct?
A. Correct.
Q. And the date on that is October 18th of 2002?
A. Correct.
Q. And the reason that that happened was because on October 10th of 2002 Dr. Harrison was arrested for buying $5,000 worth of methamphetamine from a confidential informant or an informant with, I guess, the Fort Smith Police Department. Is that right?
A. Correct.
Q. And you are also aware that part of that complaint was that Dr. Harrison had attempted to purchase two machine guns?
A. That part I didn't remember. But that may be true.

MR. HENDRIX: Well, may I approach, Judge?

THE COURT: You may.

BY MR. HENDRIX:

Q. If you will go to paragraphs 5 and 6, does that refresh your recollection that the complaint involves the possible purchase of two machine guns by Dr. Harrison?

A. Yes, yes.

Q. In addition to $5,000 worth of methamphetamine. Correct?

A. Yes.

Q. And Dr. Harrison was arrested. Correct?

A. Yes.

Q. And he was convicted. Correct?

A. Yes.

Q. And he was put on five years of criminal probation up in Northwest Arkansas. Is that right?

A. Yes.

Q. So on October 2nd of 2003, he did not appear?

A. He did not appear.

Q. And his license was revoked. Is that correct?

A. That's correct.

Q. Okay. So he's on five years of probation. So you can count from October '03, five years later, February 7th, as soon as his criminal probation is up, he's back in front of the board. Is that correct?

A. February '07 or February '08?

Q. I have February 7th of '08. Pardon me.
A. Right.
Q. It says he appeared to request that he be allowed to reapply for an Arkansas medical license.
A. That's correct.
Q. Dr. Harrison was present with his lawyer. After a discussion and upon motion by Beck, seconded by Atiq, the board voted unanimously to grant Dr. Harrison's request. The board voted further that Dr. Bruce Murphy should accompany Dr. Harrison to the next appearance to discuss the fellowship program that Dr. Harrison plans to enter under the instruction of Dr. Murphy. That began this process, did it not, where Dr. Harrison was trying to -- I'm done with my criminal case. I'm a heart doctor. Let me sort of mentor under this guy and start getting my medical license back. Right?
A. Correct.
Q. 4/3 of '08, what, just two months later, he appeared asking for reinstatement of his medical license. After a discussion and upon a motion by Cogburn and Smart, the board voted not to grant Dr. Harrison's request for licensure. So he was moving fast in this process.
A. Yes, correct.
Q. Saying now, first let me start work under Murphy. Now, two months later, let me just get my license back. Is that right?
A. Correct.

Q. 8/7 of '08. Dr. Harrison appeared again requesting a limited license to practice medicine in Arkansas. After a discussion, the motion was made by Williams, seconded by Smart, to grant Harrison's request for a limited license. However, the motion failed with five votes in favor and six votes opposed. Dr. Dudding and Harmon recused from the discussion and the vote. Do you recollect that?

A. I recollect that.

Q. So we're at August 7th of 2008, six months prior to the bombing of Dr. Pierce. That's correct?

A. Correct.

Q. And Dr. Harrison has gotten off his criminal probation, and he keeps coming back to the board. Let me work as a mentor. Let me get a full license. No. Let me get a limited license. He keeps asking for appearances to get something more from the board. Is that correct?

A. Correct.

Q. And finally he is asking for this limited license on October 7th of '08, and there are -- the motion failed with five votes in favor and six votes opposed. Correct?

A. Correct.

Q. If you recollect how that actually worked -- you were in there for this. Right?

A. Yes.

Q. When the vote was actually taken, there were five votes in

favor of reinstating Dr. Harrison, six votes against, and one abstention, that being the chairman. Dr. Pierce did not vote.
A. Correct.
Q. So you had six doctors, what, against -- five in favor, six against, Dr. Pierce not taking a position. Right?
A. Correct.
Q. But then Dr. Dudding recused. Right? Do you remember the letter I showed you earlier --
A. Yes.
Q. -- from his lawyer asking that Dr. Dudding recuse?
A. Yes.
Q. Then Dr. Dudding recused during the deliberations. Right?
A. Correct.
Q. And that left a five-five tie, five doctors wanting to reinstate the license, five doctors opposed to the motion. Is that right? Correct?
A. Yes.
Q. And that's when the chairman, Dr. Pierce, has to step in, because you have a tie vote. Right?
A. Right.
Q. Which way did Dr. Pierce vote?
A. I believe he voted to deny.
Q. So on August 7, 2008, six months before Dr. Pierce was bombed, he cast the deciding vote against Dr. Harrison. Is that right?

A. Correct.
Q. Lonnie Harrison then sues the board, does he not?
A. He did.
Q. So it looks like on April 3rd of 2009 -- does that sound right?
A. Yes.
Q. So a couple of months then after this, then he sues the board, and he says the board has violated his constitutional rights. Right?
A. Correct.
Q. Does Dr. Harrison still have a medical license?
A. Yes. You mean today?
Q. Yes, ma'am.
A. Yes.
Q. Just one final issue, Ms. Cryer. Are you aware that after the bombing of Dr. Pierce, within, I guess, about a month there was established a $50,000 reward for information leading to the arrest and conviction of someone in the bombing of Dr. Pierce?
A. Yes.
Q. You are aware of that?
A. Yes.
Q. I mean, it was publicized?
A. Yes.
Q. And I think the actual money comes from -- it was $18,000 from Crittenden Crime Stoppers, I think $20,000 from ATF?

A. I don't know about that. But I do remember that there was about $50,000.
Q. So are you aware of anybody ever trying to collect it?
A. No.
MR. HENDRIX: May I have just one second, Judge?
THE COURT: You may.
BY MR. HENDRIX:
Q. Ms. Cryer, thank you so much for your patience.
I don't have anything further, Judge.
THE COURT: Hold on just one second. Now, whether we start on cross depends on how many witnesses we will have this afternoon. Do you have more than one or two scheduled for this afternoon?
MS. CASSINELLI COUCH: No. We have people making travel arrangements, so I can't say with certainty. But probably not more than one or two.
THE COURT: How long do you think your cross will be, Ms. Whatley? I know you can't determine that until you get into it. How long?
MS. WHATLEY: Not long.
THE COURT: Let's start now.

CROSS-EXAMINATION

BY MS. WHATLEY:
Q. Ms. Cryer, I want to start where Mr. Hendrix ended.
A. Okay.

Q. Those six doctors that you just discussed?
A. Okay.
Q. Let me make sure I get them right. Dr. Clark, Dr. Kauffman, Dr. Odom, Dr. Miller, Dr. Greenwood and Dr. Harrison?
A. Correct.
Q. How many of those doctors in correspondence to the board singled Dr. Pierce out?
A. Other than addressing, sometimes -- most of the letters that come to the board, want to appear before the board, address Dr. Pierce as chairman, but not in a vindictive way or not.
Q. How many of those doctors in the body of letters that they sent to the board singled Dr. Pierce out for the treatment that Dr. Pierce had given them?
A. None.
Q. How many?
A. None.
MR. HENDRIX: Your Honor, I object to that, because I don't even understand what that allegation is. There's no foundation for it.
THE COURT: It's overruled. You can ask the question.
BY MS. WHATLEY:
Q. How many?
A. None that I'm aware of.
Q. How many of those doctors have asked Dr. Pierce to recuse from hearings?

A. I don't think any have.
Q. And if, when you were going through some of those board verifications with Mr. Hendrix, a lot of times it said the board unanimously voted. Correct?
A. Correct.
Q. Since the December 2006 board hearing, when Dr. Pierce became chairman, if the board unanimously voted, is there any reason for Dr. Pierce to even vote?
A. No.
Q. Does Dr. Pierce vote at board hearings?
A. He votes if there's a tie.
Q. But only if there's a tie?
A. Usually if there's a tie.
Q. In talking about Dr. Clark and Dr. Miller, they are both from the West Memphis area. Correct?
A. Correct.
Q. And in the board verifications that Mr. Hendrix showed you, Dr. Pierce recused from there.
A. Yes.
Q. I'm sorry. Dr. Pierce recused from their hearings.
A. Yes.
Q. I want to clear up a few things regarding Dr. Mann's history before the medical board.
A. Okay.
Q. First let's talk about the DEA. You stated that the DEA is

the only entity that can take the DEA permit. Correct?
A. That's correct.
Q. But the Arkansas State Medical Board can order the doctor to surrender as a condition of licensure.
A. That is correct.
Q. And in the 2006 order in this case, in Dr. Mann's case, he surrendered his DEA. Correct?
A. Correct.
Q. Could he go to DEA and ask for it without getting the permission of the board?
A. You mean is that possible?
Q. I guess, number one.
A. I guess he could if he wanted to. However, if his -- if the requirement says you are not to utilize your DEA, from the board's perspective, then the board would take action against him for violating the conditions of his license.
Q. So the issue is you just can't go behind the medical board's back.
A. Correct.
Q. In the 2006 hearing, do you recall that hearing?
A. Vaguely, I mean.
Q. You and Mr. Hendrix went over --
A. Yes.
Q. -- quite a bit of it this morning.
A. Yes.

Q. Do you recall discussions during that 2006 hearing that some of the board members were wanting the DEA surrender to be permanent?
A. I don't recall that definitely one way or the other. I'm sorry.
Q. Was there a concern that because of the term limits that if Dr. Mann came back a couple of years down the road the board makeup would have changed?
A. Yes.
Q. In fact, on page 44 of Government Exhibit 94-B, doesn't even Dr. Jacks state: "Is that a permanent --"
Mr. Trice responds: "Permanent."
"On the DEA?"
Mr. Trice responds: "Yes."
A. Yes.
Q. In fact, when the hearing started on that morning, that second morning of the hearing in July, I believe you and Mr. Hendrix were discussing the fact that a motion had been made or that Dr. Mann and his lawyer had come up with a possible consent order that could be entered into?
A. Correct.
Q. Even after that was brought up, didn't Dr. Pierce even question as to whether or not there was going to be an underlying agreement that the board would allow Dr. Mann to reapply for his DEA in the future, and Mr. Trice responded that

there was no underlying agreement?
A. Okay. Yes.
Q. So even early in that hearing, they were talking about the permanence of the DEA?
A. Yes.
Q. There was some discussion regarding the letter that was sent to Dr. Mann telling him he could appear for the June 2009 meeting. Do you recall that?
A. Yes.
Q. Was there any promise made in that letter that he was going to get his DEA back?
A. There would not be a promise at all. A lot can happen from one period of time to another.
Q. He was just being allowed to come ask for it?
A. Yes.
Q. You stated this morning that the 2006 hearing was contentious between Dr. Mann's lawyer and the board?
A. Dr. Mann's lawyer was not happy.
Q. In fact, on page 244 of Government Exhibit 94-A, Mr. Mann, who is Drake Mann, not Dr. Mann --
A. No relation.
Q. -- stated that his comments were based on Dr. Pierce's comments at the close of the last hearing.
A. Yes.
Q. In fact, it was before this hearing that the motion to

recuse had been filed. Correct?
A. Say that again.
Q. It was before the 2006 hearing that the motion to recuse had been filed.
A. Yes.
Q. And that is Government Exhibit 82-J2?
A. Yes.
Q. And this one is for which doctor?
A. Trent Pierce.
Q. Mr. Mann is the one that filed this. Correct?
A. Yes.
Q. Now, other than Dr. Jouett, there were no other motions to recuse filed in that case. Correct?
A. Not that I'm aware of.
Q. Now, Mr. Mann refers to Dr. Pierce by name in the hearing. Correct?
A. Yes.
Q. And he also refers to him by name in the motion to recuse. Correct?
A. Yes.
Q. But since the 2003 hearing, Dr. Mann has also referred to Dr. Pierce by name in correspondence with the board. Do you recall that?
A. In asking to appear, if it would not be -- I think the letter said something, if it would be -- if I would be taking

up, taking up Dr. Pierce's time -- it's in a letter that has already been presented.

MS. WHATLEY: Your Honor, may I approach?

THE COURT: You may.

BY MS. WHATLEY:

Q. Ms. Cryer, I'm handing you what's been marked for identification purposes as Government Exhibit 241. Is this a letter that was received by the Arkansas State Medical Board in 2004?

A. Yes.

Q. Is it redacted to take out patient names?

A. Yes.

Q. And who wrote this letter?

A. Dr. Randeep Mann.

Q. Who is it written to?

A. Dr. Ray Jouett.

Q. Was Dr. Jouett the chairman of the board at the time?

A. Yes.

MS. WHATLEY: Your Honor, I move for the introduction of Government Exhibit 241.

MR. HENDRIX: No objection.

THE COURT: It's received.

(Government's Exhibit 241 received in evidence.)

BY MS. WHATLEY:

Q. Just to put, make sure we're all on the same page, 2003 was

Dr. Mann's first hearing before the board. Correct?
A. Yes.
Q. Then 2006 was his next full hearing?
A. Yes.
Q. This letter was written September 22nd, 2004. Correct?
A. Yes.
Q. Can you read this second paragraph?
A. "At my hearing, a shocked and appalled medical board talked about my patients overdosing and dying. This was something which the board members, like Dr. Pierce, attributed to be a unique and" whatever "feature of my patient care. They had wanted me to be liable for a patient abusing medication despite my explicit instructions. The board then revoked my DEA to prescribe controlled substances for a duration of one year."
Q. I want to talk briefly about the 2009 investigation.
A. Okay.
Q. I think there was kind of a discussion about how this works. I want to make sure the jury understands how the investigation works. All complaints are not sent to the Arkansas Department of Health for a full investigation. Correct?
A. Correct.
Q. The new complaint that you received was?
A. Correct.
Q. Do you recall how you got that new complaint?

A. I received a telephone call from a lady by the name of Judy -- and I think her last name is Gerald, who said --
Q. Don't tell me what she said. But you got it from a family member?
A. She said she was a family member. I don't know that. But she said she was a family member, said it was her sister.
Q. Who was her sister?
A. RB, Rita.
Q. Rita Barthelme?
A. Yes.
Q. Did you receive more than one complaint regarding that patient?
A. I think I did. I think she has another sister, but I don't have her name. One of the sisters was complaining -- yes.
Q. So you received a number of complaints regarding this patient.
A. Yes, yes.
Q. I believe the testimony earlier was that on January 5th, 2009, you sent the request to Jim Myatt -- to Jerry Jones?
A. The official letter, yes.
Q. Then Jerry Jones is the one that assigns it out?
A. Yes.
Q. The next thing that we saw was the February 18th, 2009, subpoena?
A. Correct.

Q. Are there things that happened between your letter and the subpoena?
A. There were things that -- yes. And there are things that happen even before the official letter is written oftentimes.
Q. Was there anything that happened in this case before the official letter was written?
A. Yes.
Q. What was that?
A. It would have been for -- the complainant gave me the name of two people. That happened to be the children of RB. And she indicated that Dr. Mann was writing prescriptions in the name of the two children for Rita. And so before that, what I would have done is to contact Jerry Jones to see if, in fact, he would do an audit of pharmacies in that area to see if there were, in fact, any prescriptions.
Q. So before the subpoena to Dr. Mann is issued, pharmacies are already contacted?
A. Yes.
Q. Is the complainant talked to, the sisters?
A. I don't know whether they would have been contacted prior to that or not. They called me. Then I, in turn, called Mr. Jones.
Q. That information is given to Mr. Jones?
A. Yes.
Q. Then the Department of Health can do what they want at that

point in time?
A. Yes, yes.
Q. So that 2009 investigation, there were other people besides just you that knew about it?
A. Yes.
Q. So other people had the ability to get the information out there?
A. Yes.
Q. Something I forgot to do when we were talking about the DEA earlier, without a DEA, can a doctor do anything with controlled drugs?
A. No, not legally.
Q. I'm going to go back to just an exhibit that was introduced two weeks ago, I think, by the defense. I think it's Defendant Exhibit No. 3, the winter 2009 newsletter.
A. Okay.
Q. Is this a newsletter that's issued by the Arkansas State Medical Board?
A. Yes.
Q. On page 2 of that newsletter, does it set forth the 2009 meeting dates for the board?
A. Yes, yes.
Q. Does it also set forth the PA advisory committee meeting dates for the board?
A. Yes.

MS. WHATLEY: Your Honor, may I have a moment?

THE COURT: You may.

MS. WHATLEY: No further questions.

MR. HENDRIX: Nothing further.

THE COURT: Ms. Cryer, you can stand down. We'll take our break then. Let's recess until 1:30.

(Recess at 12:30 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Elaine Hinson, RMR, CRR, CCR Date: March 17, 2010.
United States Court Reporter

(Continuing at 1:37 p.m., jury not present.)

THE COURT: Mr. Gordon?

MR. GORDON: Thank you, your Honor.

This morning at nine o'clock, we were given transcripts of 20 phone calls the defense intends to offer into evidence, I'm presuming under Rule 106, the rule of optional completeness. That rule requires that they need to make a demonstration of how would they intend to introduce, clarify something that the United States Government introduced in a previous record. And we'd ask that the Court require them to make that demonstration. Then, depending on their response, we may have additional objections.

MR. HENDRIX: Actually, Judge, if I remember right, 106 was our objection to them using their selected portions, and I think the Court's ruling was, well, then you guys get to use your selected portions.

Here's what I expect today, Judge, and let me give you this update: We're going to run out of witnesses here in a minute. Well, in a minute, that would be a bit of an exaggeration, but -- and one of the issues, we're going to have a witness on the witness stand that is a party to about four or five of these calls, so I think that's a no -- that should take care of the government's objection.

MR. GORDON: It doesn't.

MR. HENDRIX: The remainder of the calls, I guess

we'll just have to figure out, how is a way to do it? These are the government phone calls, the same calls they provided us. The trick in the deal, Judge, is, if you remember the testimony, how screwed up the phone calls are from Pulaski County. They're difficult to cross-reference. They give you this long, strange number, and you have to then try to go to some other document and try to figure out the date of the thing. I mean, we're back where we were, frankly.

THE COURT: Let me ask this question: I think when the government wanted to introduce the selected portions, the government wanted to do it for time efficiency. They said they're just long and it would take all afternoon to listen to the phone calls, and they wanted to get certain points. And what they were trying to show would be buried in these phone calls. The defense at that point said, no, it would be better to play the whole phone calls.

I do think I told them that, no, normally the way this would work, you play the portions you want to play, you play the portions you want to play, and we don't have to sit here all day and listen to them. What is the objection to the defense putting in the entire phone call instead of selected portions?

MR. GORDON: First of all, they're introducing hearsay statements of both defendants. That's the first objection. And they haven't met their burden under 106. We are entitled to put in what we want to because it's not hearsay, and what Rule 106

allows -- Rule 106 is pretty much a rule to keep us honest, and what it allows the defense to do is to say, okay, if the government puts in evidence that is not complete or it's misleading, you can then come back and ask for additional portions.

THE COURT: Okay. Now, and I'm not going to go through the testimony contained in those phone calls, but will any -- will what you're trying to put into the record or introduce -- and I guess it's already introduced; right?

MR. HENDRIX: See, I don't think so.

THE COURT: You didn't introduce the entire phone calls. You just introduced those portions.

MR. GORDON: Correct.

THE COURT: Will any part of what you want to play to the jury, Mr. Hendrix, explain more fully the exact phone calls that were played by the government? And if so, how?

MR. HENDRIX: Sure.

THE COURT: Because if you have five seconds of, you know, F, and I don't want to say the words, I'm such a this, but then you have ten minutes of, well, you know I didn't do it and you know -- and just explaining how I'm innocent.

MR. HENDRIX: Right.

THE COURT: Then that whole portion just sitting there talking. Because you can always have a prisoner get on the phone saying something that's legitimate in five seconds -- not

legitimate, but saying something for five seconds about the event and then going on for ten minutes talking about what I didn't do. And you would end up with a situation where you never could use the portion where he's talking about the actual event because you would have to use all of this other stuff telling what he didn't do.

MR. HENDRIX: Right.

THE COURT: So how does what you're going to get into specifically address what the government has put into the record?

MR. HENDRIX: Let me give you the best example of it. If you remember, they introduced a recording and did a snippet of it and it ended -- and I forget the exact word, it wasn't destroy, but it was something like that, but it cut off and it gave the inference, go destroy evidence. The remainder of that call is go sell the house, go sell the cars, go sell this, we've got to liquidate. So they left it -- under the rule of completeness, they left it with an incredibly false impression. So it's definitely necessary, it seems to me, to be able to play that to correct the false and misleading evidence that the government gave to the jury.

THE COURT: I think that would be appropriate, if you have where he says dispose of this, and then the government stopped and then there's also a string of stuff that he needs to get rid of that has nothing to do with what the government wants

to play for the jury.

MR. GORDON: I agree. However, I disagree with his summary of what the rest of the call is. And there are 20 calls here. And there's a lot of the self-serving denials of criminal liability and all sorts of stuff throughout these 20 calls, and that's why -- I mean, we asked for this stuff weeks ago and we get it this morning at nine o'clock, and we went through all 20 at lunch, but I'd like to go call by call and have the defense tell us exactly what they're clarifying.

THE COURT: Let's do this. Okay. Were you going to put these in through a specific witness? Or you wanted to just make -- complete your record by explaining to the jury that --

MR. HENDRIX: With all due respect, I didn't think the government would take this position since it got to play its little snippets, so I'm a little bit surprised by the position the government is taking. I was going to say, hey, government, do you mind that I just push the play button so we can play the snippets like you did. Apparently they're going to object to that there are a handful this afternoon that Sarina Mann is a party to, so she can listen to them and comment and explain what those things mean. Now, there's a separate issue of the ones that we think are important that address the other specific issues in the case, for instance, the USAS, you know, he talks about that, and he talks about the RPD and sort of explains that the government has presented some proof of that, but not the

complete --

THE COURT: Let me do this: You have Sarina Mann this afternoon?

MR. HENDRIX: Yes.

THE COURT: And who else do you have?

MR. HENDRIX: Pete Patel.

THE COURT: He will not introduce any phone calls, will he?

MR. HENDRIX: Patel? No, sir.

THE COURT: Okay. Let's do this. The ones that Sarina Mann is a -- do you have any objection to the ones that she is so she can explain what they were talking about? Were those any of the ones that you introduced?

MR. GORDON: No, sir.

THE COURT: I don't think she can do that. In fact, I'm almost certain she can't. Without me looking at the rule, what would be the exception to the hearsay rule that would allow her to come in here and play telephone calls between her and either of the defendants and get it into evidence?

MR. HENDRIX: And here's what it is, Judge: The government has presented this evidence that an e-mail was sent in February of '08 from either Mr. or Mrs. Mann -- Dr. or Mrs. Mann to India that had the pictures of Drs. Jouett and Pierce on it. And so it's left out there, and, in fact, I think David Oliver said it was suspicious, it was like he wanted to

have a hit out on somebody. This goes to explain why this e-mail was sent.

THE COURT: You can ask about that without entering a telephone call into the record. She can explain that. Well, this is why this happened, I know it was.

MR. HENDRIX: Okay. I see where you're going, and if the government attacks her then credibility on that, then, of course, those are the prior consistent statements that we can introduce. Okay.

THE COURT: Do you understand that, Mr. Gordon? You have attacked the fact of these pictures, and if she knows that those pictures were not meant to send a picture to somebody to put out a hit on Dr. Pierce, then wouldn't she be able to come in and say, no, no, I know what these pictures were about. They were not about that. I was involved in this.

Now, if it was a situation, Mr. Hendrix, where she sent the picture -- Dr. Mann is accused of having sent the picture to someone in India and then told her, well, I sent it to India because I wanted him to know this, she can't come in here and testify that that's what he told her. That's hearsay.

MR. HENDRIX: She's not my witness, but I don't think that's what it is.

THE COURT: She can't testify as to Dr. Mann's reasons for sending the pictures to India.

MR. HENDRIX: If she knows, she can.

THE COURT: If she was involved in the whole conversation. But she can't tell third-hand information, give third-hand information as to why he did it.

MR. HENDRIX: And I might get Ms. Couch to address this with you better. She is handling the witness, and I'm not entirely sure what she is going to say.

THE COURT: What would be the good faith exception to her coming in and testifying as to why Dr. Mann did something?

MS. CASSINELLI COUCH: I'm walking in in the middle of this.

I think that what Sarina is going to testify to is generally traditions and customs and things that have happened in the past at their home and with their family. She is not going to get specific about what somebody told her they did with a specific item.

As far as the phone calls, I think she is in some of the phone calls discussing some of those traditions.

MR. HENDRIX: So I guess --

THE COURT: She can testify -- see, I don't know what she's going to say, so it's hard for me to sit here right now and either exclude it or say -- but she can't come in here and just give rank hearsay.

MR. HENDRIX: No.

THE COURT: And say, well, I talked to Dr. Mann and I know he sent this picture off because he told me he sent it off

for this reason. She can't do that.

MR. HENDRIX: Here's what I think it is. It's more the question would be, do you know why a picture would be sent to India? Yes, because it's a part of our customs and our habits. And I forget what rule it is, it's 604 or something, one of the witness rules talks about the introduction of habit evidence, and so it would be as part of the customs, as part of our religion, we have prayers, we have prayers for people that we are in conflict with, and that's part of the habit and the practice of our religion.

THE COURT: Here, Mr. Gordon, right now let me say this: My name showed up on a prayer circle ring that the ATF -- somebody sent it to me, and they said that what it indicated was that they were praying for me. Now, why would it be objectionable for them to explain that this is what we do? We sent this picture over there so that they could pray that Dr. Pierce and Dr. Jouett would have a change of heart?

MR. GORDON: First of all, it's speculation. We don't know why it was sent over. They didn't send a picture of you over to India. They didn't send one of me to India. They didn't send one of David Oliver to India.

THE COURT: You don't know if they sent one over to India. There might be one of you over there right now.

MR. GORDON: That's heart warming.

MR. HENDRIX: Yeah, that's exactly the point because

that's exactly the inference that the government is making. They sent this picture over there to do damage. And so we have --

THE COURT: Wait a minute. There's no question -- and this is something we need to take care of. There's no question that David Oliver's testimony was that this picture was sent to India, which would give anybody who is sitting here looking at it the impression that it's not being sent over there for a good reason; it's being sent over there for a bad reason.

Now, the question is, how do you explain it? Now, you say you want somebody that's going to come in and explain the custom of prayer circles and what we do. So you want to give the opposite inference, but we don't know unless you have a witness who can testify that that's the reason I sent this e-mail. I don't think she can testify that that's the reason why Dr. Mann sent this e-mail, even though she might have talked to him and he said he sent it for that purpose. I don't think she can come in here because of our hearsay rules and say that's the reason he sent it.

MS. CASSINELLI COUCH: Okay.

THE COURT: In that way, she would be testifying for Dr. Mann, and you would have him testifying without testifying, and I don't know that you can do that.

MS. CASSINELLI COUCH: Okay. First of all, I don't know where this all came up, but nobody is going to be

testifying that Dr. Mann told them anything. So I don't know if that was said before. That's not the case. Dr. Mann obviously has the right not to testify, and the government has said this is speculative, but, of course, that is also what the government is presenting is speculative evidence and asking for an inference. And David Oliver's testimony was there was this picture, and even over objection, he said that I believed was sent to target someone. That is in the record.

THE COURT: He said that. He said that.

MS. CASSINELLI COUCH: So we have the right to present evidence of customs that would be consistent with sending a picture over.

THE COURT: How would the testimony go? Would you ask her why would somebody send this picture?

MS. CASSINELLI COUCH: No.

THE COURT: Or would you ask generally in any custom, you know, if you have a conflict with somebody, what do you do?

MS. CASSINELLI COUCH: It is much broader than we're talking right now.

THE COURT: And you're not going to define it down to this picture?

MS. CASSINELLI COUCH: No.

THE COURT: You want to throw the opposite out there, that it must be why this picture was sent to this other person.

MS. CASSINELLI COUCH: That's the evidence that we

have to present. The defendant has a right not to testify.

THE COURT: You want to fight inference with inference.

MS. CASSINELLI COUCH: But, no, I'm not going to ask why was this photograph sent. I'm going to ask her if other photographs have been provided for other purposes.

THE COURT: The objection is overruled. And your objection initially was to the telephone conversations. You're not going to try to get her telephone conversations with Dr. Mann admitted?

MS. CASSINELLI COUCH: Well, I mean, I was, and I don't really -- of course, again, I missed the beginning of this, but I don't understand what the argument is.

THE COURT: Hearsay. He is saying it's hearsay to bring in Dr. Mann's telephone conversations with her.

MS. CASSINELLI COUCH: Okay. Now, wait a minute. Did we not hear hours of phone conversations with -- she's in the phone call.

MR. HENDRIX: Right. But the government is still making a hearsay -- where we left that is, she testifies to the habit and the custom and the practice. If the government attacks her credibility on it, then the tapes come in as prior consistent statements.

MS. CASSINELLI COUCH: I think y'all are mixing apples and oranges here.

THE COURT: You can't be a party to litigation and put somebody else on, whether it's civil or criminal, and put somebody else on the stand with a phone call to your client and have that person talk. The opposite party can because they're the opposite party. It's a statement of a party opponent. It's not hearsay.

MS. CASSINELLI COUCH: Right.

THE COURT: But the difference is, I can't in a lawsuit have somebody else testify for me without me testifying. It's hearsay. That's what makes this different than what the government did.

MS. CASSINELLI COUCH: I think because she is in the phone calls, and we've had a lot of testimony about what was in the phone calls that third parties have testified to. So if she can introduce it as to, this is me.

THE COURT: She can't testify for Dr. Mann, though. She can testify I told Dr. Mann this and I told him that, but she can't put on a phone call between her and Dr. Mann and get that in evidence. He could have talked to 20 different people and say I didn't do it, and then you put on the phone call and have him on there testifying. You can't do that. That's hearsay. There's no Rule of Evidence that would allow that in.

MS. CASSINELLI COUCH: Well, I respectfully don't see how the government got a whole bunch of phone calls in with random people. I understand the party opponent on the phone

issue.

THE COURT: Who were the random people?

MS. CASSINELLI COUCH: There were all kinds of people, what people said, and if we had --

THE COURT: But you said -- all the phone calls were Dr. Mann. They're not random people. They're the defendants. They're party opponents to the government.

MS. CASSINELLI COUCH: But they're talking about what other people are doing and saying. How about the outer parts of the conversations that the government admitted? Where are we on that?

THE COURT: What outer parts?

MS. CASSINELLI COUCH: If they admitted the middle of a conversation and we feel like that the second half of that is relevant --

THE COURT: We haven't gotten to that yet. We haven't gotten to that yet. With regard to those, this is what I want to do is, you put on your two witnesses, we take that testimony. Then what we can do is sit in here, let the jury go, we will go through those phone calls, and we will get it lined up what we're going to let the jury listen to. Because if it turns out that the government played phone calls up to a point there's other relevant information that would put it in context, we're going to play that other testimony. Not the testimony, those other statements. I'm not, however, going to allow there to be

testifying, you know, offering these phone calls to supplant the testimony. I can't do that.

MS. CASSINELLI COUCH: On her, that's fine. She will testify about it, so --

THE COURT: She can testify as to her custom and what they do.

MR. HENDRIX: And once we get to the break, we'll work through the process on the remainder and see how we come out.

MS. CASSINELLI COUCH: I would like to talk to her about talking with her parents about these things, that this continues through this trial.

THE COURT: But she can't go talk to her parents and then come in here and testify about what they're telling her, what they're doing.

MS. CASSINELLI COUCH: Well, and I'm not suggesting that she is going to say they told me this and they told me this. It's more, yes, we've discussed these things throughout this whole process. When things are difficult in life, these are the kind of things religiously that we do. And, yes, we discuss it on the phone, and I communicated from the family what the good day was based on astrology or -- do you see what I'm saying?

MR. HENDRIX: I'm not hearing any hearsay in that. I had a conversation.

MS. CASSINELLI COUCH: That's the phone --

THE COURT: And, Mr. Gordon, we're going to put her on, and you object where you think she is getting into hearsay.

MR. GORDON: I will.

THE COURT: I am going to let her explain their customs, and we'll have to play it piece by piece, so to speak, to determine what parts of this we exclude and what parts we don't.

MR. GORDON: Your Honor, I do have one other issue on a different witness.

I was given two documents this morning that I believe the defense will try to introduce through Pete Patel. One is a receipt from a Nissan dealership, it looks like, and the other is -- honestly, I can't tell what it is because there's no -- it doesn't say who it is from.

MR. LASSITER: Second page at the bottom, it says Home Depot.

MR. GORDON: Says what?

MR. LASSITER: Home Depot.

MR. GORDON: Okay. I guess the second one appears to be a Home Depot receipt. There's no certification of authenticity attached to either of these, and if they attempt to -- I would ask the Court to direct them not to attempt to introduce them through Mr. Patel because, once again, they are straight-up hearsay.

THE COURT: What is the response to these being

hearsay documents?

MR. LASSITER: Mr. Patel can identify those documents as follows: One is a customer copy from a Nissan dealership in Memphis showing the sale of a wheel on which a tire was mounted in August of '03 consistent with his daughter's testimony that if she had a flat which she got -- at which time they replaced the donut spare tire with a full tire. He can identify that as a copy of the receipt.

The other document was retrieved by Home Depot recently at his request. He'll testify he went there, they pulled those records. What he asked them to do was to pull transaction records so he could identify certain material he bought to remodel the attic in his house. His daughter testified that that was back in '06 and '07. Phillip Barthelme testified that when he was in Memphis, that Mr. Patel showed him the attic and asked him about Sheetrocking it.

THE COURT: The question is not what the documents are. The question is, why are they not hearsay? They're out-of-court statements offered for the truth of the matter asserted. Now, as you know, receipts and all of those things are hearsay. Now, what -- how do you overcome the hearsay exception with that when you don't have a certified copy? Unlike the Lowe's man who came here from Lowe's and testified and verified the documents and the whatever, the video and all that. We don't have anybody from Home Depot or Nissan here to

verify that those documents are accurate. How do you overcome that assumption?

MR. LASSITER: I think he can -- the Nissan document is different than the Home Depot document in that he can say that that was their customer copy that they would have received at the time from that dealer.

THE COURT: What's your response, Mr. Gordon?

MR. GORDON: Your Honor, that does not overcome the rule against hearsay.

THE COURT: I think that's true. I'm going to exclude the documents. He can testify as to having gone and he can give the testimony about where he bought them, but those documents can't come into the record.

MR. LASSITER: I would ask him if he has looked at documents that refresh his memory as to when these things occurred.

THE COURT: Now, why would you be asking that when he already -- well, you can. I'll let you ask him has he looked at receipts and whatnot, but the truth is that unless he says he hasn't refreshed his recollection, you can't walk up, hand him a receipt, and have him look at it. And I'm sure he's not going to come in here and say, "I don't remember."

MR. LASSITER: No, he won't.

THE COURT: I imagine he's going to say, yeah, I remember and I bought it and this is what I did. You can't walk

up to him and kind of hand him the receipt and refresh his recollection.

MR. LASSITER: I understand, your Honor.

THE COURT: The testimony itself is not hearsay, but the actual document because it's an out-of-court document that's offered for the truth of the matter asserted, it's hearsay. There are ways to get it in, it's just very difficult, and it's very difficult to get somebody from Nissan or Home Depot to come over here, and I guess you could certify a copy from them, but then you have to go through all of this rigmarole to get it.

What else do we have?

MS. CASSINELLI COUCH: We've been working on that and we're still working on that.

THE COURT: I understand. If you come up with it before the end of the trial, we'll let you offer it.

What else do we have?

MR. GORDON: That's all, your Honor.

THE COURT: We can bring the jury in.

MR. HENDRIX: Of course, Judge, I presume that presumes that if the government were to try the old prosecutor tactic, you ain't got no documents to back up what you're saying, do you, we would be able to produce the documents, wouldn't we?

THE COURT: I would imagine Mr. Gordon will not do that, he will not ask that.

MR. HENDRIX: I said old prosecutor trait.

(Jury entered the courtroom.)

THE COURT: Call your next.

MR. LASSITER: Pete Patel.

THE COURT: Ladies and gentlemen, I'm sorry to keep you waiting back there, but we had some matters we needed to take up in here, and I forgot I had a hearing at one o'clock that didn't end until right at one-thirty, so it ended up taking a little longer than we thought.

PRAMUDHBHAI "PETE" PATEL, DEFENDANTS' WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. LASSITER:

Q. Mr. Patel, would you state your name for the jury, please, sir.

A. Pramudhbhai Patel.

Q. And would you spell your first name for the court reporter.

A. It's P-r-a-m-u-d-h-b-h-a-i.

Q. And do you go by Pete?

A. I do go by Pete.

Q. And where do you live?

A. 8720 Somerset Lane, Germantown, Tennessee, 38138.

Q. Do you know Dr. Randeep Mann?

A. Yes, I do.

Q. Let me just ask you, in early '09 or late '08, did you give a spare tire to Dr. Mann?

A. No.
Q. Do you recall ever giving a spare tire to Dr. Mann?
A. No, never.
Q. Do you think you'd remember that?
A. Yes, I would.
Q. I'm going to ask you a few questions about your background. Where did you grow up?
A. I grew up in Zimbabwe, in Africa.
Q. And when did you come to this country?
A. In '76, 1976.
Q. By the way, do you speak Hindi?
A. No.
Q. Or Hindu, as I think somebody said earlier in this case. Do you speak that?
A. No.
Q. And where did you get your college degree?
A. At the University of Tennessee, in Knoxville.
Q. And what was your degree in?
A. Accounting, and then I got a second degree in economics, bachelor of arts.
Q. Do you have any graduate work?
A. Yes. Then I moved to Oklahoma and I got an MBA degree.
Q. And are you married?
A. Yes.
Q. And how many kids do you have?

A. Two.
Q. And what are their names?
A. Priya and Jayche.
Q. And I think Priya was here last week; is that correct?
A. Yes.
Q. And how long have you known Dr. Mann?
A. Since about '93, I think.
Q. Did he at one point in time before he moved to Russellville live fairly close to you?
A. Yeah, on -- it was, like, around the corner, sort of.
Q. You're motioning with your hand. Within a couple blocks of your house?
A. Yeah.
Q. And what kind of business are you in?
A. In the hotel business. Hotel-motel.
Q. Okay. And do you own hotels or motels?
A. Yeah, I've got partnership with my brother and several other partners, too.
Q. Do you have different partnership agreements for different hotels?
A. Yes.
Q. Different investors?
A. Yeah. Each hotels are different entity.
Q. And does Dr. Mann have an interest in any of those hotel partnerships?

A. Yes.
Q. How many? Do you recall?
A. Well, right now, he's just got in the Lakeland property and the Motel 6, but we had, like, other motels, but we've still got the -- we sold the motel and -- well, one we sold, two we lost the motels, but we've still got the entity. We're trying to dissolve them now.
Q. And a couple of those hotels are still in business, the partnership is still active; is that correct?
A. Yes.
Q. In 2002, did you buy an Altima?
A. Yes.
Q. And do you remember when the ATF agents came out and searched that vehicle?
A. Yes.
Q. And was that a white Altima?
A. Yes.
Q. And when you initially purchased that car, who in your family used that for the first few years?
A. My daughter. Well, we mainly bought it for her.
Q. Was she in college at that time?
A. She was -- I think she was finishing high school and going into college, that fall. I think around that time, we bought it for her.
Q. Where did she go to college? Did she go out of state?

A. Yeah, she went to -- in St. Louis, at the St. Louis College of Pharmacy.
Q. And how many years was she there?
A. I think one and a half years, maybe two years. I'm not exactly sure.
Q. And do you recall if there was an occasion where she had a flat tire on a trip back to St. Louis?
A. Yes.
Q. And did she continue on or did she return to Memphis?
A. No, she came back.
Q. At that time did you do anything about the spare tire in the Altima?
A. Like, well, what she -- well, she had the flat on the way to St. Louis. Then she drove back on the spare, and I think then we decided to change that because she couldn't drive further because the state trooper told her it's not safe to drive, you know, all the way to St. Louis. So I decided to change it into a real full-sized tire. And that's when I think we did it.
Q. Okay. Did you have to buy a rim or a wheel to support a full-sized tire?
A. Yes, yes.
Q. And do you know when that was?
A. I think it was in '03, around August or so.
Q. Did you check some records to see when it was?

A. Yeah. I checked it over the weekend.
Q. Did you find a record that was your copy of -- your receipt for that purchase?
A. Yes.
Q. Do you know what happened to the donut tire?
A. Well, at that time I think I bought two tires. One was to change out that blown flat tire that she had, and one was to go onto the spare. So we bought the rim, I think, from Dobbs, and they put one tire on it to make it a spare. And one was on the original car, on the --
Q. Do you know where the donut tire that came with the car, do you know if it stayed at Dobbs or something else --
A. I don't know. It might have gone back to Dobbs because they're the ones that changed the tire for us.
Q. In any event, let me ask you again, did you ever give that donut tire to Dr. Mann?
A. No.
Q. You have a warehouse?
A. Yes.
Q. And is that a personal warehouse or your business warehouse, or do you use it for a little bit of both?
A. It's a business warehouse, but we use it for -- upstairs we have offices, you know, like few offices, and downstairs is like a warehouse, storage area for the hotels.
Q. I think there was a picture that was introduced previously

in this trial of some tires in your warehouse?
A. Uh-huh.
Q. And why were those tires in there?
A. They probably belong to -- well, we got -- we've got shuttle vans, you know, for the hotels. We've got a maintenance van and we've got trailers and that, too, that go on the maintenance van. It could be for all those. I don't know exactly what they're for, exactly where they go.
Q. Do you remember the last time that you saw Dr. Mann in Memphis?
A. I've been -- it's been probably, like, 2008, end of 2008.
Q. Was there anybody with him?
A. Yeah, Sue. Sue came, his wife.
Q. Was there an individual by the name of Phil with him?
A. No.
Q. How long have you lived at your current residence?
A. Since '93.
Q. And at some point in time, did you remodel the attic?
A. Yes.
Q. And tell the jury what you did with that space. What was the remodeling you did with the space?
A. What it's used for. I mean, I don't --
Q. Did you put solar panels in it or Sheetrock? Tell them what you did.
A. Oh, okay. Well, the space is above the garage. That's the

attic. It's got one window that faces the north side, you know, just a small window. So what we did was, it was unfinished, and so we decided to insulate it, Sheetrock it, close it up and make it into a closet, sort of.

Q. Do you know what year or years you did that?

A. It was done in 2006.

Q. And did you go back and look at some records?

A. Yes.

Q. All right. And did you buy some -- did you buy the material for the remodeling?

A. Yes.

Q. Did you buy some Sheetrock?

A. Yes.

Q. Maybe some studs?

A. Well, I bought Sheetrock studs and insulation. And we bought, you know, electrical stuff in that, too.

Q. And after the remodeling project was finished in the attic, did you do any other remodeling up there in later '09?

A. No.

Q. So I understand your testimony, that remodeling project was completed in what year?

A. In 2006. It might have gone on to maybe 2007, you know, like early part of it.

Q. Was there a time that Dr. Mann came to Memphis with some -- with someone with him, a worker?

A. Yes.
Q. And was that in '08 or '09?
A. No. It had to have been before we did the remodeling.
Q. And did that individual do some work at one of the hotels?
A. Yes.
Q. Which hotel or motel did he work at, and what work did do?
A. He did it at the Days Inn and at Austin Peay. He did -- well, this is according to the manager that I found out. He remodeled one of them, he put plaster in that room.
Q. Did you have some rooms at the hotel that needed to be worked on?
A. Yeah, they constantly do.
Q. And did -- was he assigned to one of those rooms?
A. Yeah.
Q. About how long was he there? Do you know?
A. I think not even a week.
Q. All right. Did he do a very good job?
A. No.
Q. And that's the only work he did for you?
A. Yeah.

MR. LASSITER: May I have just a second, your Honor.

THE COURT: You may.

MR. LASSITER: Thank you, Judge. I pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. GORDON:

Q. Good afternoon, Mr. Patel.

A. Good afternoon.

Q. How long have you been business partners with Dr. Mann?

A. I think since '95.

Q. And is it only in the hotel business that y'all are partners?

A. Like --

Q. Do you have any additional business agreements or business adventures that you all share, other than hotels?

A. No, just hotels.

Q. And you said currently Dr. Mann only has an interest in two hotels; is that correct?

A. Yeah. I think -- that are operating.

Q. Okay. Do you remember testifying in front of the grand jury in this case back in July of 2009?

A. Yes.

Q. Do you remember when you testified in front of the grand jury --

MR. HENDRIX: Your Honor, I'm sorry. Can we approach real quick?

THE COURT: Yes.

[Bench conference reported as follows:]

MR. HENDRIX: I was just going to ask the government for access to the grand jury transcript. We've not been given

it, and if he's going to cross-examine with it, we'd like a copy.

THE COURT: Do you have a copy?

MR. GORDON: I have one copy that I'm working off of. That's it.

THE COURT: Can you cross him and then let them take a look at the portion you're dealing with?

MR. GORDON: Sure.

MR. HENDRIX: Great. Thanks.

THE COURT: How much time are you going to need before you do your redirect? You're probably going to need a couple seconds to look at it.

MR. HENDRIX: How long is it?

MR. GORDON: It's, like, 40 pages. I don't anticipate whacking him with anything on it.

MR. HENDRIX: Okay.

MR. GORDON: When he was in the grand jury, he wrote out a list of all the hotels that Dr. Mann had an interest in, and apparently it's gone from six or seven down to two, so I'm going to go over what he used to have an interest in.

MR. HENDRIX: And so, yeah, when Mike's done, we'll see --

THE COURT: If you need a few minutes, just let me know.

MR. HENDRIX: Thanks.

[Continuing in open court:]

BY MR. GORDON:

Q. Mr. Patel, do you recall when you testified in front of the grand jury writing out a list of the hotels that Dr. Mann had an interest in?

A. Yes.

Q. I want to go through that with you.

A. Okay.

Q. The first one you listed was the Days Inn in Lakeland?

A. Yes.

Q. And that Dr. Mann had a 31 percent interest in that hotel?

A. Yes.

Q. And there was a Motel 6?

A. Uh-huh.

Q. That Dr. Mann had a 4.75 percent interest?

A. Right.

Q. And there's one here, Marion Lodging?

A. Yes.

Q. That Dr. Mann had a 10 percent interest?

A. Yeah. That's -- it's just an entity right now. It's no longer a hotel.

Q. Okay. What happened to the hotel?

A. It got sold.

Q. When was that?

A. I think 2002 or '3, in that time.

Q. And then there's the Lamar Lodge?
A. Yeah, Lamar Lodging. That was the Econolodge.
Q. And Dr. Mann had a 10 percent interest in that?
A. Yeah. That was -- that hotel we lost also, around that same time.
Q. Lost in a good way or a bad way?
A. Bad way, to the bank.
Q. Foreclosed?
A. Foreclosed.
Q. Then there's a Quality Inn; is that correct?
A. Yes.
Q. And Dr. Mann had a 10 percent interest in that hotel as well?
A. Well, he doesn't actually have a 10 percent interest. It's his brother that has a 10 percent interest.
Q. Which brother?
A. Sandip.
Q. And how about the Days Inn on Austin Peay?
A. Yes.
Q. Okay. Dr. Mann had a 10 percent interest in that hotel as well?
A. Yes, but that also got foreclosed.
Q. Have I missed any?
A. Marion -- I'm just trying to picture the hotels, the locations. No. I think that's it.

Q. And because of your business relationship with Dr. Mann, is it fair to say that you guys sometimes exchanged large amounts of money?
A. Like, what do you mean exchange?
Q. Like he'll write you a check or wire you money for a large amount?
A. Maybe as a loan.
Q. As a loan?
A. Yeah.
Q. In addition to being business partners, are you and Dr. Mann also friends?
A. Yes.
Q. He's been to your house? You've been to his house?
A. I've been to his house maybe once, twice, max. I think once only.
Q. In Russellville?
A. That I can remember, yes.
Q. In Russellville?
A. Yes.
Q. But, again, y'all lived in the same neighborhood in Germantown; correct?
A. Yes.
Q. Your wives know each other?
A. Wives know each other, like what --
Q. Like Mrs. Mann knows your wife, Alka?

A. Yes.
Q. Y'all are friends?
A. Yes.
Q. In addition to being business partners with Dr. Mann, you already mentioned that you were also business partners with Dr. Mann's brother Sandip; correct?
A. Yes.
Q. How many hotels does he have an interest in?
A. Right now he's bought into the Motel 6.
Q. How much?
A. 4 percent. On the Quality Inn, that's 2000 Lodging, 10 percent. And on the Apex Financial, 48 percent.
Q. And then I believe you were also a business partner with Dr. Mann's son Kundan?
A. Yes.
Q. And people know him as Dan; correct?
A. Yes.
Q. Tell us about your business partnerships with him.
A. He's a partner in the Motel 6. He's got 9.5 percent. And we've got some land together that's -- he's got 40 percent in it, that he bought out some other partners. That's how he became a partner recently.
Q. And not only is Dan a partner, but he used to work at the Days Inn on Austin Peay; correct?
A. Well, work? He was there, like, for training.

Q. Okay.
A. He wanted to train, learn the motel business.
Q. So --
A. But he wasn't paid.
Q. So if you don't call that work, what do you call it?
A. Apprenticeship.
Q. Okay. He was an apprentice in your hotel?
A. Yes.
Q. And that started in the summer of 2007; correct?
A. I'm not sure on the exact date.
Q. And do you recall when Dan graduated college, he came and continued his apprenticeship at the hotel in Memphis; correct?
A. Yes, probably.
Q. He continued to work there in Memphis at your hotel until his father was arrested; isn't that correct?
A. I don't know exact timeline on that, when he was arrested and that.
Q. Okay.
A. I don't know if he was still working, you know, then, because he used to go on vacation and stuff like that, so we don't know whether he was there or not.
Q. If Dr. Mann was arrested on March 4 of 2009, can you tell this jury that Dan was working at your hotel in Memphis up until that date?
A. No, I can't because I don't know.

Q. Do you recall telling ATF that Dan Mann worked at your hotel at least through February of 2009?
A. I don't remember, but maybe he was.
Q. Now, you testified that you were born in Zimbabwe; correct?
A. Yes.
Q. How long did you live there?
A. Well, I was born and then I moved to the States in '76, so I was close to 20. 19, 20.
Q. Do you speak Punjabi?
A. No.
Q. You were asked if you bought an Altima back in 2002 and you said yes; correct?
A. Yes.
Q. Isn't it more accurate to say you bought three in 2002?
A. Yes. Well --
Q. Two for you, and then you and your brother shared one?
A. Yeah. Well, we bought three together. One was under my name, one was under my brother's name, and one I shared, yes, with my nephew.
Q. And then the white Altima is the one that your daughter used; correct?
A. Yes.
Q. And eventually it became your wife's car; correct?
A. Yes.
Q. When did it become your wife's car?

A. After Priya moved back to Memphis, so probably 2004. 2005.
Q. And I believe it's -- you told this jury when the donut spare tire was replaced on that Altima, you don't know what happened to it, do you?
A. No.
Q. Okay. That's what you told the grand jury, too; correct?
A. Yes.
Q. And that's what you told the ATF as well; correct?
A. Yes.
Q. And sitting there today, you still don't know what happened to that tire?
A. No. I'm just trying to picture what could have happened.
Q. Do you recall during the search warrant at your house when ATF came and searched the white Altima telling them that the spare tire might be in your warehouse?
A. Yes.
Q. Okay. And do you remember them also talking to your wife, ATF talking to your wife?
A. Yes.
Q. And ATF looked where she told them where she thought the tire might be; correct?
A. I'm not sure on that.
Q. And then they went to the warehouse based upon what you said.
A. Yes.

Q. And what you told ATF was that you thought the tire might have been moved to the warehouse when you moved some lacrosse equipment and other stuff?
A. Yes, because we were cleaning up.
Q. And then ATF went with you to the warehouse; correct?
A. Yes.
Q. And in the warehouse, they found all the other stuff that you said had been moved to the warehouse; correct?
A. Yeah, all over the warehouse.
Q. But not the spare tire?
A. No.
Q. And there were other spare tires in there?
A. Yes.
Q. Mr. Patel, if you would, look at your screen there.
A. Okay.
Q. And in a moment, Government's Exhibit 189-I is going to pop up. Do you see a picture there?
A. Yes.
Q. Okay. I'm going to give you a little bit to look at the picture. When you think you've had enough time, tell us if you recognize the person in that picture.
A. Now I do.
Q. You do?
A. Yeah. That was the guy that came to my house.
Q. That's the guy that came with Dr. Mann to your house? And

he's the guy that went up and looked at the attic?
A. That's what I'm not sure if he did or not.
Q. Okay.
A. I'm just trying to picture it back.
Q. You do recall Dr. Mann bringing him to your house; correct?
A. Yes, after putting it back in my mind.
Q. That's why we're doing this.
A. Okay. Okay.
Q. Do you remember Dr. Mann also -- is this also the guy that worked on your hotel?
A. I assume it is, yeah.
Q. When you say assume --
A. I'm not a hundred percent. You know, they said that he did it, but I can't hundred percent picture it. I'm just assuming, yeah, it might be him.
Q. Okay. Well, and please do us all a favor. Don't guess. It's okay to say, "I don't know." Okay?
A. Okay. Okay.
Q. But don't use that as a reason to avoid a question. All right?
A. Okay.
Q. Do you recall meeting with the man in this picture with Dr. Mann at one of your hotels to talk about him potentially doing work on your hotel? Not whether or not he did it, but do you remember talking to this man about doing that?

A. Yes.
Q. Did you at one point own a hotel called the Graceland Hotel? Or something similar to that?
A. Yes.
Q. And was that hotel demolished?
A. Yes.
Q. When did that happen?
A. Probably 2006 or so. '6 or '7.
Q. Don't know for sure?
A. No.
Q. Okay. Do you remember talking to the man in this picture about maybe him helping demolish the Graceland Hotel?
A. No.
Q. You don't recall that?
A. No.
Q. You don't know, or for sure that never happened?
A. No. I'm not sure. I'm pretty sure -- no.
Q. Sir, do you recall during your grand jury testimony a member of the grand jury asking you, and, actually, I correct -- I asked you: Do you remember the spare tire from your daughter's car ever being on the side of the garage of your house?
And you replied: I remember a tire there, but I don't know what it was.
A. Yeah.

Q. Is that accurate?
A. Yes.
MR. GORDON: Thank you, sir. No further questions.
THE COURT: Redirect?
Ladies and gentlemen of the jury, you can take a couple of seconds and stand up and stretch out. Defense counsel is looking at a document it needs to look at before it can redirect. So if you need to stand up and stretch out, you can. That goes for everybody else sitting in the courtroom.
(Document review.)
MR. LASSITER: Thank you, Judge.

REDIRECT EXAMINATION

BY MR. LASSITER:
Q. The government attorney showed you a picture of a man here a moment ago, asked you if that was the individual that was with Dr. Mann. Just let me ask you, you testified earlier that this individual must have been around 2005. I believe that was your testimony?
A. Yeah.
Q. Do you have a clear recollection of what that gentleman looked like in 2005?
A. No.
Q. Is that why you were struggling with it?
A. Yeah.
Q. I think Mr. Gordon asked you about whether or not there

might have been a tire in your garage at one time.
A. Yeah.
Q. And do you recall if there was a tire in there at one time?
A. I'm just -- there might have been. Just hard to picture, you know.
Q. Was there a Jeep tire at one time in the garage or in the warehouse?
A. Yes.
Q. Do you remember where?
A. In the warehouse. I'm sorry. I didn't catch your question.
Q. My question was simply this: Was there a Jeep spare? Not an Altima spare, but a Jeep spare, like a Jeep Cherokee?
A. Yes.
Q. Was there a Jeep spare either in your garage or at the warehouse at one time?
A. Yes.
Q. And did you tell the government that in your grand jury testimony? Do you recall?
A. I'm not sure if I did.
Q. I believe you testified that Dr. Mann's brother had some investments also. Were those before -- his business investments, were they --
MR. LASSITER: Excuse me, your Honor. We've been here a few weeks. I'm not very articulate today.

THE COURT: That's all right.

BY MR. LASSITER:

Q. Were those investments prior to 2002?

A. The Quality Inn, that's where it gets its name from, 2000 Lodging. So that was in 2000. Okay?

Q. All right.

A. The Motel 6, that was before 2000, probably '99, '98 or so.

Q. And when I asked you on direct about the partnerships that Dr. Mann had an investment in, was your response as to the businesses that were still ongoing?

A. Yeah. Well, the Marion Lodging, Lamar Lodging, they no long -- well, the entity is there. We still file the tax returns and that, but there's no physical hotel with that property. That's what I mean by not ongoing. And the Austin Peay place also, there's no physical hotel with that one. Quantum hotels, there is.

MR. LASSITER: Okay. Just a second, Judge.

BY MR. LASSITER:

Q. When you talked to Dr. Mann in the past, have you always spoken in English or spoken in any other language?

A. No, English.

Q. Always?

A. (Nods head.)

MR. LASSITER: I pass the witness, your Honor.

THE COURT: Is there anything else, Mr. Gordon?

MR. GORDON: Briefly.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. GORDON:

Q. Mr. Patel, there's been quite a bit of talk about tires --

A. Okay.

Q. -- with you. I just want to make sure that we're clear. You do recall a spare tire being on the side of the garage of your house; correct?

A. I don't know whether it was a tire or a spare tire, you know. A spare tire is with a rim, without a rim. That's the thing.

Q. Okay. Do you recall testifying in front of the grand jury and I asked you --

A. Okay.

Q. Do you remember the spare tire from your daughter's car ever being on the side of the garage of your house?

MR. GORDON: May I approach the witness, your Honor?

THE COURT: You may.

BY MR. GORDON:

Q. And what was your answer to that question?

A. "I remember a tire there, but I don't know what it was."

Q. And let's keep going.

A. Okay. "Now, we did have -- I did find after they left a Jeep from -- you know, that was at the back. Yeah."

Q. The back of your house?
A. Yeah.
Q. And that was just a rim; correct?
A. Yeah.
Q. Okay. Just so we can put that all together, you told the grand jury you do remember a spare tire from your daughter's car being on the side of the garage, and then after ATF left, you found a Jeep rim. Not the tire, but just the rim.
A. Yeah.
Q. Also behind your house; is that correct?
A. Well, behind in the garage, in that storage room area, I think I found it there.
Q. Okay.
A. Okay.

MR. GORDON: Thank you. No further questions.

MR. LASSITER: Your Honor, may I approach?

THE COURT: Yes.

FURTHER REDIRECT EXAMINATION

BY MR. LASSITER:

Q. Let's read the question and the answer one more time here. The question to you was: Do you remember the spare tire from your daughter's car ever being on the side of the garage of your house?

And your answer was?

A. "I remember a tire there. But I don't know what it was."

Q. Were you saying you don't know what kind of tire it was?
A. Yes.
MR. LASSITER: That's all I have, your Honor.
THE COURT: Anything else?
MR. GORDON: No, your Honor.
THE COURT: Mr. Patel, you can stand down.
Call your next.
MS. CASSINELLI COUCH: Sarina Mann. And, your Honor, if I may step out.
THE COURT: Yes, you may.

SARINA MANN, DEFENDANTS' WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MS. CASSINELLI COUCH:
Q. Before we start, be sure and speak into that microphone. Okay?
A. Okay.
Q. You talk a little quiet. Tell us your name.
A. Sarina Mann.
Q. And, Sarina, how old are you?
A. 18.
Q. 18. What's your relation to Dr. and Mrs. Mann?
A. They're my parents.
Q. How many siblings do you have?
A. Three.
Q. What are their names?

A. Dushyant, Kundan, and Shivani.
Q. You're going to have to also speak very slow for us because the court reporter is taking down everything you say, and when you get too fast, she can't keep up with us.
You said you had three siblings. Dushyant --
A. Dan and Shivani.
Q. And how old are they?
A. Dushyant is 21, Kundan 24, and Shivani, 22.
Q. And so you're the youngest?
A. Yes.
Q. Okay. Tell us what you do.
A. I'm a student at U of A full time.
Q. What year are you in?
A. This will be my junior year.
Q. Who is the next oldest?
A. Dushyant.
Q. Okay. What does he do?
A. He's at UALR right now, and this will be his senior year, undergrad.
Q. Do you know what he's planning on doing after college?
A. He wants to go to medical school.
Q. Who is next in line?
A. Shivani.
Q. Shivani, what does Shivani do?
A. She is working in Oklahoma University, Norman, Oklahoma.

Q. She's already graduated from college?
A. Yes, yes.
Q. Where did she go to school?
A. At U of A in Fayetteville, where I go.
Q. And how about Dan?
A. Dan graduated from UCA in Conway and has now gone back to school at Arkansas Tech.
Q. Okay. And you said you're in school at the University of Arkansas right now?
A. Yes.
Q. Tell us, have you been at university since you graduated from high school?
A. No, I went -- I did my first semester at St. Louis University, and my second semester was in -- at U of A, and I've been there since.
Q. And how often were you at home -- well, when you were in St. Louis?
A. In St. Louis, I didn't get to come home very often, maybe once a month, if that.
Q. And how about once you transferred to the University of Arkansas?
A. Then I started coming home a lot, probably every weekend.
Q. When you were at home, did something funny happen when you were trying to take a shower?
A. Yeah. I went upstairs to the room my grandparents usually

stay in, and I was going to take a shower there, but there was a tire in it, so I had to go to a different bathroom shower.

Q. Do you know why the tire was in the shower?

A. Yeah. It had just been cleaned off because it belonged in the RX-7, and that car was having a leak and apparently there was water collecting where the spare tire was supposed to go and it was really slimy. So they just took it out and put in the shower and cleaned it off.

Q. Why would he put it in the shower to clean it off instead of doing something else?

A. The hose was frozen because it was cold out, so that wasn't an option.

Q. Is your dad pretty particular about his cars?

A. Yeah.

Q. And all of the parts that go with them?

A. Uh-huh.

Q. So you weren't surprised that he was cleaning off the tire?

A. No.

Q. You mentioned the -- that room was where your grandparents usually stay?

A. Yes.

Q. And whose parents would --

A. My dad's parents.

Q. Your dad's parents? And when do they come to the United States?

A. Usually about summertime, and they stay here for the warmer months typically.
Q. Is it hot in India in the summer?
A. Yeah, to escape that to some extent.
Q. And is that something that they've been doing pretty regularly for --
A. Yes.
Q. A long time?
A. Yes.
Q. Are they citizens?
A. Yeah, they have dual citizenship, India and America.
Q. Is and does -- let's go back to your siblings. You said Dushyant is your brother. Is he your biological brother?
A. No.
Q. Okay. Who are his biological parents?
A. Anju and Sandip, which is my dad's sister-in-law and brother.
Q. And why does Dushyant live with you?
A. We adopted him whenever his parents went back to India.
Q. Does he go to India to visit with his parents?
A. Yes. He goes once a year.
Q. What time of year, usually?
A. Christmas, whenever he gets that winter break from school.
Q. Have you seen Sandip in this country since they left?
A. No.

Q. You all talk to your family in India pretty frequently?
A. Yes.
Q. How do y'all usually talk to each other?
A. Skype typically and through e-mail.
Q. Is that where you can see each other through the screen?
A. Yeah, videoconferences.
Q. Your grandparents, what religion do they practice?
A. They're Hindu.
Q. Are they pretty devout?
A. Yes.
Q. And have you all grown up around that religion?
A. Yes.
Q. Does your family practice some of that religion?
A. Yeah.
Q. As well as others?
A. Yeah. My mom goes to a Lutheran church on Sunday and my brother goes and my grandma when she is here.
Q. That's your other grandma?
A. Yeah.
Q. Tell us about what you're familiar with as far as the religion that they practice. Like, what kind of things do they do?
A. Well, there's a lot of different practices in the religion. They do fasts weekly and daily prayers multiple times a day and they'll hold ceremonies called pujas and temple.

Q. What's a puja?
A. A puja is like a group service where your friends and family get together and pray.
Q. What kinds of things do they pray about? What do they do?
A. I would say it's situational based on what's going on in that person's life at the time. I mean, of course, everybody is going to pray for their family, you know, for their family to be in good health and for nothing bad to happen to them.
Q. And you've been to one of these?
A. Yes.
Q. Is that right?
A. I've been to multiple in America and in India I went to one when I visited.
Q. Tell us what kinds of things they have there, like, what kind of -- help us picture a puja.
A. At the group ceremonies, there's people usually gathered around a fire or something like that, and there's lots of decorations around it. There's usually one person sort of leading it.
Q. What kinds of things are there?
A. There's a lot of depictions. There's a lot of statues, like idols of gods and pictures of, you know, just different people and beads and flowers and just lots of different things.
Q. Do they have a picture of you over there?
A. Yes.

Q. Do you send pictures sort of updating as your life -- as you grow up, I guess?
A. Yes. Uh-huh.
Q. Is it typical for them to use pictures of people that are involved in the prayers that they're doing?
A. Yeah. Whenever we went last, my grandfather in India, he had pictures of us where he prays, but because we were there, we just sat with him while he prayed. Sort of instead of using the pictures.
Q. And what kinds of things -- I mean, I know you've said they pray about normal stuff that everybody prays about. But do they pray for people that are involved in things that are happening in their lives?
A. Yes.
Q. And would it be unusual for them to send a picture of that person?
A. No, not at all.
Q. And are you aware of your family using depictions, whether it's I guess a picture or name or whatever in prayers related to things that have been going on in the past couple years?
A. Yes.
Q. Does sending a picture for a prayer service mean that you want harm to come to that person?
A. No. Hinduism is a real peaceful religion. Ideally Hindus don't eat meat, they don't kill animals. It is a really

peaceful religion.
Q. So what are you normally praying for if you're praying for someone outside of your family?
A. If you are dependent on them in some way, just for them to sort of like stay strong and make the right decision and for wisdom to come to them. And for your family to, you know, remain safe and --
Q. Peace, I guess?
A. Peace, yeah.
MS. CASSINELLI COUCH: May I approach, your Honor?
THE COURT: You may.
BY MS. CASSINELLI COUCH:
Q. Do you recognize this?
A. Yes.
Q. What is this?
A. My mom puts these in her shoes, and her mother gave it to her, and it's a religious practice.
MR. GORDON: Your Honor, may we approach?
THE COURT: You may.
[Bench conference reported as follows:]
THE COURT: I know what it is without you even bringing it up here. I could tell what it was when you went over and showed it to her.
MR. GORDON: I wish they would have told me they were going to do this, but they didn't until they did it. I mean,

this is a specific prayer for this case. I think it's highly prejudicial. It's hearsay because it's one of the defendants. I don't think it should be admissible. Is character in --

MR. HENDRIX: But there's good ju ju coming your way.

MR. GORDON: Yeah, I can feel the love.

THE COURT: This does concern me, I will tell you this. Essentially, what this is doing, it makes -- it mentions David Oliver. It mentions Mr. Gordon. Mr. Gordon is a lawyer in the case. I'm the judge. It makes us, kind of puts us in the case, and essentially what -- and I know -- let the record reflect that Ms. Couch moved her arms as if to say who cares.

MS. CASSINELLI COUCH: No, I did not mean who cares.

THE COURT: What it almost does is, it says if the judge is not scared about it and he's sitting up here and he lets it in, if Mr. Gordon is not upset about it, feels he has nothing to fear, then it's testimony.

MS. CASSINELLI COUCH: You're entitled to feel whatever you want. The jury is only allowed to consider the evidence that's presented. The evidence presented is her testimony that it is a tradition in her family and what that tradition is and how that plays into it. I don't think the jury is even permitted to speculate about how you might feel or he might feel about it.

THE COURT: But how do you, if you let this in, how do you unring that bell? It's as if I'm testifying. It's as if

I'm telling the jury I'm not scared about it, so why would anybody else be scared?

MS. CASSINELLI COUCH: I'm not sure how that inference comes out.

MR. HENDRIX: If I can -- one, I don't think that it's uncommon for people to pray about their prosecutor and the judge and so forth.

THE COURT: Yes.

MR. HENDRIX: So I don't see anything prejudicial about that. The exclusion of this gets in -- I don't mean to sound too flowery about this, but a right to be able to present a defense. And it is a fact and it is true and she is prepared to say this is a simple prayer for the people that have concerns about life.

THE COURT: Okay. What is the response?

MR. GORDON: Your Honor, I think that's part of the problem, because clearly this is after he's gotten in trouble. If it were something before all of this came up or involving other people, I wouldn't have that big a problem with it, but it's crossing a line and it's getting into this case. It's after he's been arrested. Your name is in it, my name is in it, the ATF agent is in it. It's character evidence, showing that she's a peaceful person.

THE COURT: I would overrule you if it was just the character evidence portion of it. I think it would be

inappropriate to essentially say that she's praying for the judge and he's not upset about it and he doesn't take it as a threat, so, therefore, there's no way they could have done this. I think that evidence would be -- let me tell you -- okay, hold on before you light into me. Listening to this testimony, now, what is she going to say about the picture? Because she says, hey, we have all these prayer ceremonies, send pictures, all of this, that, and the other, other than her father telling her they sent that picture?

MS. CASSINELLI COUCH: I didn't ask her about that picture.

THE COURT: That almost would be less prejudicial than this. But then I'll listen to the government's point on it. I think this might be more prejudicial than the picture.

MS. CASSINELLI COUCH: Well, first, it's the right to present a defense. I mean, it is, and let me explain the -- let me bring this full circle. These are religious principles. They have a right to practice whatever religion they want to, and we have a right to present evidence to counter the inference that they want drawn. What this signifies is that they do practice religion where if people are in positions of authority or presiding over something that affects them, that they pray for those people, they pray for wisdom, and she is going to explain that. And just because -- I mean, there is nothing better than this example. You know, you're all here, and I'm

not going to ask anybody to draw an inference about how you feel about it or how you judge her about it. It's simply the fact that Sue has -- do you want to --

MR. HENDRIX: Well, no, and understand, I think -- here is where I think the judge is headed: What's the probative value? The probative value is this: The government left the sending a picture of Dr. Pierce over to put a hit on the guy, that's the clear inference. This clearly refutes that. So it has a good chunk of probative value. Is it so prejudicial because it names me and I'm sitting up here and I don't care, so --

THE COURT: Here's what I'm thinking I'll allow you to do is not admit it into evidence, but you may use it as a demonstrative exhibit as to -- I mean, put it up on the -- almost like you would have a board and show how this is, but not put it into evidence. I know -- and I see Ms. Whatley, who vehemently disagrees. Tell me why that would be disparate. See, here's the backdrop. Here's the backdrop. We have a picture in a medical periodical, not even periodical, a magazine, a bulletin, that we've had an ATF agent sit up here and say that we found this, and this indicates that to me is something fishy. And apparently it's true because I looked out there, why is he sending something over to India, especially with all of the backdrop of Sandip and all this, some of the testimony about Dan? What's really going on here? They're

trying to figure out how do they counter that? We're not required -- in fact, we have a constitutional right not to call our client on to say, I didn't send it for that purpose. So what can they put on to counter this inference that's in the air?

MS. WHATLEY: I think they have done an adequate job of countering that by explaining through Sarina that pictures are sent over. This isn't a picture.

THE COURT: Yeah, that was in her shoe.

MS. WHATLEY: Actually, I don't think it was in her shoe. I think it was --

THE COURT: She just testified that this was --

MS. WHATLEY: That wasn't where it was found in the house.

THE COURT: But this is where she wears it, in her shoe, so I'm under Ms. Mann's foot right now.

MR. HENDRIX: Or in her fridge. I'm not sure.

THE COURT: Without being able to say directly we sent that picture of him over to -- so they could pray for them?

MS. WHATLEY: She has testified pictures were sent to pray for people. She's also testified that during the past two years of everything we've been going through, they've been praying for everything. I mean --

THE COURT: Could they ask -- could she be asked the question, if you were -- if your parents were to send a picture

of Dr. Pierce over to your relatives, what would be the reason for that?

MS. WHATLEY: No.

THE COURT: She can't answer that?

MS. WHATLEY: No, because she can't answer what her parents did and why they did it. I think she has adequately answered why pictures were sent.

MR. HENDRIX: Let me throw this additional thing out. The government keeps making this big position of Dr. Pierce is the target, he's the target of this, the target of that. The position of what this is relevant to is to show that he's not a target, he is chairman of the board, like a judge that runs the show and they're praying for his wisdom and guidance. That's what it shows.

THE COURT: I understand that. I'm just saying, I don't want to be put in a position where essentially I'm testifying, without testifying.

MR. HENDRIX: Do you want to mark your name out?

THE COURT: And my silence here that I'm sitting here and we have this prayer circle stuff -- and I forget what it's called.

MS. WHATLEY: A sloka, s-l-o-k-a.

THE COURT: A sloka going on, and I'm not offended or in any way scared would give off the impression that Dr. Pierce wouldn't have any reason to be scared.

Here's what I'm going to do: You can ask her about this. I'm not going to let you put this into the record. Now, the question is whether I let you use it as a demonstrative exhibit. She is testifying that she knows that this is going on. She's testifying that, you know, they're praying for us.

MS. CASSINELLI COUCH: I don't mind if I can just have her describe it and what it says. That's fine.

THE COURT: You're talking about putting it up on the screen and let her do it.

MS. CASSINELLI COUCH: I don't mind if I don't even -- I'd rather put it on the screen, but if not, she can describe what it looks like and --

MR. GORDON: Without the names?

MS. CASSINELLI COUCH: Well, no. That defeats the whole purpose.

THE COURT: I don't -- you know, I mean, because if she were to sit up here and testify that we prayed for the judge, I don't know that I can exclude it just for that reason. I don't want this coming into evidence, though. Because what would be the objection to them praying for the judge or even praying for you as the prosecutor? I think showing it to them, I think that makes a big difference.

MR. GORDON: Judge, I don't know if that means a prayer for peace or a prayer for painful death. So --

THE COURT: I know, and I'm in pain every day that I'm

here.

MR. GORDON: We've got a 50/50 shot.

THE COURT: Well, this side is the painful death and this side is -- and I'm over here on this side. I think I'm fading out over there. I'm joking. I shouldn't play like that.

You can show it to her and you can have her describe what she sees. I'm not going to exclude it or prevent her from asking her about it because I think she could testify that she's praying for you and praying for me, but I will not receive this into evidence. Now, you can proffer it.

MS. CASSINELLI COUCH: I would like to do that.

THE COURT: Okay. Mark it and let's proffer it. In fact, your last one --

MR. HENDRIX: 51?

MS. WHATLEY: It should be 52 now.

THE COURT: This is 52 and we'll put it down as a proffer so that you have reference.

MS. CASSINELLI COUCH: Okay. Thank you.

MR. HENDRIX: Judge, how much longer do you want to go?

THE COURT: How long do you think --

MS. CASSINELLI COUCH: I said 45 minutes on Friday, so I'm not good at this time thing. Maybe 15 -- ten, 15 minutes.

THE COURT: Do you want to take a break?

MR. HENDRIX: I don't want to interrupt.

THE COURT: Do you want to take a break between your direct and cross or do you think it will matter?

MR. GORDON: We'd like to take a break.

THE COURT: We'll take a break between the direct and cross.

MS. CASSINELLI COUCH: Okay.

[Continuing in open court:]

MS. CASSINELLI COUCH: May I approach, your Honor?

THE COURT: You may.

BY MS. CASSINELLI COUCH:

Q. I'm going to show this to you, and you've said that you do recognize that, right?

A. Yes.

Q. And what do you recognize that to be?

A. My mom puts them on the inside of her shoes, and her mother gave them to her. It is a religious practice.

Q. Okay. And what does it say?

A. Since these are sort of the people that were kind of -- we're depending on these people, I guess, to sort of get wisdom, be granted wisdom and just, like, make the right decisions.

Q. Can you describe what you're looking at and what it says for the jury.

A. These are circles with the names of --

Q. You can just read it if you want to.

A. Oh, U. S. District Judge Brian S. Miller, ATF Special Agent

David Oliver, attorneys Michael Gordon, Julie Peters, and these are the people that we need to -- we need them to be granted, like, wisdom and truth, I guess, and --

Q. Okay. And so you're aware of your family using that, the circles, which that's a copy of something; right?

A. Yes.

Q. You're aware of your family using those to pray during the pendency of this case?

A. Yes.

Q. And you might not know everybody's name, but that involves the people involved in the case; right?

A. Yes.

Q. Is it typical in the Hindu faith for everyone to pray for somebody who is presiding over something that affects your family?

A. Yes, definitely.

Q. Would you be surprised if your parents sent photographs of the chairman of the Medical Board for prayers?

A. No.

Q. You were aware of your dad's issues with the Medical Board?

A. Yes.

Q. Did you know a whole lot about it or just --

A. No. I was pretty young when it all started. It wasn't discussed a whole lot at my house, but I knew that it was going on.

Q. Did you have any idea who Trent Pierce was before this happened?
A. No.
Q. When you came home from school, I guess particularly when you were in St. Louis and not at home every weekend --
A. Yes.
Q. -- did your parents give you money to pay your bills and go out to eat and all that stuff?
A. Yeah. They gave money to me and all my siblings that were in college at the time.
Q. Did they give y'all checks or cash?
A. No, they gave us cash.
Q. Did they give you cash for your rent?
A. Uh-huh, for rent and bills, food, gas. Just everything that we --
Q. And is that -- do they do that with your siblings as well?
A. Yeah. We were all out of the home at that time.

MS. CASSINELLI COUCH: Okay. May I have a moment, your Honor?

THE COURT: You may.

MS. CASSINELLI COUCH: Thank you, Sarina.

I'll pass the witness.

THE COURT: Okay. We're going to take a short break between the direct and the cross, we'll take 15 minutes. Let's come back at 3:30.

(Recess from 3:17 p.m. until 3:41 p.m.; jury not present.)

THE COURT: You all can be seated. Forgive me. I was back there yapping and didn't realize -- I'm sorry. Bring the jury back in. In fact, I was yelling why didn't you come get me and he said I thought you were busy. Wasn't busy at all, we've been back there just yapping.

(Jury entered the courtroom.)

MS. CASSINELLI COUCH: Your Honor, I actually have one more question that I'd like to ask, if I may.

THE COURT: You can finish up.

BY MS. CASSINELLI COUCH:

Q. Ms. Mann, you mentioned that you all communicated with your family in India through Skype and e-mail?

A. Yes.

Q. And how old are your grandparents? Do you know?

A. I'd say in their mid 80s maybe, early to mid 80s.

Q. And when you talk to them over Skype or communicate with them through e-mail, do they have their own e-mail account, their Skype account?

A. No, it's my uncle that has an e-mail account and that knows how to use the computer.

Q. So he provides them the --

A. Yeah, he relays messages for us to them.

MS. CASSINELLI COUCH: Thank you.

THE COURT: Cross-examination.

MR. GORDON: No questions, your Honor.

THE COURT: Okay. You may stand down.

And that is our last witness of today?

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: If I'm not mistaken.

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: Ladies and gentlemen of the jury, I have two hearings in the morning, one starts at nine and then the other at nine-thirty, so I'm going to release you until ten o'clock tomorrow. Just same admonitions I've given you all along. I don't have to give them to you again. We'll see you back tomorrow at ten o'clock.

(Jury exited the courtroom.)

THE COURT: How quickly can we work through those telephone calls?

MS. CASSINELLI COUCH: Before we get to that, would you mind in the morning just telling them we had issues to take up today? I saw a couple of jurors just kind of be upset with us. I want them to know we're doing stuff after they're gone.

THE COURT: I will tell you this, I'll take it up in the morning. But I will tell you every so often, I let them know all the different things we're doing, I'm not talking about in the courtroom, I'm talking about back in the back, things you don't see. I let them know we have all types of matters going on, and I don't give them specific details, but I let them know

we've been busy taking up these different matters and most of them seem fine. I know we have a couple and I know the ones you're talking about, their faces are very expressive. But they'll be okay.

MS. CASSINELLI COUCH: I'm glad to know you've talked to them.

THE COURT: They'll be all right. And I will let them know that we had some other issues that we're taking up.

MS. CASSINELLI COUCH: Thank you.

MR. HENDRIX: Judge, if we can, if Mr. Lassiter and Ms. Couch and I could just have a few minutes to look over these things.

THE COURT: That's fine. Just tell me how much time you need.

MR. HENDRIX: Okay.

THE COURT: Let me ask you this: Would this be better done with you all taking a few minutes to just discuss it among yourselves, and then if you can work something out, let me know, and if you can't, get me involved after that?

MR. HENDRIX: Okay. Sure.

THE COURT: Because I'll be in the back. If you need me, just call me and I'll come back out.

MR. HENDRIX: Great.

THE COURT: How long do you think you'll be working out here?

MR. HENDRIX: 15 minutes. We'll get it figured out.

THE COURT: Just call me back when you need me.

MR. HENDRIX: All right.

(Overnight recess at 3:47 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: March 18, 2011

/s/ Christa R. Newburg, RDR, CRR, CCR
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

August 3, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 10:18 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 15
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
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Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

I N D E X - VOLUME 15 **(August 3, 2010)**

WITNESSES FOR THE DEFENDANTS:	**Direct**	**Cross**	**Redirect**	**Recross**
JOHN NORRICS	**3047**			
WAYNE HENRY	**3052**	**3058**	**3061**	
ERIC HARTSELL	**3067**			
LYNN BLUNIER	**3079**	**3082**	**3083**	

EXHIBITS: **RECEIVED**

Defendants' Exhibit 53 .....P.3051

Defendants' Exhibit 54 .....P.3073

Defendants' Exhibit 55 .....P.3073

DEFENDANT RANDEEP MANN RESTS P.3085

JURY INSTRUCTIONS CONFERENCE P.3095

P R O C E E D I N G S

(Proceedings continuing in open court at 10:18 a.m.)

THE COURT: Can I see the lawyers up here, please?

(Bench conference reported as follows:)

THE COURT: I was going to invite Dr. and Mrs. Mann to the bench, but that would probably pique the interest of the people sitting around in the courtroom. I think everybody knows what I am bringing to the bench this morning. I received a notice from the marshals that over in the jail last night, the jailers did a sweep, I think it was, of Dr. Mann's cell and they found a couple of items that they were concerned about. I'm not going to get into the details of that. I don't want somebody looking over the shoulders back here and raising a bunch of issues.

They want to institute some different security procedures. And I'll let the lawyers tell me what they want -- what they want to do is they don't want to have Dr. and Mrs. Mann passing things back and forth. Conversation is fine, of course. What they like is to have their correspondence, notes, or whatever they pass filtered through the lawyers. If Mrs. Mann was to give Dr. Mann a note, she would hand it to one of the lawyers to give it to him. On its face it looks a little silly, but I can understand the concern if they believe that he's trying to manufacture a key or something to get out. Now, have you all seen the pictures of what they found?

MR. LASSITER: No.

MR. HENDRIX: (Shaking head.)

THE COURT: And I don't know what this is. Have you seen the incident report?

MR. HENDRIX: I haven't seen anything. I've talked about it with him this morning.

THE COURT: There is a copy of the incident report. Have you seen it?

MR. GORDON: Yes, Your Honor.

MS. WHATLEY: I haven't seen the pictures.

THE COURT: I'll let you see these. Those are the pictures for you, and --

MS. WHATLEY: You're so funny.

THE COURT: -- these are the original pictures. That's what they found. I don't know what that is, but apparently the jailers say that they get these every so often of somebody who is trying to either pick a handcuff key or something else. I don't know what that is. It's taken from a broomstick apparently and it's a piece of twine and a stick. And they have seen people in jail attempt to use that to pick their handcuffs. And so they don't want him to be given the items or the instruments of a key. And so --

MR. HENDRIX: I can tell you his version of it if it helps.

MS. CASSINELLI COUCH: No.

THE COURT: Just keep -- I'm just saying that's not going to affect what we do here. It's just as far as the security and how she interacts with him, they have no objection to conversation, but they do object to her handing him items.

MR. GORDON: Judge, one other thing. I've known about this, and I just found out this morning that the marshals never told you when Mrs. Mann brought clothes in for him to wear to court, Patty, one of the marshals, went through and found a key in one of the pockets, and they seized the key.

MS. CASSINELLI COUCH: Like a car key --

MR. GORDON: It was a --

MS. CASSINELLI COUCH: -- full size key?

MR. GORDON: A car key on a Mickey Mouse chain in one of the pockets, and they seized it as well.

THE COURT: Was it a key to a Nissan Altima? You don't have to answer. I just thought that was funny.

MR. GORDON: That was good, Judge.

THE COURT: Can I have those pictures back, please? And I'll just hold these here. Let the clients see them, know they can't pass stuff back and forth. And any handholding under the table or whatever, I don't think that's going on, if it is, it has to stop. Anything else we need to take up?

MR. GORDON: No, Your Honor.

(Proceedings continued in open court as follows:)

THE COURT: We can bring the jury back in.

(Jury enters the courtroom.)

THE COURT: Mr. Hendrix, you can call your next.

MR. HENDRIX: Thank you, Judge. I'm going to call John Norris.

THE COURT: Agent, you've been sworn in so you remain under oath.

THE WITNESS: Yes, sir.

JOHN NORRIS, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

MR. HENDRIX: Ms. Tyree, can I turn this on?

DIRECT EXAMINATION

BY MR. HENDRIX:

Q. You are Agent John Norris?

A. Yes.

Q. Work for the ATF and testified previously in this case?

A. Yes.

Q. And during that, you had talked about and through you introduced a lot of those phone calls in the jail?

A. Yes.

Q. And including the ones from the Pulaski County jail?

A. Correct.

Q. And one of them, I believe, was Government's Exhibit 147-B, 147-A1. And that was -- you recollect that -- have you had an opportunity to look back and do you recollect that?

A. Briefly.

Q. And that was part of -- just a part of the phone call?

A. That was a portion of a full phone call, yes.
Q. Okay. What I would like to do is go ahead and replay the portion y'all played. And then, Agent, what I'm going to do is ask to play the remainder of that conversation. So this will be Government's Exhibit 147-A.
(Government's Exhibit 147-A played in open court.)
THE COURT: Hold on, Mr. Hendrix. We need to see if we can turn that up over here. Try it again now and see.
(Government's Exhibit 147-A played in open court.)
BY MR. HENDRIX:
Q. Okay. And, Agent, that was not the entirety of the conversation, correct?
A. Correct.
Q. And, of course, Dr. and Mrs. Mann are charged with obstruction of justice, correct?
A. Corrected.
Q. And that allegation is based on hiding things and destroying things and keeping them from the grand jury, correct?
A. Correct.
Q. What I would like to do is if I could have the ELMO back. Let me see if I can do this. I'd like to pick up and play the remainder part of the that conversation, okay?
A. Okay.
MR. HENDRIX: And, Ms. Tyree, I've got this on my

audio. I can't do the ELMO and -- let's listen and then we'll deal with it. Want me to turn that off?

BY MR. HENDRIX:

Q. And, Agent, listen carefully. We've selected the portion that begins where -- a few sentences before where that ended. Are you ready?

A. Yes.

(Government's Exhibit 147-A played in open court.)

BY MR. HENDRIX:

Q. And if we can switch over to the ELMO. And this is an agreed-upon transcript of the remaining part of that conversation. And, again, it begins where the -- there it is. The exhibit that had been previously introduced ended with the sentence "dispose of everything. Get Mom and Dad involved. You can't do this alone, you know, you can't do this alone. Call that guy" -- and it stopped right there where we picked it up.

The remaining part of the conversation begins, "Call the guy in Oklahoma City, sell the scull guy -- the scull guy, sell the scull to him." And you and I had this conversation earlier. Are you aware that a scull is a rowboat like a kayak?

A. Correct.

Q. And it continues on to talk about Oscar, something about a beamer. And BMWs are oftentimes called Beamers?

A. Correct.

Q. And it's asking him to fix that and apparently sell it, correct?
A. Yes.
Q. And there's something about "giving Rita's cousin a check for $300 for a dirt bike you gave me"?
A. Uh-huh.
Q. It says put bikes -- and I assume motorcycles, he owns a bunch of motorcycles?
A. Yes.
Q. "Put them on eBay and sell everything"?
A. Correct.
Q. And I believe there was conversation about a Honda and selling a Honda car, too.
A. Yes.
Q. There it is. And finally he's talking about selling the house, right?
A. Correct.
Q. So when he's talking about dispose of everything, he's talking about disposing of assets, correct?
A. I'm not sure that he's talking about disposing of assets. To me it was kind of going from talking about one thing to talking about another. But that was the way I took that phone call.
Q. Okay. So your impression was when he said "dispose of everything" and when he started to do a list of things to

dispose of like cars and the house, you took it as something different?

A. Yes.

Q. And that's why you stopped at that point?

A. I didn't choose to stop at that point.

Q. I understand. I understand.

MR. HENDRIX: And, Judge, we have -- I believe the Government is agreeable to the introduction of Defendants' Exhibit 53, which would be that portion of the tape, the audio portion.

MS. WHATLEY: No objection.

THE COURT: It's received. Is that 53 Government's Exhibit, or Defendants'?

MR. HENDRIX: Defendants' 53.

(Defendants' Exhibit 53 received in evidence.)

BY MR. HENDRIX:

Q. And, Agent, just to be sure, this is a picture from the inside of Dr. Mann's garage. That long thing is a scull, isn't it?

A. I believe so. I'm not positive on that, but I believe so.

Q. Kind of a kayak?

A. Right.

Q. Here's another picture. And there are all of these cars?

A. Yes.

MR. HENDRIX: That's all I've got. Thank you.

MS. WHATLEY: No questions.

THE COURT: You can stand down.

Call your next.

MS. CASSINELLI COUCH: Wayne Henry.

THE COURT: Please bring in Wayne Henry.

Mr. Henry, come down here and let us get you sworn in.

WAYNE HENRY, DEFENDANTS' WITNESS, DULY SWORN

THE COURT: Mr. Henry, just have a seat right over here on the witness stand.

DIRECT EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Good morning. I can tell you right now you're going to have to sit up and put your mouth on that microphone so we can all hear you.

A. Okay.

Q. Can you tell the jury what your name is?

A. Wayne Henry.

Q. Mr. Henry, what do you do for a living?

A. I do construction.

Q. Okay. Do you have your own company?

A. Yes.

Q. What's it called?

A. Henry and Son Construction.

Q. Does your son work with you?

A. Yes, ma'am.

Q. Do you have a couple of crew members?
A. It's about six.
Q. Did you do any work for the Manns in Russellville?
A. Yes.
Q. Okay. What did you do?
A. Added about 1600 square feet onto the existing house.
Q. You did -- you added onto the house?
A. Yes, ma'am.
Q. We're going to look at a picture of the house in just a minute. Did you do any other work on that house?
A. Yeah. We done landscaping, driveways, patios.
Q. When you say landscaping, did you work on the back yard?
A. Yes.
Q. What did you have to do?
A. We moved the existing yard and added fill dirt and sod.
Q. Okay. Is this the house that you know to be the Manns' house?
A. Yes.
Q. Okay. And you can touch your screen up there. What part did you construct?
A. Right here, far side to the right.
Q. Okay. It's not -- how about this? Is it the end opposite of the garage --

THE COURT: Use this.

MS. CASSINELLI COUCH: Thank you, Judge.

BY MS. CASSINELLI COUCH:

Q. Is it the end opposite the garage doors we see in the photograph?

A. Yes, ma'am.

Q. And when you -- when did you do that work?

A. 2003.

Q. Okay. And when you did that work, do you remember kind of a basement area in the house where there was workout equipment?

A. Yes, ma'am.

Q. Did you do any work down there?

A. Yes, ma'am.

Q. What did you do in that room?

A. Remodeled it and added a gun safe wall.

Q. When you say "gun safe wall," what do you mean?

A. Gun room.

Q. Like, why do you say the wall?

A. It was made with concrete blocks other than where somebody couldn't just knock a hole in the sheetrock and get through.

Q. So the whole room was made with concrete?

A. Just one side. Three sides were already there.

Q. Because they were outer walls?

A. Outside, yes, ma'am.

Q. And is there a crawlspace in that area that goes under the house?

A. Not in the gun room, no.

Q. In that basement area?
A. Basement area, yes, ma'am.
Q. Did you go in that crawlspace when you were working?
A. Yes, ma'am.
Q. How long do you think you did work on the house?
A. Probably six months.
Q. Okay. And tell us about -- do you know that the Manns had an alarm system?
A. Yes.
Q. Okay. And tell me when you build, when you, I guess, add on to a home, how does it work with alarm systems and wiring and stuff?
A. Basically after you get to a certain stage, it has to be prewired, like, for lights and switches and plugs.
Q. So it's like electrical wiring sort of?
A. Well, it's a little magnetic -- magnetic eyes from one -- like, from the door when it opens and when it shuts.
Q. So do you have to do part of the -- do you have to do part of your work and then they do wiring for the alarms and electrical and then you finish your work?
A. Yes, ma'am.
Q. When you were doing this work, were you in all areas of the house?
A. Probably.
Q. Were you in the garage area?

A. The detached garage?
Q. Uh-huh.
A. Yes, ma'am.
Q. And you were downstairs in the basement area; is that right?
A. Yes, ma'am.
Q. And did you have occasion to kind of walk through the whole house at one time or another?
A. Yes.
Q. Okay. I'm showing you what's been marked as Government's 118a. Did you ever see anything that looked like that when you were in the house?
A. No, ma'am.
Q. I'm showing you Government's 69. Did you ever see anything that looked like this when you were in the house?
A. No, ma'am.
Q. And you said you were in the crawlspace. Did you see anything in the crawlspace when you were in there?
A. No, ma'am.
Q. And you said you've done some, I guess, work on the grounds around his home?
A. Yes, ma'am.
Q. Have you had occasion to dig out some stuff and bring dirt in?
A. Yes, ma'am.

Q. I'm showing you Government's 98h. Does this appear to be a hole?
A. Okay.
Q. Do you see a hole in that picture?
A. Yes, ma'am.
Q. Does that hole appear to you to be freshly dug up like within an hour and 20 minutes before this photograph was taken?
A. Not to me.
Q. And why not?
A. It wouldn't be full of leaves if it was a fresh dug hole.
Q. Does it also look like a hole deep enough that there should be a pile of dirt next to it?
A. Don't know. I mean, it's hard to tell.
Q. In your opinion does it look like it is not fresh?
A. Not to me.
Q. Can you tell from that photograph how big that hole is?
A. No, not really.
Q. Does it look like it could fit something that's about a foot and a half long in it?
A. Possibly.
Q. Do you think it looks that big? How deep do you think that hole looks?
A. I have no idea.
Q. How about in that photograph, 98i? Does it look pretty shallow?

A. Probably eight, nine inches deep.
Q. Eight or nine inches?
A. Yep.
Q. Did any of your crew members report seeing anything that looked like live grenades when they were in the house?
A. No, ma'am.
Q. Did anybody from any alarm company report to you that they saw anything that looked like live grenades they were concerned about?
A. No, ma'am.
Q. Thank you.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. GORDON:

Q. Mr. Henry, are you a hole expert?
A. Well, I've dug lots of footings over my life.
Q. Okay. Do you consider yourself a hole expert?
A. Dug lots of pier holes.
Q. Are you being paid at all for your testimony here today?
A. No, sir.
Q. When you added on that 1600 square feet of residential space to the house, did you also add the garage?
A. No.
Q. No. Let's look at Government's Exhibit 100-A again, please. Can you see it there on your screen there, sir?

A. There's nothing there. Okay.
Q. Is that it?
A. Yes, sir.
Q. Okay. Do me a favor just so we're all clear. Pick up that pen that the judge handed you again and circle on the screen -- you've got to push kind of hard on the screen so it'll show up for all of us to see.
MR. GORDON: May I approach, Judge?
THE COURT: You may. It's not working?
MR. GORDON: No, sir.
BY MR. GORDON:
Q. Okay. Just describe it for us then. Looking at this picture, the part that you added is the right side of the house, correct, that's kind of set back?
A. Yes, sir.
Q. You can see, looks like, a doorway with a cover and then two sets of windows?
A. Yes, sir.
Q. That's the part that you added?
A. Yes, sir.
Q. Okay. When you talked about a gun room, let's look at Government's Exhibit 100-MM. Is that the entry to the gun room that you're talking about on that back wall?
A. Yes.
Q. Then let's look at Government's Exhibit 100-QQ. The wall

that you, I guess, reinforced or rebuilt, is that in this picture?

A. Yes.

Q. Which wall is it?

A. It's the wall where the crossbows are leaning to.

Q. The wall on the left?

A. Yes.

Q. So that's going to be the wall between the gun room and the gym?

A. Yes.

Q. Okay. When you -- when you rebuilt that wall -- am I using the right word, rebuilt?

A. Yes.

Q. Were the gun safes still in place?

A. No, none there.

Q. There were no gun safes in there?

A. Huh-uh.

Q. Is that a no?

A. No.

Q. Were there any machine guns in that room?

A. No.

Q. Let's look at Government's Exhibit 100-NN. Was there a 50-caliber machine gun sitting out in the gym?

A. No.

Q. Was there a 50-caliber machine gun in the living room?

A. Yes.
Q. You do recall that?
A. Yes.
Q. How many machine guns do you recall seeing in the house other than that .50 caliber?
A. None.
Q. None? Do you remember seeing some ammo cans? Do you know what I mean by "ammo cans"?
A. Yes, sir.
Q. Do you have any military experience?
A. No.
Q. Let's look at Government's Exhibit 100-S. Do you recall seeing anything like that in the house?
A. No.
Q. This hole that you were asked about, have you ever gone and looked at it in person?
A. No.
Q. So you're only answering questions about this hole based upon the pictures you've been presented here in court, correct?
A. Yes.

MR. GORDON: Thank you, sir. No further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Just so we're clear, Mr. Henry, you're not currently doing

any work for the Manns?
A. No.
Q. And you've not done any construction for them since you finished all of this; is that right?
A. No.
Q. You haven't gone back to the house?
A. No.
Q. Mr. Gordon asked you about the safes, the gun room. When you built the gun room, those were not in there; is that right, the safes were not in the gun room?
A. No.
Q. Did you have to go back after you built it for some reason and do some more work in that area?
A. Yes. Yes. We had to go back and remove all of the weight equipment and replace the floor. The floor, the original floor, buckled up, and we had to go back and replace all of it.
Q. Did that floor extend into that gun room?
A. Yes.
Q. So at that time, did you see in the gun room again?
A. Yes.
Q. And at that time, were all of the safes there?
A. Yes.
Q. And did Dr. Mann tell you that he collected and dealt in firearms?
A. Yes.

Q. Did he show you any of them?
A. At that time, yes.
Q. Did he open one of the safes?
A. Yes.
Q. Any other time that you were there, did you ever see the safes open when Dr. Mann wasn't there?
A. No.
Q. Thank you.

THE COURT: Anything else, Mr. Gordon?

MR. GORDON: No, Your Honor.

THE COURT: Mr. Henry, you can stand down.

Call your next.

MS. CASSINELLI COUCH: Your Honor, may we approach?

THE COURT: Yes.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: Here's kind of where we are. I have somebody that left this morning at 5:30 or 6:00 to get over to Memphis to get the certified documents. Well, of course, there was some sort of truck explosion on the White River Bridge, and so I got a phone call at 7:00, it may have been, that they were going to be sitting there an hour today. That has delayed them getting back here with those documents. So I want the Court to be aware of that. And he made it there and he's gathering -- I assume he's probably on his way back by now, but that's --

THE COURT: You don't know when it will be?

MS. CASSINELLI COUCH: No, and I will check with him. I hope he's on the way back.

I'm also waiting on documents from another state pursuant to subpoena and a whole bunch of requests, and they are not being very cooperative. We have another witness possibly that came late that we need a few minutes to determine if we're going to call.

THE COURT: So you want to take a break?

MS. CASSINELLI COUCH: Yeah, if that's okay.

THE COURT: What time do you want to be back this afternoon?

MS. CASSINELLI COUCH: What do you-all --

THE COURT: I would not want to tell the jury to come back at 1:00 and the guy coming from Memphis is not here. I would rather give them enough time so that we know the person is going to be here.

MS. CASSINELLI COUCH: Well, what I'm thinking is if we took a break, then we could decide if we're going to put these other people on, and that would buy me some time on the document issue.

THE COURT: Give me a time.

MS. CASSINELLI COUCH: Do you want to do 1 o'clock?

MR. HENDRIX: Sure. What do you think?

MS. CASSINELLI COUCH: I think that would be --

MR. HENDRIX: I was thinking the judge was saying is that enough to get --

THE COURT: Yes.

MS. CASSINELLI COUCH: I think so.

THE COURT: I would hate for us to push it to 1:00, 1 o'clock comes around, we don't have everything in place. If you have a number of witnesses, I would hate to come back at 2:00 and then have too many for this afternoon. I mean --

MR. HENDRIX: Split the difference, 1:30.

THE COURT: Tell me what you want to do.

MS. CASSINELLI COUCH: I don't think we're going to have -- I can go call him right now if you would like me to do that.

THE COURT: No. Just give me a time because I'm deferring to you. You just tell me what you need.

MS. CASSINELLI COUCH: I think 1:30 might be the safest.

THE COURT: 1:30 is fine. Any objection, Ms. Whatley, to 1:30?

MS. WHATLEY: That's fine.

THE COURT: Why does everybody look like they are having allergies?

MS. WHATLEY: My husband came back from Vegas with a cold.

MS. CASSINELLI COUCH: I've been through a flu and the

cold during this trial, and hanging on to it.

THE COURT: Let's come back at 1:30. I'll tell the jury to come back then.

MS. CASSINELLI COUCH: Thank you very much.

(Proceedings continued in open court as follows:)

THE COURT: Ladies and gentlemen, we have a number of issues we need to take up. And instead of keeping you here, we're going to release you until 1:30. And I would just ask you the same admonitions I've given you all along. I know you're probably getting antsy to start talking about the case, but just hold up. You'll have the case fairly soon. Don't read anything about the case. Don't go grab the newspaper or go online and start reading about it. Don't watch any television about it. Don't listen to the radio about it. Don't talk to each other about it.

When somebody else wants to come up to you and talk to you about it and tell you everything that's going on down here like some -- I was in church on Sunday and had a man come up and tell me all about the case. And then I tried to stop talking to him, and somebody who disagreed with him about the case came up and started on the other side. So I left both of those two talking as I left. So whatever you do, don't start talking to people about the case because they will tell you all about it and they haven't been here. Also, continue to do what you've been doing. Don't talk to the lawyers. Don't talk to the

witnesses. Don't talk to anybody. And we will come back at 1:30. All right. We'll be in recess until then.

(Recess at 11:00 a.m. until 1:40 p.m.)

THE COURT: We can bring the jury in.

(Jury enters the courtroom.)

THE COURT: Call your next witness.

MR. LASSITER: Eric Hartsell.

THE COURT: Mr. Hartsell, just stand right there and we'll get you sworn in.

ERIC HARTSELL, DEFENDANTS' WITNESS, DULY SWORN

DIRECT EXAMINATION

BY MR. LASSITER:

Q. Mr. Hartsell, if you would speak into the microphone and state your name for the jury, please, sir.

A. Eric John Hartsell.

Q. And where are you employed?

A. Sorrells Body Shop in Russellville, Arkansas.

Q. Do you live in Russellville?

A. Live in Dover.

Q. Dover. All right. That's nearby?

A. Yes, sir.

Q. How long have you been at the body shop?

A. 11 years.

Q. And are you the manager?

A. Co-owner.

Q. All right. Do you know Dr. Mann?
A. Yes.
Q. And in your business, have you worked on some of his cars before?
A. Yes, sir.
Q. And does he have -- has an RX7 that belongs to him ever been in your shop?
A. Yes.
Q. And has it been in on more than one occasion?
A. Yes, it has.
Q. And for what kinds of repairs?
A. Couple of different times for rattles around the stereo speakers in the back and for a water leak in the rear of the car.
Q. Around the hatch, the back hatch?
A. Yeah, it was getting wet, the back area, and behind the seats would get water in it.
Q. I just met you outside a moment ago --
A. Yes, sir.
Q. -- the first time. And I think you've been on vacation, have you not?
A. Yes, we just got back from St. Louis.
Q. All right. I think -- did we talk on the phone a couple of weeks ago?
A. Yes, sir.

Q. And did you look for some records at your shop?
A. I did. And we -- things like that, if it's a simple thing for -- if we do it for people all of the time, we don't charge them for it, we don't make a ticket when they are in the shop.
Q. Okay. Do you have a clear recollection of when it was that the car was in with the leak?
A. No, sir.
Q. Were you able to get the leak stopped?
A. Not all of it. It's still -- when they picked it up, it still was getting a little bit of water in the back.
Q. All right. And what -- did you ever notice whether or not the spare was in the car?
A. I didn't pay any attention whether it was or wasn't.
Q. RX7, is the spare under the car, or under the back platform?
A. I'm not sure on that car. I know some of them are also inside and some of them are under.
Q. But you don't have any recollection of seeing it or not seeing it. Is that fair to say?
A. No, sir, either way.

MR. LASSITER: I pass the witness, Your Honor.

THE COURT: Okay.

MR. GORDON: No questions, Your Honor.

THE COURT: You can stand down, Mr. Hartsell.

Call your next.

MR. LASSITER: Your Honor, if we may approach.

THE COURT: You may.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: While we're up here, let me tell them status-wise. We've got two people who are supposed to be here right now. Our subpoenas aren't as powerful as yours, so we've got two people on the way that should be here any second, so they say. I'm hoping they are in the hallway by the time I get finished saying this.

THE COURT: We have two witnesses for today?

MS. CASSINELLI COUCH: If they show up, yes.

MR. LASSITER: The other day when Mr. Patel was on, I had a couple of documents that we approached about, but I did not have them certified.

THE COURT: Okay.

MR. LASSITER: Our investigator went to Memphis and got them certified. He has not been here because of the traffic issue. He had them faxed to us and we will --

MR. GORDON: I would be fine putting in the faxed copy and substitute the copies once we get them here.

THE COURT: Do you remember what exhibits they are?

MR. LASSITER: 54 and 55.

THE COURT: Okay. They are received. And we will substitute the originals for the faxed copies when they arrive.

MR. LASSITER: Judge, I should mention the affidavit

to the jury, the records of Home Depot and records of Dobbs Nissan.

THE COURT: Here's what I will allow you to do, not read the affidavit, but you can describe what the exhibit is, "Defense would offer Exhibit 54, which is the verified receipt from Dobbs Nissan for" XYZ, and the government will have a chance to object. And I'll ask the government, "Will you object, or will you have no problem with it?" And then I'll receive it. And then you can do the same here instead of reading the entire affidavit, who it's from, and all of that. Do you have any objection?

MR. GORDON: No, sir.

MR. LASSITER: Thank you, Your Honor.

THE COURT: What we'll do is I'll just tell the jury, "Hey, look, we have two witnesses we're waiting for." Are they out of state, or out of town witnesses, or witnesses from in town who haven't made it to the courthouse?

MR. LASSITER: One is a witness in town, he has not made it here. The other is an investigator. And the third thing she's waiting for is a certified copy of --

THE COURT: Is that investigator going to testify? He's not going to testify, the investigator, is he?

MR. LASSITER: No.

THE COURT: The person who is in town, do we have any idea where that person is?

MR. LASSITER: Mr. Gordon just had some conversations with Ms. Couch. I don't know where y'all are about that testimony.

MR. GORDON: I believe there's two witnesses who are going to testify. One is a female from out of town. She's been here, but she's been out shopping to kill time. And I'm not saying that -- that's really what she's doing.

THE COURT: I understand.

MR. GORDON: And she is on her way back to the courthouse.

THE COURT: Here's the only reason I say that. I can send the jury back to the jury room, or they can just relax, or I can send them downstairs where they can really relax. And all of that depends on how quickly we're going to get started. I'm not going to leave the courtroom. I'll probably sit here and do some work and we can all stay here and --

MR. LASSITER: I can read these and go find Ms. Couch and see exactly where we are.

MR. GORDON: I would rather keep them close than let them go downstairs.

THE COURT: I would, too. Let's go back on the record and read those. I'll call your name and you can stand and read those and I'll tell the jury they can go back to the back.

(Proceedings continued in open court as follows:)

THE COURT: Mr. Lassiter.

MR. LASSITER: Yes, Your Honor. Judge, I'm referencing Defendants' Exhibit 54, which is a certified copy of a record from Dobbs Nissan on Winchester Road in Memphis, Tennessee. It reflects the purchase of a wheel/tire. The notation "Customer wants rim for spare mounted tire to rim." It is dated August 20, 2003, for an '02 Nissan Altima. And the document bears the VIN number of the vehicle, which I won't read; Customer No. 7926, Alka Patel, 8720 Somerset Lane, Germantown, Tennessee. And I offer that into evidence.

THE COURT: Any objection to 54?

MR. GORDON: No, Your Honor.

THE COURT: It's received.

(Defendants' Exhibit 54 received in evidence.)

MR. LASSITER: And, Your Honor, I have Defendants' Exhibit 55, which is a certified copy of a customer order report for the account of Pete and Alka Patel, address, 8720 Somerset Lane, Germantown, Tennessee. This document is from Home Depot, 0725 Hickory Hill Store. It reflects certain purchases in July of 2006 for drywall, sanded pine, studs and a compound pail. And I offer that exhibit.

THE COURT: Any objection?

MR. GORDON: No, Your Honor.

THE COURT: It's received.

(Defendants' Exhibit 55 received in evidence.)

THE COURT: Ladies and gentlemen, we just discussed at

the bench that we have two witnesses this afternoon, one is subpoenaed, and apparently both are on the way. And that was one of the reasons we gave you a long recess at lunch so we could make sure we have the witnesses here. And from what I understand, they are en route. One was here earlier and went and took care of some personal matters because she wasn't needed at the time she showed up. So I'm going to release you back to the jury room. I don't want you to go downstairs and get too comfortable because as soon as these witnesses get here, we're going to bring you back in here and we're going to put them on the stand. So go back, be comfortable, and we will call you back as soon as we need you.

(Jury exits the courtroom.)

(Recess at 1:54 p.m. until 2:06 p.m.)

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: I've been told just to come up and give an update. We have one of the witnesses here, but it's going to be super fast. So we didn't know if you wanted --

THE COURT: Let's wait.

MS. CASSINELLI COUCH: That's what we thought.

THE COURT: Let's do both at the same time. I would rather not bring the jury in and let them, you know, hear a quick witness and then go back.

MS. CASSINELLI COUCH: Now, we are talking and trying

to figure out if there's any way to get the information in from that witness and not have the witness. We're working on that, but everyone is totally uncooperative.

MR. GORDON: Except for me.

MS. CASSINELLI COUCH: Not us with each other; all the third parties. So I apologize.

(Recess at 2:08 p.m. until 2:39 p.m.)

THE COURT: All right. From what I understand, we have one witness and then we have a stipulation.

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: Okay. Now, I understand that the defense will rest at that point. Are you --

MR. HENDRIX: (Nodding head.)

THE COURT: Are we going to have rebuttal, or do we know?

MR. GORDON: We do not anticipate any rebuttal.

THE COURT: Okay. Question, if we finish up in the next 30 minutes, when do we want to work on jury instructions? Do we want to have a conference on jury instructions today?

MR. GORDON: Yes, Your Honor.

THE COURT: I would rather do it this afternoon. I will go through the proposed instructions from -- the way I normally do it is I'll look at the proposed instructions from the government and the defense. Those that are the same we'll use. Those that are -- where there's some difference in them,

I'll choose the one that I believe is more appropriate. We'll come in. I will let the parties make a record on why we should use -- say, if I use a defense instruction, and the government believes its instruction is more appropriate, I'll let the government make an argument as to why that instruction should be used. Same thing for the defense. And I change sometimes. Sometimes I look at it more closely and I change. But either way, we can make a record on that, and then we will proffer the instruction that is not being used. And we'll just go through that and do it that way. And we can get our instructions together, and that way we can come back in the morning and we'll close in the morning.

Yes, Ms. Whatley.

MS. WHATLEY: Nothing.

THE COURT: If we close in the morning, how long do we -- I know you can't tell me because it just depends on -- there's a lot of information, so we could go a long time. But how long do you anticipate, Ms. Whatley, your close will be? I know it's hard to say. You don't have to give me a hard number.

MS. WHATLEY: For first close?

THE COURT: Yes.

MS. WHATLEY: Hour to hour and a half.

THE COURT: Okay. And who is going to close for Dr. Mann?

Mr. Hendrix, how long do you anticipate your close will be?

MR. HENDRIX: An hour or so.

THE COURT: Mr. Dudley, how long?

MR. DUDLEY: Probably 45 minutes to an hour, Your Honor. It kind of depends on what they say, but probably 45 minutes.

THE COURT: And what I anticipated was we will use -- if we were to come back at 9:00, we will use the whole morning and go into lunch almost on closing, and then submit it to the jury. And I'd like to get it to them early enough where they have some time to really discuss it. I would not want to give it to them late in the afternoon so that they feel rushed and then we have to bring them back the next day and do all of that.

Yes, ma'am.

MS. WHATLEY: Will you instruct first, or will we close first?

THE COURT: I usually give substantive instructions first. And then after you close, I give those last procedural instructions on picking a foreman, signing the forms, and all of those types of things.

MR. DUDLEY: Your Honor, will you give us a break between each close so the jury is fresh when we start, too?

THE COURT: I don't mind doing that. You know that

that's going to push us later into the afternoon though before we give them, but that's fine.

MR. DUDLEY: Judge, as long as you give them one before I close, I don't care.

THE COURT: I understand that. I understand that. You don't want to be worn out from hearing one close and then go right into another and not remember what each person said. That's fine.

MS. CASSINELLI COUCH: And, Your Honor, I think we have a couple of additional instructions to submit --

THE COURT: That's fine.

MS. CASSINELLI COUCH: -- based on the evidence, but I'll need a little bit to get them.

THE COURT: If we can finish up around -- as soon as we finish -- it's going to take us some time to go in the back and start looking through them and making sure we have them all together, and we can either call you so you can come back, or you can stay in the courthouse and just wait. Either way will be fine. We'll work that out with you. If we don't have anything else -- do we have stipulations as to fact, or as to something else? What is the stipulation --

MS. CASSINELLI COUCH: A stipulation of fact. I think we would like to call the witness before we do the stipulation.

THE COURT: All right. We can bring the jury back.

MR. HENDRIX: And, Judge, I've got the stipulation. I

was -- I got nominated to read it to the jury.

THE COURT: Is it as to testimony, or as to fact?

MR. HENDRIX: It's to fact.

THE COURT: Okay.

(Jury enters the courtroom.)

THE COURT: Ms. Couch, call your next.

MS. CASSINELLI COUCH: Lynn Blunier.

THE COURT: Come on down. Let us get you sworn in.

LYNN BLUNIER, DEFENDANTS' WITNESS, DULY SWORN

THE COURT: Come and have a seat.

DIRECT EXAMINATION

BY MS. CASSINELLI COUCH:

Q. Good afternoon. Could you tell the jury your name?

A. Lynn Marie Blunier.

Q. Can you spell your last name for us?

A. B-L-U-N-I-E-R.

Q. Okay. And scoot up to that microphone a little bit so everyone can hear you. Ms. Blunier, where do you live?

A. 10 Galaxy Lane, London, Arkansas.

Q. Okay. I'm going to show you what's been admitted as Government's Exhibit 101-B. Can you see that from here?

A. Yes.

Q. Okay. And does this appear to be an aerial shot of your neighborhood?

A. Yes.

Q. Okay. And would you mind getting up for me and coming over here with the Court's permission? Can you point out your house on this picture?
A. Right here.
Q. Right there?
A. Yes.
Q. Okay. And are you pointing to the only house on Galaxy Lane?
A. Yes.
Q. Okay. Thank you. What is your street address?
A. 10 Galaxy Lane.
Q. And, Ms. Blunier, do you have a pool?
A. Yes, I do.
Q. You do. And when was your -- let me ask you this. Have you had problems with a leak in a pipe related to the pool?
A. Only at the very beginning in January. The first day that they were digging the hole to start the pool, they cut our water line and we had it fixed that day.
Q. Okay. And when that happened, did the city of London take care of that, or --
A. No. It's private property. It's our problem.
Q. Okay. So you had to personally take care of that?
A. Well, the pool company did.
Q. And did you call the city of London about that?
A. Yes, because I needed to know where the shutoff valve was.

Q. And did they say it wasn't their responsibility to fix the pipe?
A. Yes.
Q. Did that get fixed?
A. Yes.
Q. Did you have any other problems with leaky pipes after January?
A. No.
Q. Are you home during the day?
A. Yes.
Q. If someone came to your house and inspected your pool, would you know that they were there?
A. Most likely, yes.
Q. And why?
A. Because my whole back yard is nothing but glass windows. I can see anybody who came -- come into my house. I'm usually in the kitchen or in the great room.
Q. Okay. And is your pool -- how is your pool in your back yard? Can somebody just walk right up to the pool?
A. From?
Q. From, I guess --
A. No.
Q. Kind of explain how your pool is in your yard.
A. The driveway is here, the grass is here, and it comes around. And then you have to walk up a berm to the pool or

walk up the deck. You couldn't see the pool from the lawn. You have to walk up. All you could see is the rim of the pool.

Q. Okay. So you have to be right up near your house on a raised area --

A. To see the pool.

Q. -- to see the pool? Okay. You were just talking about having your pool -- well, let me move on. Have you -- were you aware of somebody coming to inspect your pool on March 3rd of 2009?

A. No.

Q. Did you see anybody outside your house looking at the pool?

A. No.

Q. Were you home?

A. Yes.

MS. CASSINELLI COUCH: Thank you. I'll pass the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. GORDON:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. How long have you lived at 10 Galaxy Lane?

A. Since September 22nd, 2008.

Q. And when was your pool built?

A. It was started in January of 2009.
Q. When was it completed?
A. In late February 2009.
Q. Do you own a grenade launcher?
A. No.
Q. Do you own any 40-millimeter grenades?
A. No.
Q. Do you even have a firearm in your home?
A. No.
Q. Did you bury any grenades there at the end of Galaxy Lane?
A. No.

MR. GORDON: No further questions.

THE COURT: Any redirect?

MS. CASSINELLI COUCH: Just to be clear.

REDIRECT EXAMINATION

BY MS. CASSINELLI COUCH:

Q. You didn't have any water problems or any reason to have anybody check on them after January of '09 --
A. No.
Q. -- is that correct? When you say, "No," is that --
A. It's correct, I did not have any water problems.
Q. Thank you.

THE COURT: Anything else?

MR. GORDON: No, Your Honor.

THE COURT: You can stand down. Thank you.

Mr. Hendrix, call your next.

MR. HENDRIX: Your Honor, we have a stipulation of facts that we've entered into with the government. May I read it?

THE COURT: Yes.

MR. HENDRIX: "Stipulation of facts to the Honorable Brian S. Miller, U.S. District Judge: The United States Attorneys for the Eastern District of Arkansas and the defendants, Randeep Mann and Sangeeta Mann, in person and through undersigned counsel, hereby agree and stipulate as follows:

The deposits referenced as 'CLM payment PRL ADM FOR NYL' in Government's Exhibit 200-A through 200-L are payments from the disability insurance policy held by Randeep Mann. These payments are made monthly from New York Life in the amount of $14,500 plus additional adjusted payments over $4,000 for cost of living. These payments will continue whether or not Randeep Mann maintains his medical license.

"Respectfully submitted," and signed by Mr. Gordon for the government, Dr. Mann has signed it, Jack Lassiter signed it, and Sangeeta Mann has signed, and Tim Dudley for Sangeeta Mann signed it.

THE COURT: Ladies and gentlemen, the government and the defendants have stipulated, that is, they have agreed that certain facts are as counsel has just stated. You must

therefore treat those facts as having been proved.

Call your next.

MR. HENDRIX: Your Honor, with that, Dr. Mann rests.

THE COURT: Okay. Now, does the government anticipate any rebuttal?

MR. GORDON: No, Your Honor. We close.

THE COURT: Ladies and gentlemen of the jury, you have just heard the case. Now, before we have closing arguments, which we will -- we plan to start tomorrow at 9 o'clock, we have some issues to take up with regard to jury instructions and all of those things that lawyers and judges have to take up before we can give the case to you. So I'm going to release you.

Now, I've been telling you for five weeks that you'll have your day to sit back and discuss this case. But that doesn't start right now. You have not been instructed. So I have to give you all of your instructions before you can start discussing the case with anybody. And so I ask you, please hold true to the admonishments I've given you for five weeks. Don't read about the case this evening. Don't listen to it on the radio. Don't let anybody come and talk to you about it. Don't listen -- watch it on television. You know more about this case than anybody outside of this courtroom knows. There's nobody out there that knows more about this case than you do. So what we need to do is wait until tomorrow when we

instruct you and you have a chance to go back and listen to the points of view of your fellow jurors. And you'll get a chance to do that tomorrow. So just hold strong. We'll bring you back in tomorrow at 9 o'clock and we'll close and we'll give the case to you. Okay. Will all of you do that for me?

You are released until 9 o'clock tomorrow morning.

(Jury exits the courtroom.)

THE COURT: I am going to modify a little bit what I said earlier. You can stay up here if you want to, but I don't know how long it's going to take me to review these proposed instructions and come up with our instructions that I would initially propose that we have before our conference. So what I would suggest is that all of you take time, go back to your offices, do whatever you have to do, and then I call you back up here. We can -- I'm sure I can get you on the phone. Of course, like I said, if you want to stay in here and sit in these chairs or walk around the building or whatever, you can do that.

Is there anything else we need to take up, Mr. Lassiter?

MR. LASSITER: Yes, Your Honor. We need to renew our motions made at the close of the government's case.

THE COURT: And I have struggled -- there were two of the motions. I think I denied all of the motions for acquittal, and there were two that I was holding; one, I think, dealing with the registration of the grenade launcher that had

been, I think, purchased legally, but then was not registered. I was holding that to the end. I'm going to deny that motion. And I will take care of the motion now as a renewal of that motion and I'll deny it.

Mr. Dudley, I struggled with your issue probably more than most on the testimony before the grand jury. But I think there's enough in the case to submit it to the jury. So I'm going to deny it. And, of course, I know you're going to move to renew your motions.

MR. DUDLEY: I do, Your Honor.

THE COURT: Okay. And I'll deny that now.

Also, motions to sever, motions -- what other motions do we have that we need to make a record on?

MS. CASSINELLI COUCH: All of them. I can't list them all at this moment, but we renew all of them.

THE COURT: Do this. I will show for the record they are denied, but what I want you to do is look through your list. And when we come back for the conference, I would like for you to, on the record, restate them, very briefly state what your reasons were, so we have a good record on that.

MS. CASSINELLI COUCH: I have two other minor things. We --

THE COURT: Well, there's something we didn't do. I just noticed that Mrs. Mann did not rest. Do we need to call the jury back in here and catch them and bring them back in

here and let you say that? Do we still have them? Catch them at the door, bring them back --

MR. DUDLEY: We can do it in the morning before you --

THE COURT: I guess that's true.

MR. DUDLEY: I don't see that we need to call them back now.

MR. HENDRIX: Time for you to get all of your surprise witnesses together.

THE COURT: Well, let's see if they are still here. If they are still here, we'll do it now.

Would you do me a favor? Tell them to let the jury go and we will call them back tomorrow at 9 o'clock and rest.

COURT SECURITY OFFICER: Yes, sir.

THE COURT: What we just did was I asked the other CSO to go catch them because we had another issue we needed to take up, but tell them to let them go.

COURT SECURITY OFFICER: Yes, sir.

THE COURT: Thank you.

Oh, I show that I have a sentencing at 9 o'clock in the morning, so we're probably going to have to start at 9:30 -- 10:00. We have two. Well, we need to let the jury know. I wish you had reminded me. I totally forgot.

MR. HENDRIX: Do you want Robert to go --

THE COURT: Yeah. See if you can tell them not only don't come back today, but don't come back tomorrow until

10:00 o'clock. I have two sentencings tomorrow, one at 9:00 and one at 9:30. You-all please forgive me for this.

They are already gone?

COURT SECURITY OFFICER: They are gone. We'll take care of them in the morning.

THE COURT: Here's the thing. I have two sentencings tomorrow at 9:00 and 9:30. And I told them to be back at 10:00. I guess we'll just hold them downstairs until 10 o'clock.

Anything else we need to take up now before I start looking at the instructions?

MR. HENDRIX: Is there any way to call the jury?

THE COURT: And tell them not to be back until 10:00?

MR. HENDRIX: The only reason I -- of course, the government goes first, but I would hate for them to be all mad at us for waiting around --

MS. CASSINELLI COUCH: They are already mad at us.

THE COURT: Here's the only problem. If we -- see if we can get somebody to call them and leave messages for them and tell them to come back at 10:00. We can do that. We can call the clerk's office.

Who is our jury coordinator?

COURTROOM DEPUTY: Cindy Chapman and Shauna Bostic.

THE COURT: We can ask Ms. Chapman and Ms. Bostic to give them a call, to at least try to catch them, leave a

message for them or something.

COURT SECURITY OFFICER: Can we make it for 9:45 because we pick them up 15 minutes early?

THE COURT: Fine. Tell them to be back at 9:45.

MS. CASSINELLI COUCH: Two brief things. Should we take up issues with regard to the bill of particulars that will be submitted tomorrow?

THE COURT: Say that again.

MS. CASSINELLI COUCH: I think we need to make a record on the bill of particulars and how some of the items that the government included -- that would be the charges I don't think there's been any evidence of. Do you want to do that in the morning?

THE COURT: Well, if you have those together this evening -- or this afternoon, not evening, this afternoon, when we have -- when you make your record on the other issues, we can do that this afternoon. But if you want time to think about it and --

MS. CASSINELLI COUCH: I mean, it's just some of the things that they included as a basis for the obstruction and stuff I don't think we want offered.

We also have an ex parte matter that we need to make a record on.

THE COURT: Do you want to do it now, or do you want to do it when we come back?

MS. CASSINELLI COUCH: It doesn't matter. Whatever you would prefer is fine.

THE COURT: Let's do it now.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: In renewing our motion to sever, we need to make a record on the defendant's desire to testify and not testify as it pertains to that motion. In support of that motion and in our brief we discussed when a defendant might testify as to one count, but shouldn't testify to another count, and then he's put in that Hobson's choice and he can't exercise his right not to testify without impeding his defense on another count. And in this case, I think the case law is that I have to tell you what my particular issue is, what he would say and why it's good and bad.

THE COURT: Okay.

MS. CASSINELLI COUCH: So that's my attempt at this point. On the grenade count --

THE COURT: Do you want to take this up in chambers? Would that be easier?

MS. CASSINELLI COUCH: This is fine, whatever you prefer.

On the grenade count, the defense is that they were planted, that someone put them there. Dr. Mann has a history with law enforcement in Pope County including some ATF officers who are stationed and active in that county. It goes back

to 2001 or '2. There is a little bit of testimony in the record through the medical board transcript that those officers bribed a witness to try to testify. There are many, many, many, many other things that are of a similar nature that we believe, if we had called that ATF agent, we could have established a pattern of harassment towards Dr. Mann from this agent including that his wife is a patient of Dr. Mann's who could have been an informant sent in. We also have tapes of that agent -- of who I believe is that agent and other agents trying to bribe people to go in and attempt to get illegal firearms from Dr. Mann. None of those were successful attempts.

We felt like in this case, we could not call that person as a witness because to do so would have hurt the bombing case significantly. He participated in the bombing investigation and learned information through that investigation that if he testified would have been admitted and would have hurt more than his testimony would have helped on the grenades. So that is one basis for the severance, we were not able to call him or other local law enforcement agents as witnesses in support of the grenade count because of their testimony.

And let me add, their testimony also would have included complaints that they generated about patients, you know, people who had drug issues in the community who would blame it on Dr. Mann and then they would send it to the medical board and it

would generate some of these investigations. You ruled that a lot of that wasn't admissible, so we didn't want to open the door to that as to the bombing investigation.

In addition, Dr. Mann would testify that he has been harassed by them for years, that he was aware of their sort of following him around and being around his house and talking to his friends and trying to get his patients run in on him. And he could explain his contact with law enforcement over the years including his contact with law enforcement through a gentleman named Tim Harrell who the government was originally going to call, but didn't. However, he was not able to testify because of the medical board issues that would have hurt him and his defense on the bombing case because he would have had to have answered questions about the allegations at the medical board and his feelings and interactions with Trent Pierce. And we felt like that would be harmful to his defense to have to try and go back over all of those years and give some opinion about the way that he felt about the things happening in the medical board and his interactions with Dr. Pierce. Because of those things we would renew our motion for severance.

And we believe that his testimony as to the grenade counts and the gun counts, I should add that, that he obviously would have been able to testify when he received the USAS shotgun, that he didn't receive the letter telling him that he should have registered it, that he was unaware of that. And he could

have testified about the Hahn weapon, and that he received it from Hahn and everything to corroborate everything else we presented in our defense. We were not able to call him because of the negative effect it would have on the bombing case. So we feel like it infringes his right to choose whether or not he's going to testify in his own defense. And if the counts were severed, obviously he would be able to present all of those things to the jury.

THE COURT: Anything else you need to add to that?

MS. CASSINELLI COUCH: I hope not.

THE COURT: I'm still going to deny the motion. If you think of anything that you need to add when we come back out to do the conference on the jury instructions, we'll take that up. And you can -- you can supplement the record if you --

MS. CASSINELLI COUCH: Thank you, Judge.

(Proceedings continued in open court as follows:)

MR. DUDLEY: Your Honor, may my client be excused from attending the jury instruction conference?

THE COURT: She can.

MR. DUDLEY: Thank you.

(Recess at 3:08 p.m.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 9, 2011
United States Court Reporter

(Proceedings continuing in chambers at 5:45 p.m., defendants not present.)

THE COURT: This is not a cleaned-up version. We're still working on it.

MS. CASSINELLI COUCH: And, Judge, we brought a 404(b).

THE COURT: Take a look at it, and we will go through it. I took out -- the government had most of these and more. Mr. Dudley submitted three or four dealing specifically with the issues that he addressed, and I don't know if I took -- I think in a couple of those they were the same as the government's. I took a couple of those -- I took several of yours that you submitted, Ms. Couch, but what I did was I put -- I changed the form. I took out the headings and put Court's Instruction No. whatever. So read them closely to make sure.

MS. CASSINELLI COUCH: You have the only set of revised. So are you comparing?

MR. LASSITER: No.

MS. CASSINELLI COUCH: Do you want me to do it?

MR. LASSITER: No.

MS. CASSINELLI COUCH: I only have one copy.

THE COURT: I can tell you I took out several. One is -- the one that I took out -- well, just keep reading.

MR. GORDON: Do you want us to make comments as we go or save them until the end?

THE COURT: Note your comments. We will go through

each instruction and, if you have something you wanted to submit, we can look at it. And if you have something you wanted to change, we can look at it.

We can get started. Now, I have the final instruction. Like I said, I will do substantive instructions first, let you do your close. The final instructions are just going to be this: In conducting your deliberations, return -- and I have the verdict forms.

Now, has everybody seen the verdict forms that were submitted by the government?

MS. CASSINELLI COUCH: No.

MR. DUDLEY: You submit a verdict form?

MR. GORDON: I do, yes, sir.

THE COURT: I have the reasonable doubt instruction, and I didn't put it in there. I guess we need to put it in there.

And do we need a credibility of witnesses instruction?

MS. CASSINELLI COUCH: I have got to have sort of a way -- are we going to go through and object? Do I need to lay all mine out and figure out what I had that you don't have?

THE COURT: What we are going to do is go through the stack I just gave you, and the first one is going to be marked Court's Instruction No. 1. And I will see if there is agreement on it and, if there is disagreement, you can make your record on it. And if at the end you have instructions you want to submit,

you can submit those.

MS. CASSINELLI COUCH: Okay. Well, we are talking about do we have a credibility, and without comparing --

MR. DUDLEY: There is one that I have got.

MS. CASSINELLI COUCH: I need to compare or I am not sure that I am sharp enough right now to pick up if we passed over something.

THE COURT: Okay.

MR. CRABTREE: The reasonable doubt instruction is in here too.

THE COURT: That goes to show you. I have an extra one sitting over here, and I thought I didn't put it in. We will go through it and see, and we can read through it together and see if we have an agreement on the ones we have. I will tell you that there were only a couple of instructions that were greatly different. I think the --

Ms. Couch, you-all submitted an instruction dealing with constructive -- hold on just a second. I included one, but for a normal entrapment instruction. You also have to include it and then you have to not only give that entrapment instruction, but you have to give it in the previous instructions. But you don't have to do that for a constructive entrapment. So --

MS. CASSINELLI COUCH: Mr. Weisberg is the go-to on that, and so I think we're okay with whichever.

MR. LASSITER: The Court gave --

MS. CASSINELLI COUCH: What he is saying --

THE COURT: There was some language that should have been in one of the other instructions dealing with that, but the law says you don't have to for constructive entrapment. If it's entrapment, you have to. So let's go through these, and let's see.

On the first page, let's just mark that now as Court's Instruction 1. And that is almost an introductory instruction, just explaining to the jury that the same instructions I gave at the beginning and during the trial are still in force, but I am about to give additional instructions. Is there any objection to that instruction?

MS. CASSINELLI COUCH: No, sir.

MR. LASSITER: No, sir.

THE COURT: Second page is Court's Instruction No. 2. Is there any objection to that one?

MS. CASSINELLI COUCH: No.

MR. LASSITER: No.

MR. ROBLES: No.

THE COURT: Court's Instruction No. 3 will begin on page 3 and it defines evidence and it's essentially the same instruction I gave at the beginning of the trial.

MS. CASSINELLI COUCH: No objection here.

MR. DUDLEY: No, Your Honor.

THE COURT: On page 5, we will have what I will mark

down as Instruction No. 4. Just -- it's the instruction that deals with weighing of evidence.

MR. GORDON: I don't think we need the last sentence.

MR. DUDLEY: I agree.

THE COURT: I guess we don't. The last sentence in my Court's Instruction No. 4 is going to be stricken.

Court's Instruction No. 5, beginning on page 6.

MR. GORDON: I guess I have one comment. We were talking about Count 8. "Randeep Mann and Sangeeta Mann committed the crime of aiding and abetting the concealment and attempted concealment of an object with the intent to impair the documents." I don't know if we should switch that to "objects" so that it's consistent there.

THE COURT: We can do that.

MS. CASSINELLI COUCH: Are they objects or documents?

MR. DUDLEY: We are going to get to that.

MS. CASSINELLI COUCH: So we need to reserve our --

MR. DUDLEY: I don't care if you put objects there.

THE COURT: For consistency, I can say "concealment of document or documents to impair the documents used in an official proceeding," either way.

MR. DUDLEY: And it's going to come down to whether they claim it's something other than a document. When we get to the elements instruction, I am going to ask that they be required to state in the instruction what it is that they're

claiming. I will wait until we get there, Judge.

THE COURT: Okay. So objects or documents, we can be consistent either way. I think the evidence was that it was an envelope, wasn't it? With a checkbook or something in it?

MR. DUDLEY: Unless they're claiming something else, Judge.

MR. GORDON: It was checks and bank records.

MS. CASSINELLI COUCH: I think documents will be accurate.

THE COURT: Either way is fine. Consistency, which way?

MS. CASSINELLI COUCH: I vote documents. There is no trick here.

THE COURT: Just documents. Either way. You initially said objects.

MR. GORDON: I don't care.

THE COURT: Mr. Robles, is there any -- no, really, he is the one who is doing the research on this.

MR. ROBLES: I would -- I would think that documents might be --

THE COURT: Objects is broader. Documents is more narrow.

MR. DUDLEY: Fine with me. On this one, I don't care what we put in there.

MS. CASSINELLI COUCH: Well, it is going to come back

up, so --

THE COURT: We will change that to documents on 5, and other than that, have you had a chance to look at that real good?

MR. DUDLEY: Your Honor, I don't object, but I do ask that the Court give the last paragraph that's bracketed.

THE COURT: Yeah, I plan to.

MR. GORDON: And actually, Your Honor, back on page 6, Count 8, aiding and abetting the concealment or attempted concealment since we instruct in the disjunctive.

THE COURT: We'll do that. I would ask you to hang on to your copy so tomorrow when you get the final version, you can follow it along. Okay?

On page 8 we have Instruction No. 6. Any objection to the reasonable doubt instruction?

MS. CASSINELLI COUCH: No.

MR. DUDLEY: No, sir.

THE COURT: Page 9, we have, I guess, the weighing of testimony with regard to Lloyd Hahn.

MS. CASSINELLI COUCH: Do we think there are other instructions that should go in the order? Do you want us to say that now or --

THE COURT: You can.

MS. CASSINELLI COUCH: I think it would go in the order. I think we also wanted, in addition to this instruction,

an accomplice instruction on Lloyd Hahn, which I can tell you -- for the grenades.

THE COURT: Was there evidence that he was an accomplice?

MS. CASSINELLI COUCH: He testified or he attempted to testify that he illegally obtained them or possessed them and then transferred them to Randeep's possession. And so I think he would be an aider and abettor, accomplice to possession of unregistered grenades.

THE COURT: I think that's what the testimony was. In fact, he said he scratched off the numbers, and those are the ones that he sold. And at some point I think he said that the belt that they came in was different than what he saw, and then you redirected him on that issue. But that's essentially what he said.

MR. GORDON: He did.

THE COURT: Do you have that?

MS. CASSINELLI COUCH: I do, but where is going to be --

THE COURT: I think you might have given me, when you submitted yours, and I might have taken it out.

MS. CASSINELLI COUCH: I did.

THE COURT: Did you-all get a copy of their instructions?

MR. ROBLES: Uh-huh.

THE COURT: Do you have a copy of the defense accomplice instruction?

MR. ROBLES: We don't have a copy of the accomplice instruction.

THE COURT: Take a look at it, and we can get you a copy.

So is the -- is No. 9, which is --

MS. CASSINELLI COUCH: I missed 8.

THE COURT: Page 9. I'm sorry. It should be No. 7. Is there any objection to that?

MS. CASSINELLI COUCH: No, sir.

THE COURT: I think that you said there may be another order that they should come in.

MS. CASSINELLI COUCH: I didn't know if you wanted me to speak up so we get our numbering off or something.

MR. GORDON: Sorry. I'm trying to digest three or four different things at one time here.

THE COURT: Any objection?

MR. GORDON: I think the first sentence needs to be clarified because he is an accomplice in what crime? The bombing? I think that needs to be clarified.

THE COURT: The first sentence is: You have heard testimony from Lloyd Hahn who stated that he participated in the crime charged against the defendant. That would have to be clarified to: He participated in Count 7 -- no.

MS. CASSINELLI COUCH: I think that -- my position would be that the pattern instructions don't encourage ad libbing, and so I would -- I would say that you just put "a" instead of "the." They know what the testimony was, and so they know --

THE COURT: He didn't participate. He didn't participate in the bombing though.

MS. CASSINELLI COUCH: Oh, no. And I don't think that's implied.

THE COURT: I think he was in possession of the 40-millimeter grenades or whatever they are.

MS. CASSINELLI COUCH: I don't know that it's necessary in any instruction to start adding stuff. I mean, the pattern tells you where to add information, and the instructions go with all the testimony. So they're going to know. I mean, it's not like we're going to argue that he was an accomplice to the bombing. They are going to know what he said that he did. I mean, I would say that "a" instead of "the" crime charged or one of the crimes charged. I think it's kind of all over the place on the guns and stuff.

THE COURT: What count deals with the grenades?

MR. GORDON: Count 3.

MS. CASSINELLI COUCH: I mean, if you want to put Count 3 in there.

THE COURT: I say put "crime as charged in Count 3 of

the indictment."

MS. CASSINELLI COUCH: I think that's fine. I think my formal position would be that we shouldn't add to the pattern instructions, that we should try to stick with what they suggest.

THE COURT: I'm going to revise that sentence to say, "You have heard testimony from Lloyd Hahn stating that he participated in the crime as charged in Count 3 of the indictment against the defendant -- or against the defendant, Randeep Mann." It doesn't matter.

MR. DUDLEY: The jury knows my client is not charged with that. I don't object to it being that way.

THE COURT: Okay. That's Court's Instruction No. 8. Court's Instruction No. 9 is on page 10. You have heard that -- that's the "hopes to receive a reduced sentence."

MS. CASSINELLI COUCH: I am confused about Briscoe. What is his situation? He has got state charges and --

MR. DUDLEY: About who?

MS. CASSINELLI COUCH: Briscoe. I mean, I know that he doesn't have a federal case. Does he have Rule 35 issues?

MR. GORDON: No.

MS. CASSINELLI COUCH: And is there another instruction that covers him? I just can't remember what his -- he, like, had so many issues across --

MR. DUDLEY: He wasn't promised anything.

MS. CASSINELLI COUCH: Well, except that he --

MR. DUDLEY: Well, but this -- there is not an instruction on somebody who wants something that is not promised to them.

MS. CASSINELLI COUCH: Is there not another instruction that is more general?

MR. DUDLEY: No.

THE COURT: Is there an objection to No. 9, which is on page 10?

MS. CASSINELLI COUCH: No, Your Honor.

MR. DUDLEY: No.

THE COURT: And on page 11?

MR. DUDLEY: I do object to this instruction, Your Honor.

THE COURT: What's the objection?

MR. DUDLEY: It's basically cumulative and it is telling the jury to consider the evidence on the obstruction counts against my client, which they can do anyway. It unduly emphasizes the concealment charge because it's here and it's in the element. I mean, it doesn't fit because the charge in this case is concealment.

THE COURT: What is the response to that?

MR. GORDON: I think it does fit because earlier they're instructed to separate things out, and here they're being told, okay, you can consider. If you think they're

concealing stuff because they're guilty, you can consider that.

MR. DUDLEY: But see, that's saying -- they're charged with concealing evidence, and they're saying if you find they concealed evidence, you can consider that in determining whether they're guilty of concealing evidence. It makes no sense.

THE COURT: I think it's a little different. I think it's: If you find that they took steps to conceal evidence, say as to the bombing or anything like that, then it shows they're guilty of that.

MR. DUDLEY: That would apply to Dr. Mann on those charges, but not to my client.

THE COURT: And that's why I said "defendant," but, Mr. Gordon, they are charged with that so if the jury determines that they did it, then that's a basis for conviction under the -- I think Counts, what, 7, 8, and 9. And so you -- you are basically using the same conduct, both to help find them guilty of Counts 1 through 5 -- no, 1 and 2, and then to also convict them on 7, 8, and 9. So it serves two different purposes.

MR. GORDON: Right.

THE COURT: And you are saying that that should be allowed?

MR. GORDON: Yes.

THE COURT: Why should it?

MR. GORDON: Well, I don't think that the jury should be -- that the jury shouldn't be allowed to do that simply

because they have been charged with obstruction. In that case why would you ever charge obstruction?

MS. CASSINELLI COUCH: Say that again.

MR. GORDON: I mean, it seems to me then that you could never charge obstruction when they are attempting to obstruct a substantive offense.

MS. CASSINELLI COUCH: Well --

THE COURT: If a defendant commits a crime and then tries to cover it up, you could never charge them with the obstruction of that offense because you could not use the evidence in the substantive charge for the underlying offense. I think that's, that's the argument. In this case, how does that work? How do we get to a resolution of this?

MS. CASSINELLI COUCH: I think I have a little different position -- objection, but it's not that what Mr. Gordon is saying is incorrect. It's just not all the time with everything. You know, he is saying because you are charged with obstruction, it can be evidence of anything on any count even though we have provided no proof that this was relevant to, affected, or had anything to do with some of these counts. So you are telling them: You can use the fact that we have charged you with obstruction to prove guilt of an unregistered firearm that happened months before this. I mean, you know, there has been no evidence connecting these things or showing that they even could be showing consciousness of guilt. Also, I would

renew the motion to sever on this basis because, if this instruction is given, it's very prejudicial to us.

THE COURT: Mr. Dudley, you were about to say something.

MR. DUDLEY: I forgot what it was, Judge.

THE COURT: Well, I will tell you that -- I left it in here. There is a concern, and I understand your point, if --

And for the record, I am talking to Mr. Gordon.

I understand the point that you would never charge anybody with obstruction if the evidence you are going to use for the obstruction could not be used to prove the real issue -- or to find the person guilty of the underlying offense. But in this case, I think that essentially it is that the item that was used or that was removed from the house ultimately was determined to have had no relation -- I don't know if it was really proven, but it was never proven that it had a relation to any other offense. I think what the testimony was at trial and the argument that I heard was, well, it's not her right, Sangeeta Mann's, or Dr. Mann's right to decide where the investigation should go or what's important to the investigation. But ultimately, when they brought back the envelope with, I guess, Sandip Singh's and Dan Mann's or whoever's stuff was there, it didn't affect them.

And so I guess what I am saying is maybe in this case where you have -- whatever the item was that was removed, the object

of the obstruction didn't affect the case?

MR. GORDON: But there is also other examples of them destroying evidence. Sue doing spring cleaning right after Dr. Mann's arrest and then cleaning out the office. There are -- there is phone calls where they say there are guns in the office, but when the search warrant is done, there are no guns in the office. So it's not just the charged conduct. There is other conduct that was brought up during the case.

MR. LASSITER: The instruction relates to the crime charged in the case, and it doesn't relate to a specific charge.

MS. CASSINELLI COUCH: Also, I have kind of a problem with the gun thing. There were more discussions about the gun that y'all didn't play, the guns in the office thing, and I sort of find it misleading to argue one thing to the jury when you have tapes that discussed those things and put them in a different light, you know, like sort of leave out that other end of the phone call.

THE COURT: What was the evidence about attempting to influence witnesses?

MR. GORDON: Going to Gerald Riley, telling him he doesn't have to tell ATF anything, saying that they would hire him an attorney.

MS. CASSINELLI COUCH: I'm going to jail. I'm in trouble if that's a problem.

MR. DUDLEY: I can tell my client that, and I do tell

my client that: You do not have to talk to the FBI. That's not influencing a witness. That's telling them the truth. They don't have to.

MS. CASSINELLI COUCH: And your employer can pay for a lawyer, or your friend.

THE COURT: This seems to be a little different connotation from a lawyer telling his client that and the defendant telling somebody. But what I am going to do, they have been charged with obstruction. That's been part of the case. They -- the jury has heard all the evidence about the obstruction. I am going to remove this instruction because they have that information anyway. They are going to use everything they saw in this case to make this decision, and I would -- out of caution, I am going to strike this instruction.

Now, Mr. Gordon, do you want to submit this one?

MR. GORDON: No, Your Honor.

THE COURT: For -- just to have a record on it?

MR. GORDON: No, sir.

THE COURT: The next one is experts.

MS. CASSINELLI COUCH: No objection.

MR. DUDLEY: Do you want to make this No. 10?

THE COURT: Yes.

MR. DUDLEY: No objection.

THE COURT: Now, demonstrative summaries, this was submitted by Dr. Mann. I don't think you have any.

MS. CASSINELLI COUCH: On the medical clinic, they submitted summaries of assets and -- income and expenses, and on the sign-in sheets --

MR. GORDON: Right.

MS. CASSINELLI COUCH: I think that's what --

THE COURT: Do we need this?

MR. GORDON: I think the 4.12 instruction is more appropriate because it deals with Rule 1006 summaries, which is what they were admitted as.

MS. CASSINELLI COUCH: And I think we submitted both, not really knowing which one --

THE COURT: I think I have removed the other instruction.

MS. CASSINELLI COUCH: You didn't admit the underlying records?

MR. GORDON: We did not.

MS. CASSINELLI COUCH: I thought you did.

MR. GORDON: No, I didn't.

MR. LASSITER: They were pushing --

MS. CASSINELLI COUCH: They were sign-in sheets, and then did you have underlying data for the accountant stuff?

MR. GORDON: Back at her office, we did.

MS. CASSINELLI COUCH: We didn't even look at it? I must have misunderstood that.

THE COURT: So here is what 4.12 states. You remember

that certain -- what? Do we have summaries? We didn't have schedules.

MS. CASSINELLI COUCH: Charts.

MR. GORDON: Charts and summaries.

THE COURT: Summaries and charts were admitted into evidence. You may use those summaries and charts as evidence even though the underlying documents and records are not here.

I don't think anyone challenged the accuracy of -- the next statement is: However, the accuracy and authenticity of those charts and summaries has been challenged. Did anybody challenge what came from the clinic?

MR. GORDON: No, sir.

THE COURT: I think the extent of the cross-examination was you bought stuff over in Arkansas -- I mean, in Tennessee.

MS. CASSINELLI COUCH: Remind me, though, which -- we had the accountant's summary, and she had two?

MR. GORDON: A barred chart and then the numbered chart.

MS. CASSINELLI COUCH: And then somebody -- Ms. Rudd?

THE COURT: The office manager.

MS. CASSINELLI COUCH: And that was a chart about --

MR. GORDON: The sign-in sheets broken down by year.

MS. CASSINELLI COUCH: And was there a summary of the out-of-state people? I can't remember how that worked out.

MR. GORDON: That was actually a full-blown list that

was admitted under seal because it contains patient information.

MS. CASSINELLI COUCH: There is no summary of that?

MR. GORDON: No.

MS. CASSINELLI COUCH: I do object to that if there is a summary.

MR. GORDON: No. Mrs. Rudd testified what the breakdown was by state, but there was no summary of that list put in.

MS. CASSINELLI COUCH: Okay.

THE COURT: My only question is that was there any objection to them -- not objection to those coming in, but during the course of the trial, I don't think anybody questioned the accuracy of those charts. So -- and the reason I ask that question is the next part of this instruction deals with where there has been a challenge to it, and I don't think there was.

MR. DUDLEY: I know I didn't.

THE COURT: Those patient sign-ins -- and it was his income over a ten-year span.

MS. CASSINELLI COUCH: I think that issue is going to be what they mean, so --

Do you agree with that?

MR. LASSITER: We didn't object.

MS. CASSINELLI COUCH: Okay.

THE COURT: Next, we have --

MS. CASSINELLI COUCH: So demonstrative is out, right?

THE LAW CLERK: What number was that?

THE COURT: That was 11.

MR. CRABTREE: So is 4.12 replacing?

THE COURT: Yes, it is. And then the next one, which I will mark as 12, is a fairly long one. It deals with elements of crime for weapons of mass destruction. The question I have to everyone -- this was submitted with the conspiracy charge attached. I mean, this all is one instruction. Should we separate these out into two separate instructions?

MS. CASSINELLI COUCH: I think that we filed some motions on this issue, and this goes to the duplicity of Count 1? Your duplicity and multiplicity, is that right?

MR. DUDLEY: Do what?

MS. CASSINELLI COUCH: Is it duplicity and multiplicity?

There is two offenses listed in Count 1, which is why we have a problem now figuring out instructions, and we filed a motion on this prior to trial. I think that I would prefer it to say both and have a separate pattern conspiracy instruction.

THE COURT: Look at pages 14 and 15 and 16. They were all included in one instruction, and I was saying separate conspiracy out into a separate instruction.

MS. CASSINELLI COUCH: This is my issue. The conspiracy instruction is not the pattern instruction, and the way that the Eighth Circuit Model Instructions do this is

normally you have it -- like you would have conspired or aided and abetted and then you would have the element and then the next instruction would be conspiracy is when two people agree to do something bad and then here are the four paragraphs explaining it. And then the one after that is aiding and abetting is and here is what that means. And I think that's what I would suggest.

MR. LASSITER: Was this your conspiracy instruction?

MR. DUDLEY: Pardon?

MR. LASSITER: Was this your conspiracy instruction?

MS. CASSINELLI COUCH: Who submitted this instruction?

THE COURT: The government submitted this instruction.

MS. CASSINELLI COUCH: I think we should perhaps start with that.

THE COURT: Do you have a model? Does it include all of this in one instruction?

MR. DUDLEY: Judge, I am not involved in this. What they submitted doesn't even fit with the model instruction on conspiracy.

THE COURT: Okay.

MR. DUDLEY: Because the model instruction requires them to state the object of the conspiracy and the means by which it is accomplished, and they don't have any of that.

MS. CASSINELLI COUCH: I was going to show you what we had originally.

THE COURT: Have you seen the proposed instructions submitted by the -- by Dr. Mann?

MR. GORDON: I have, but it was this weekend when I looked at them.

Judge, I have looked at theirs. The version that you have, is it page 29 on the bottom?

THE COURT: It is.

Ms. Couch, do you have another copy of yours?

MS. CASSINELLI COUCH: Mr. Lassiter has another copy.

THE COURT: Okay.

MR. GORDON: First, I don't agree with the three elements that are broken down there.

MS. CASSINELLI COUCH: And I am fairly insistent that there are three elements and not two.

THE COURT: What instruction do you have, the model instruction?

MS. CASSINELLI COUCH: This may have been one that didn't have a model.

MR. DUDLEY: The model is 5.06A.

MS. CASSINELLI COUCH: Oh, yeah.

THE COURT: Okay. That's the conspiracy count, but how about first let's deal with Count 1, the conspiring to use a weapon of mass destruction.

MR. GORDON: The problem with 2332(a) is this statute has not hardly been contested. There is zero -- almost zero

case law on it. I couldn't find any sample instructions. We did contact the counterterrorism section just because they're the ones that mainly deal with this statute, and what we provided the Court is what they provided us. That's what they have used in the past.

MS. CASSINELLI COUCH: I have a note at the bottom of mine that looks like there is a model instruction for a similar statute, like 6.18.2252B. So perhaps we should -- I can't swear that that means anything, but it's on here. So maybe --

THE COURT: What's the statute?

MS. CASSINELLI COUCH: Well, it's the Eighth Circuit Instruction No. 6.18.2252B.

I don't know if you-all have that.

THE COURT: 2252?

MS. CASSINELLI COUCH: That's what I have here. I don't know why. It looks like Jack's bar number is next to it. So maybe there was a similar -- I don't know. I just thought you might want to look at it and see if it had anything good.

THE COURT: 2252A is child pornography.

MR. LASSITER: I think when I did it, I was looking for a basic conspiracy instruction.

MS. CASSINELLI COUCH: Did you mean 2232 maybe?

MR. LASSITER: I don't know. It's been a long time ago.

MS. CASSINELLI COUCH: Well, I would say if the

government is going to charge two offenses in one count, then they should have two options of one instruction.

THE COURT: Remind me what the indictment in Count 1 was, conspiracy to --

MS. CASSINELLI COUCH: Would you like me to read it?

THE COURT: I am trying not to read it, and you want to hand it to me to read. I am trying not to. That's okay. Don't worry about it. I think it was --

MS. CASSINELLI COUCH: I have it right here, if you would like me to --

MR. CRABTREE: Go ahead.

Aided and abetted by a person and persons unknown to the grand jury, without lawful authority, knowingly use and attempt to conspire to use -- and so you have aided and abetted, attempt, conspire.

MS. CASSINELLI COUCH: Of course, we're going to object to the attempt because they dropped that out of the bill of particulars. They said aided and abetted or conspired, and I clearly --

THE COURT: I don't think we have heard any evidence of attempt anyway. I think it was all conspired and aided and abetted. I think that's right, but we have -- we'll hear from the government about that.

MR. GORDON: I agree.

THE COURT: That is what the evidence showed. So how

do we get through this instruction? You-all tell me. What -- here is the deal. The -- I am trying to remember why I chose the government's instruction. I think it was -- I think the first part of it, the two elements, I think it was easier for me to read. It read more easily. And the conspiracy part of it, essentially -- I don't know.

MR. ROBLES: May I say something?

THE COURT: Yes, sir.

MR. ROBLES: I believe that the -- these components to the statute, it's not necessarily a separate crime that's being charged. It's just a -- the charging language is in the disjunctive in the indictment, and it's not necessarily conspiracy to use or conspire to use a weapon, just the same as it would be attempt or to use or aid and abet or whatever. It's the disjunctive language in the statute. The statute actually states: A person who without lawful authority uses, threatens, or attempts, or conspires to use. So it's not necessarily that there is a separate --

THE COURT: So either one of those would satisfy or meet the burden.

MR. ROBLES: Exactly. And the definition of conspiracy is just to aid the jurors in understanding how an agreement or, in this case, how a conspiracy to use the --

MS. CASSINELLI COUCH: I don't disagree with that aside from our pretrial motion that the statute hasn't been through

the system for a challenge on the multiplicity issue, but, otherwise, I agree with his statement that it could -- it would be aid and abet or conspire in one instruction.

The bigger issue is that Element 2 makes an "and" an "or" and combines multiple elements into an optional choice that should be a third required element instead of --

THE COURT: What are you pointing to?

MS. CASSINELLI COUCH: On the second element: The defendant knowingly did so against a person or property within the United States -- that should be a third.

THE COURT: I'm not following you. That's on page 15?

MS. CASSINELLI COUCH: 14.

THE COURT: And, two, the defendant knowingly did it.

MS. CASSINELLI COUCH: And then three.

THE COURT: What was three?

MS. CASSINELLI COUCH: Three is the offense or result affected interstate commerce.

THE COURT: You say: And the results affected interstate commerce. Is that what you are saying?

MS. CASSINELLI COUCH: Yes. The "and" is correct. I thought it should be "or," but it's "and." And there should be a third element. It's not combined with -- that should be combined with the second element.

THE COURT: How would we restate?

MS. CASSINELLI COUCH: You just break it, after the

and, I mean, I would --

THE COURT: You say within the United States and then have.

MS. CASSINELLI COUCH: Semi colon and 3.

THE COURT: Any objection to that?

MR. GORDON: No, Your Honor.

THE COURT: Okay. Now, do we take the conspiracy portion and make it its own instruction?

MS. CASSINELLI COUCH: I think that our position would be that this instruction should say: The crime as charged in Count 1 is aiding and abetting or conspiring to use a weapon of mass destruction. In order to prove Count 1, the -- they must prove, what, a conspiracy --

What does ours say? It has three elements. One is --

THE COURT: This is the conspiracy portion?

MS. CASSINELLI COUCH: No. Let me start over. The first element under the government's theory and the -- Element 1 is you either aided and abetted or conspired to use a weapon of mass destruction. The second element is -- well, we have two different ones. Either you knew -- I think you knew it was a weapon of a mass destruction is an element and against a person or property is an element and then the results affected interstate commerce. Then the next one is the definition of conspiracy, to aid and whether or not they have found Element 1, Option 2.

Is that --

THE COURT: What is the -- Ms. Couch is essentially bringing us back to her instruction. What is the objection to hers?

MR. ROBLES: I don't believe that knowing that a WMD was a WMD is an element. It's not within the scope of the statute.

THE COURT: Where is that found?

MR. ROBLES: I believe she is pointing back to her instruction. I don't know if she is submitting that language for the Court's instruction, but --

THE COURT: Okay. When you say the crime of using or conspiring to use a weapon of mass destruction against a person, property has three essential elements -- would that solve it?

MS. CASSINELLI COUCH: I'm sorry. Say that again.

THE COURT: The crime of using or conspiring to use a weapon of mass destruction against person or property. Would that solve the problem? Take your instruction and take out the "knowingly" and just say that the crime of using or conspiring to use?

MS. CASSINELLI COUCH: Yes. I'm okay with that.

MR. GORDON: I think we need a knowing there, but where she has Element 2, where it says "Dr. Randeep Mann knew the weapon was a weapon of mass destruction," that is not required.

THE COURT: So at the top, the crime of knowingly using

or conspiring to use?

MS. CASSINELLI COUCH: I am okay with that.

MR. GORDON: (Nodding head.)

MS. CASSINELLI COUCH: Do you-all have any -- Jack, do you have any major issue with that?

MR. LASSITER: No, I don't.

THE COURT: And then so in the second element, you say 2. We will just say, Dr. Randeep Mann -- just take it out?

MR. GORDON: I think if we then look at the United States's proposed instruction, Element 2 would be: The defendant knowingly did so against a person or property within the United States. And then 3 would be the interstate commerce.

MS. CASSINELLI COUCH: I am so tired I am barely keeping up with what we're doing.

THE COURT: Knowingly -- Dr. Mann knowingly used or attempted to use a weapon of mass destruction against a person?

MR. GORDON: Knowingly used or conspired.

MS. CASSINELLI COUCH: Yeah.

THE COURT: Knowingly used or conspired, and so that would be -- we would just take that portion of your second element and replace it, and replace their second element with that.

MR. GORDON: I think so.

MS. CASSINELLI COUCH: There are lots of pronouns flying around the room.

THE COURT: Yeah. I can't keep it together.

It will read: Dr. Randeep Mann knowingly used or conspired to use a weapon of mass destruction against a person or property within the United States and the offense or results of the offense affected interstate commerce.

MS. CASSINELLI COUCH: I can live with that.

We would also object to the intro paragraphs.

THE COURT: Where?

MS. CASSINELLI COUCH: Where it says first element and second element, in those paragraphs.

THE COURT: No, no, no. What I have done is taken your instruction, and I have amended it.

MS. CASSINELLI COUCH: Okay. So we're going to go with --

THE COURT: And we're using your instruction, but we're taking the language from the second element of the government's.

MS. CASSINELLI COUCH: Okay.

THE COURT: And then we're going to, at that point -- so that is No. 12, and so conspiracy would be -- conspiracy would be No. 13.

MR. GORDON: Can I ask which definition we're using for weapon of mass destruction?

THE COURT: I haven't settled on that yet.

MR. GORDON: Okay.

THE COURT: I have a definition at the bottom of their

instruction. Are you opposing that?

MR. GORDON: Yes.

THE COURT: Okay. And what definition do you propose? Yours?

MR. GORDON: Yes, Your Honor. On page 14 of our -- and the main difference is that when you are trying to figure out the definition of weapon of mass destruction, you have to hop around the code because it points you to different sections. And we have eliminated all the hopping, and then we have -- and then we have knocked out the parts that simply don't apply. So we have simplified it so -- to what actually applies in this case.

MS. CASSINELLI COUCH: Does the language "converting any device to a destructive device," is that statutory?

MR. GORDON: Yes.

MS. CASSINELLI COUCH: May I assume that we took this from the statute that is cited? Maybe we should just look at it and, whatever it says, we should go with it.

MR. GORDON: I just tracked through the code here and 2232(a), the first definition for weapon of mass destruction points us back to the definition of destructive device in Section 921 -- 18 U.S.C. 921. And when we flip to that, it says: The term destructive device means any explosive, incendiary or poison gas, bomb, grenade, rocket. And so we have just -- we have eliminated the --

MR. LASSITER: Erin, I don't have any heartache with what they are proposing, do you?

MR. GORDON: I took out "rocket" in that.

THE COURT: I think the difference is having a charge of more than one quarter ounce.

MS. CASSINELLI COUCH: What?

THE COURT: Grenade or rocket having a propellant charge of more than 4-ounces plus an incendiary charge of --

MS. CASSINELLI COUCH: I don't care if we take that out. Is that --

THE COURT: I think that's what distinguishes your definition from the definition the government has.

MS. CASSINELLI COUCH: Their definition talks about converting devices and assembling new devices. I would prefer to go with what the statute says, but I don't mind cutting out the middle.

MR. GORDON: And I don't mind eliminating the part that you are talking about either.

MS. CASSINELLI COUCH: We're best friends.

THE COURT: So we'll stick with that definition.

MS. CASSINELLI COUCH: Mike, if you want to cut out the propellant, 4 ounces, and missile stuff, I'm fine with that too. I didn't hear any missile testimony, but --

THE COURT: Poison gas.

MR. GORDON: I think it should say weapon of mass

destruction includes -- I mean, the thing is it gets a little tricky here because later on we're going to talk about a different kind of destructive device when we're dealing with the USAS-12 shotgun.

MS. CASSINELLI COUCH: What about explosive incendiary or grenade? Do you want more than that?

MR. GORDON: How about weapon of mass destruction includes?

MS. CASSINELLI COUCH: Destructive devices which include?

MR. GORDON: Or even just knock out destructive devices.

THE COURT: Any explosive, incendiary, or grenade?

MS. CASSINELLI COUCH: I think we have to leave destructive devices in, but can we end it after grenade or do we need more than that?

MR. LASSITER: Weapons of mass destruction includes destructive devices, which includes explosives, incendiaries --

MS. CASSINELLI COUCH: Do you want more than that, Mike?

MR. LASSITER: It's a bomb. It's not something that's readily convertible.

MR. GORDON: Okay.

THE COURT: Mr. Lassiter, what was your last definition? Includes a destructive device?

MR. LASSITER: Which includes any explosive, incendiary, or grenade, period.

MR. GORDON: Except explosive, incendiary, or poison gas modifies bomb, grenade, and rockets. So I think --

MS. CASSINELLI COUCH: Huh?

MR. GORDON: -- it should really say explosive bomb, since that's the only thing that we're -- or I'm sorry -- explosive grenade.

THE COURT: Explosive-grenade?

MR. GORDON: Explosive grenade.

THE COURT: An explosive grenade?

MS. CASSINELLI COUCH: I don't know what that means, so I am okay with it.

Was I trying to include more stuff?

THE COURT: An explosive grenade and leave it at that?

MR. GORDON: (Nodding head.)

THE COURT: Okay. We can do that. Here is what I have so far.

Okay. Weapon of mass destruction includes any explosive grenade or any destructive device or just any explosive grenade?

MR. GORDON: I think the defense wanted the buzz word "destructive device" in there.

MS. CASSINELLI COUCH: I think we need it because that's the definition.

THE COURT: How about includes any destructive device

such as an explosive grenade?

MR. LASSITER: That works.

MR. GORDON: That's beautiful.

THE COURT: We'll do that. Okay. That's 12.

So now we have the conspiracy definition.

MS. CASSINELLI COUCH: Are we looking at ours, Your Honor?

THE COURT: I am right now, uh-huh. The conspiracy definition proposed by defense as taken from the statute or taken from the -- I have yours.

MS. CASSINELLI COUCH: You have mine and I have Jack's.

THE COURT: A person may be found guilty of a conspiracy if, 1, you reached an agreement or came to an understanding with another person or persons to use a weapon of mass destruction against a person or property. 2, he voluntarily or intentionally joined in the agreement or understanding. And 3, at the time he joined the agreement or understanding, he knew the purpose of the agreement or understanding.

MR. GORDON: I'm trying to sort out my piles.

THE COURT: You have one that's different than this?

MR. DUDLEY: I am not involved in this count, Judge. She was just asking me about the pattern instruction.

MS. CASSINELLI COUCH: And I don't know. You would have just done -- that's the Pattern 371. So whatever it says,

I think, is -- I am sure that --

MR. LASSITER: I know there is a reason that --

MS. CASSINELLI COUCH: So the question is, is that what we want it to be or --

MR. LASSITER: Yes.

MS. CASSINELLI COUCH: Is there supposed to be detail in there?

MR. LASSITER: 371 requires --

MS. CASSINELLI COUCH: No. I'm talking about what you have in your hand. Is that correct?

THE COURT: Do you have any objection to Defendants' 13? It was not 13. It was their -- and I don't know what page theirs was initially.

MR. ROBLES: 32.

THE COURT: Well, was that their 32?

MR. ROBLES: Yes.

THE COURT: You probably want to read that in conjunction with their page 33, which is the agreements.

MR. GORDON: Right. Your Honor, on the defense proposed conspiracy instruction on Count 1, Element 2 in the Eighth Circuit model includes the language of the -- at the time it was first reached or at some later time while it was still in effect.

THE COURT: What number is that?

MR. GORDON: 5.06A.

MS. CASSINELLI COUCH: Is that on the elements?

MR. GORDON: Yeah.

THE COURT: Defendant voluntarily and intentionally joined the agreement or understanding either at the time it was first reached or at some later time while it was still in effect. Do you need that? That is the -- that's the -- I don't know that there would be any testimony -- I mean, I don't think that -- him joining it at some later time, I don't think that's been the testimony here.

MR. GORDON: Right.

THE COURT: I mean, I don't mind putting it in there, but I don't know that that necessarily --

MS. CASSINELLI COUCH: The second part of the conspiracy has that language, if that matters to you. Like our proposed -- the model on that has that in there if that matters.

THE COURT: The agreement explained portion?

MS. CASSINELLI COUCH: Yes, sir.

MR. GORDON: Page 33.

MS. CASSINELLI COUCH: Uh-huh. Last paragraph in the middle.

MR. GORDON: That's fine.

MS. CASSINELLI COUCH: Although, I think that's right. The Court is right that it doesn't really --

MR. GORDON: That's fine.

THE COURT: So No. 13 will be the conspiracy. No. 14

will be the agreement explained. I'm going to take out those captions when we hand them to the jury.

So that brings us to page 21, No. 15. This is aiding and abetting.

MS. CASSINELLI COUCH: I appear to have lost my version of that.

MR. GORDON: Your Honor, I would ask -- and I am sorry. I am going back to the Court's Instruction 14.

THE COURT: 14?

MR. GORDON: Yes, sir. Based on Model 5.06B .

MS. CASSINELLI COUCH: Which one is that?

THE COURT: Page 33. This is your instruction on --

MS. CASSINELLI COUCH: I can't compile these.

MR. GORDON: -- the agreement explained.

MS. CASSINELLI COUCH: Okay.

MR. GORDON: On the model there is a second sentence in the first paragraph. It makes no difference whether that person is the defendant or named in the indictment.

MS. CASSINELLI COUCH: I have never read that in my life.

THE COURT: What is the language? It makes no difference if the person what?

MR. GORDON: It makes no difference whether that person is a defendant or named in the indictment.

MS. CASSINELLI COUCH: Are you sure? I mean, I

don't -- we have used this instruction in every case, and I have never heard that in my life. Did you copy this out of the models?

THE COURT: What number?

MR. GORDON: 5.06B. And honestly, I wouldn't have noticed it except Mr. Dudley had it in his, and I was like, I like that.

MS. CASSINELLI COUCH: I really never have heard that sentence in my life.

THE COURT: It's optional.

MS. CASSINELLI COUCH: Okay. Maybe that's why. I have always erased it. So it says --

MR. GORDON: I would ask that that be included.

MS. CASSINELLI COUCH: Will you read it again for me?

MR. GORDON: It makes no difference whether that person is a defendant or named in the indictment.

THE COURT: And that would be the case here because you have some other unnamed conspirators apparently.

MS. CASSINELLI COUCH: Is there any other bracketed language?

THE COURT: No. The rest of the bracketed handling is you do not have to find that all of the persons charged were members of the conspiracy.

MS. CASSINELLI COUCH: Okay. And that is 14.

And 15, which is the aiding and abetting, aiding and

abetting the weapon of mass destruction charge. Do you-all want some of coffee to wake you up?

MR. DUDLEY: I want to sleep tonight, Judge.

MR. LASSITER: No, thank you.

THE COURT: If you-all are getting tired, we can always knock off and just come back tomorrow when I get through my hearings at 10:00. And we can take this back up and we can come back here and do this -- the only problem with that is, if we charge the jury and you do closing tomorrow afternoon, I mean, we would almost have to make the jury go home and then hand them the case on Thursday morning. And I would not want to hand the case to them on tomorrow afternoon and then they go home -- or they stay back there until late in the evening and get tired and mad at each other and start making deals and doing what juries do. You know, they cut deals and they say, If you give me this, I will give you that. We don't want that. We want them to make a decision.

MS. CASSINELLI COUCH: I am tired, but I don't have to do closing. And Mr. Gordon and Mr. Dudley have to do closing tomorrow, so I think it should be up to you-all if we proceed tonight or tomorrow.

MR. LASSITER: I agree. I can stay as long as you want.

MS. CASSINELLI COUCH: Y'all are the ones that have to be prepared tomorrow. So I think whatever you two want --

MR. GORDON: I would rather press and get it done, but --

MR. DUDLEY: How about if we set an 8:00 o'clock time limit. If we're not through, we break. I think we can move on.

THE COURT: I think we can too because a lot of these start looking alike here in a minute.

The aiding and abetting the weapons of mass destruction, that is presently our -- that will be our 15 if we can reach an agreement on it.

MS. CASSINELLI COUCH: I think I am okay with it.

THE COURT: Government have any objection to 15?

MR. GORDON: No. I would ask for clarity's sake in Element No. 1, have known the crime of -- you said weapon of mass destruction was being committed.

THE COURT: Had known the use of a weapon of mass destruction was being committed -- or the offense.

MS. CASSINELLI COUCH: I think just "the."

THE COURT: Was being committed.

MS. CASSINELLI COUCH: What does the pattern instruction say?

MR. GORDON: It doesn't.

THE COURT: I say that the offense of -- you can't just say "the use of a weapon of mass destruction" because then you say "was being committed."

MS. CASSINELLI COUCH: I think it's fine. I think it's

capitalized. We are hitting them with all these instructions.

MR. GORDON: That's fine.

MS. CASSINELLI COUCH: And there are two typos. The comma in the last full line before you get to Element 1, there is a space, and at the end there is a colon and a comma.

THE COURT: We'll take those out.

Okay. The next one is crime of damaging or destroying a vehicle. That's 16.

MS. CASSINELLI COUCH: And I have some things on this one. Do you want me to just go?

THE COURT: Yes.

MS. CASSINELLI COUCH: First, I think the vehicle should be described as it's indicted. Going down, I -- these definitions are used in the -- in activity. I am great for the first one, but I am not for the second one, telling them that if you find the vehicle was used by Trent Pierce for the medical board -- that's for them to decide if that affects interstate commerce or not. I mean, that's -- also, we had a personal injury and we charged it as that and I don't know if that matters.

MR. LASSITER: It does. In our pattern instruction, I think we put that as a -- I shouldn't say pattern --

MS. CASSINELLI COUCH: I certainly --

THE COURT: First, first, the term "use of in interstate commerce" means active use of property for commercial

purposes and not passive --

Now, that's fine. The objection is to: You may find this if he was using it in the performance of his duties as the Arkansas State Medical Board --

MR. GORDON: He is. That's just from the model instruction. That's their language and then they have a blank and we filled in the blank.

MS. CASSINELLI COUCH: What model instruction? I don't think there is one.

THE COURT: 16.

MR. ROBLES: 6.18.844.

THE COURT: 844?

MR. ROBLES: Yeah. I will find a page number.

MR. GORDON: It's on page 228 of my model instructions.

THE COURT: That is -- the question here is, is driving to the medical board meetings as a matter of law an act that affects interstate commerce? I think that's the defendants' whole case here. I will tell you, I think if you look at case law, it's pretty clear it is, but I don't know if that's an issue of law as much as it is an issue of fact for a fact finder to determine.

MS. CASSINELLI COUCH: I will tell you, the use or using as defined as the affecting parts when you are using -- or using a vehicle, it's a lot -- the cases are more all over the place. For instance, just using your car in your everyday

business, is not sufficient, but if you lease your car, leasing and renting -- but I told you there is a case about the Judge who goes and presides over cases involving out-of-state claimants. Him driving his car to work is not sufficient.

MR. GORDON: And we're really hanging our hat more on the use in an activity affecting interstate commerce where the board itself affects interstate commerce and he is using his car and reimbursed for the use of that car in his business with -- as a member of the board, as the chairman.

MS. CASSINELLI COUCH: I think that's a similar question.

THE COURT: Is that an issue of fact?

MR. GORDON: It's an element we have to prove, so I think it's both.

MS. CASSINELLI COUCH: Well --

MR. GORDON: It goes to the jury. But I think you could also rule as a matter of law we have not met it, and then it would be a directed verdict.

THE COURT: At the same time, I don't know that the jury instruction -- if I essentially instruct them that, if you find that he drove it to a meeting, that it's affecting interstate commerce. I think you can argue that to them. You can argue that that's how we prove the use of stuff in interstate commerce, that he was doing his things, but the testimony -- I think you had several things in testimony about

how he was affecting interstate commerce and I think that's something to be argued to the jury and not something that they have you look and say, "He drove to the meeting, therefore"-- I think that's -- I will take out that sentence.

MS. CASSINELLI COUCH: Also, we have "attempted" in there. I have been taking it out because it's less things to worry about, but --

THE COURT: Attempted where?

MS. CASSINELLI COUCH: Damaged or destroyed or attempted to damage or destroy. We took it out of the first one.

MR. GORDON: That's fine.

THE COURT: To leave it in here?

MR. GORDON: To take it out.

THE COURT: I don't know where it is.

MS. CASSINELLI COUCH: Element 1, the defendant damaged or destroyed or attempted to damage or destroy a vehicle.

THE COURT: I don't think that's really an issue.

MS. CASSINELLI COUCH: And it's also on Element 3.

THE COURT: So it will be vehicle was damaged or destroyed?

MS. CASSINELLI COUCH: Yes.

THE COURT: So we have No. 16.

MR. LASSITER: Resulted in injury to a person -- I think we included that last phrase as --

MS. CASSINELLI COUCH: We did, but I certainly don't have an objection if you don't want to include it.

MR. GORDON: And here is what we did, and based upon *Pirani*, because really that fourth element about injury is a sentence enhancement. It ups the sentence up, and so we included it as a special instruction on the verdict form, a special finding on the verdict form because it's -- I see it as a sentencing enhancement.

MS. CASSINELLI COUCH: Well, and I certainly wasn't going to make you have a jury finding for a sentencing enhancement if you didn't want to, but if you are going to offer it as a verdict option, I think it has to be in the count instruction. I think you at least need a reference in here: If you find this, you will also consider whether this caused whatever.

MR. GORDON: I just don't think that's right. It's crazy in the facts of this case, but theoretically a jury could find, okay, he blew up the car, but he didn't injure him.

THE COURT: I'm going to leave it as we have it.

MR. CRABTREE: I do have one request on the verdict.

MS. CASSINELLI COUCH: I also asked for Element 1, for it to have the vehicle in there.

THE COURT: The next one is on page 25, 17.

MS. CASSINELLI COUCH: This one --

THE COURT: I'm getting confused now.

MR. GORDON: He is charged with aiding and abetting.

THE COURT: Okay. This is means of explosive.

MS. CASSINELLI COUCH: This one says the crime of. So I guess we should be --

THE COURT: I'm getting confused now.

MR. GORDON: He is charged with aiding and abetting.

THE COURT: Okay.

MS. CASSINELLI COUCH: In this one it said the crime of. Whatever we do, we should just be consistent.

THE COURT: What are you --

MS. CASSINELLI COUCH: I guess in Element 1 of the aiding and abetting, have shown the crime of damaging or destroying. And I guess really -- I'm sorry. It's the commas and the colons and the --

THE COURT: Other than those items, any objections to 17?

MR. GORDON: No, sir.

THE COURT: Now, the purpose of the statute -- I think that was Dr. Mann's proposed instruction. I put this in there, and then we ended up putting another instruction on page 28.

MS. CASSINELLI COUCH: Wait.

THE COURT: I put this in here only to ask what purpose does this serve? I didn't want to have you kick it out without giving you a hearing on it, but I didn't necessarily want to include this.

MR. GORDON: We included this, again, just because we asked other people who had charged similar cases to give us sample jury instructions, and this is what came to us. We actually cut it down to just the part that applied to this case. The main reason we like it is just because it tells them definitions to use for the relevant counts rather than having to define it again and again and again.

THE COURT: Like I said, I was predisposed not to put it in, but I wanted to give you a fair hand on it. Anybody from defense have an objection to purpose of the statute instruction or does it really matter?

MR. LASSITER: I am not used to having that instruction.

MR. GORDON: And really, Judge, I don't care.

THE COURT: I'm going to exclude it. Turn to page 28. We brought up an instruction starting about a third of the way down. That should be the next instruction. That should be -- we are going to number this 17.

MS. CASSINELLI COUCH: Okay.

MR. GORDON: 18 maybe?

THE COURT: Is it 18? Okay, 18. Any objections to --

MS. CASSINELLI COUCH: I think we would prefer "element" following "possessed" -- blah blah blah.

THE COURT: I think this follows the -- I think originally it had "knowingly," and I changed it that he had

because I think that's what the instruction is.

MS. CASSINELLI COUCH: And I can't remember if there was a pattern one for these.

THE COURT: 6.26.

MS. CASSINELLI COUCH: I do remember it. I did some research and some of the instructions on other offenses that had as an element knowingly possessing something. They changed their instructions to say knowingly possessed because it was more consistent with the interpretation they gave on appeal.

THE COURT: Model instruction on page 552. And it says, "Defendant knew he or she had the firearm," and so that's why I changed it from knowingly. I think a jury sitting there listening to he knew he had as opposed to the person knowingly had -- it just seems easier to follow for me.

MS. CASSINELLI COUCH: I guess our position would be the statute says that the violation is knowingly possessing X and, like I said, in other offenses that have as an element knowingly possessing something, particularly in other circuits, they have used that language as opposed to changing it to now he had or whatever. Because it's really not the same thing and then you proceed to give the definition of knowingly, but you have given them --

THE COURT: What's the distinction between I knowingly have it and I have it?

MS. CASSINELLI COUCH: Well, for us nothing. But for a

jury, have to make this as simple as possible and if you are giving them the definition of knowingly and the statute is knowingly, it seems more consistent to say what the statute says.

THE COURT: I understand. Is there any objection -- I think this is your instruction, but I changed it from knowingly to knew he had. Is there any objection from the government on this?

MR. GORDON: There is, Your Honor. The Element 3, these are destructive devices. We are not required to prove that they function as designed and that's consistent with case law, but also with the pattern jury instruction. If you look at Element 3, it has a Footnote 5. Jump over to the next page, last sentence.

THE COURT: So it's operated or assembled or readily assembled?

MR. GORDON: I think -- our position is there just would -- that element would be knocked out and it would -- what you have as Element No. 4 would be the third and final element.

THE COURT: Okay. Now, if you look at the pattern instruction in Footnote 5, it does say the third element of the pattern instruction will not be required in cases involving destructive devices as it is not necessary that the device function as intended. So I guess normally if you had a normal firearm, it would have to be operational.

MS. CASSINELLI COUCH: I'm okay with that.

THE COURT: But for a destructive device, it's not required.

MS. CASSINELLI COUCH: That's fine.

THE COURT: So we'll take that out. And so 4 now becomes 3.

MR. GORDON: Right. And we changed up above to Count 3 has three elements.

THE COURT: Okay.

MR. GORDON: And in Element 1, we need to close the bracket.

THE COURT: Yes.

MR. GORDON: And my question then, are we not going to define terms? Just by what we include in the brackets, we're telling them that the grenades are firearms without specifically defining them.

THE COURT: Have we defined firearm?

MR. GORDON: No. And that's why we had the definitions in that purpose-of-the-statute section.

THE COURT: You are right. He defines firearm, then destructive devices. I will include the definition. Shall we include the definition of both firearm and destructive devices at this point or just firearms?

MR. GORDON: At this point I think we have to do both.

MS. CASSINELLI COUCH: What was the Court's decision

on -- I don't know if Mr. Gordon ever said if he had a "knowingly possessed."

THE COURT: I'm going to stick with the "knew he had" and the reason I do that -- and I understand your confusion, but that's the -- that's what the instruction -- model instruction says. I think it's actually easier to understand.

MS. CASSINELLI COUCH: Sure. As long as our record is made. And actually, for now, I will just say that that would be our argument on all of those counts that require one knowingly possessed by statute.

THE COURT: Okay. The next one is 19, page 29. That's possession of a unregistered firearm that he had, and the firearm was a shotgun classified as a destructive device.

MS. CASSINELLI COUCH: Nothing other than what I --

THE COURT: Any objections?

MR. GORDON: I'm hesitating on the second element because I am not sure that that's quite accurate.

MS. CASSINELLI COUCH: This is your instruction, isn't it?

THE COURT: I think it's yours.

MS. CASSINELLI COUCH: It's not.

THE COURT: Is it not yours? I think it is.

MR. GORDON: If it's mine, it must be accurate.

MS. CASSINELLI COUCH: It may be ours. It doesn't -- format-wise --

THE COURT: If you look at 52, the firearm -- and it's a little different. This is not quoted the same as the firearm -- defendant knew the firearm was -- whatever, a shotgun has a barrel, barrel is -- you know, if I have an example --

MR. GORDON: It's fine, Your Honor. I mean, it's not fighting about -- it's something we can clean up if we can, but -- I think it's fine, Your Honor.

THE COURT: Okay. That's 19.

And then we have page -- how -- this was put in by Mr. Lassiter. This was the constructive --

MS. CASSINELLI COUCH: Entrapment by estoppel.

THE COURT: -- entrapment by estoppel, all right, which there is an Eighth Circuit case where you deal with it, where you call a law enforcement person -- or it doesn't have to be a law enforcement person. Well, it does have to be a law enforcement person. Somebody who was at a gunshop and he was a felon and he says, Can I buy a gun? And they say, Oh, yes, you can. And he buys a shotgun and he gets stopped and he says, Well, I thought I could do -- law enforcement told me I could.

The Judge did not give the instruction because the way this instruction was written, it put the burden on the prosecution to prove that the person knew -- or that the law -- that the person was not a law enforcement official, gave him -- and the burden should shift to the prosecution to prove that. It's the defense's responsibility to prove this defense. And if they

can't get up and say, The prosecution didn't prove -- well, they can't actually argue that you didn't prove it. They have to argue that the proof showed what they argued.

It's late in the day.

MR. GORDON: I'm following. I'm following. Judge, I believe the able Mr. Robles would like to be heard on this.

MR. ROBLES: I would object to the submission of this instruction. I believe the case credited was *United States v Austin*.

THE COURT: It is.

MR. ROBLES: I think there is a -- there needs to be a distinction made or there is a twofold burden that the defendant possesses, and that's, one, to accurately state the law in the instruction.

THE COURT: Yes.

MR. ROBLES: And, two, to show that the evidence sufficiently proves that -- exactly what you just stated. The tricky part about the entrapment by estoppel is that I believe that defense requires showing that the individual who gave the information was someone who possessed adequate authority to give that information to the individual, who they relied on.

In this case I think the only evidence we have is a phone call or testimony where Dr. Mann said, I called ATF in Atlanta and they told me. I don't think that sufficiently gets us all the way there because we don't know who that individual was. It

could have been the secretary. It could have been an agent, not necessarily someone who is charged or possessed the authority to give such information. I think *Austin* actually states specific individuals who would be considered to possess the requisite authority, and that's ATF legal counsel, prosecuting attorney, an Attorney General, somebody of that caliber, somebody in those positions.

THE COURT: And just saying we don't have anybody specifically, we have that he called. I think that's kind of -- that's the extent of the evidence, that he called. And he said he was told that he didn't have to register it. And what you are saying is he has to be able to point to somebody and say: Johnny Jones, the investigator, told me this.

What is the response to that?

MR. LASSITER: Two issues here. The threshold for giving the instruction -- I am not on a computer here. The written rule is if you have the evidence to support it -- I mean, it's --

MS. CASSINELLI COUCH: The case law is in conflict on Mr. Robles's point. Some cases say that the official -- they're just in conflict. There is no settled rule on whether this person has to have authority or not because there is also that public authority defense, which is not the same thing. I mean, this is a different category where it's about what the defendant believed and relied upon. And then --

THE COURT: I think what the Eighth Circuit said is -- in the case, the *Austin* case, the guy says she does not have the authority to tell him what the law is and cannot bind the government. I think in this case -- and I will read this. I think to give this instruction, I think that -- there is some testimony here, and I don't remember where the testimony came from. I just remember hearing it, that he contacted -- it wasn't ATF.

MS. CASSINELLI COUCH: It was ATF.

THE COURT: He contacted ATF and they told him and that's as specific as it gets. Now, who the "they" at ATF is, we don't know.

MR. GORDON: That's the defendant's self-serving statement on a jail call.

THE COURT: Of course, of course, but that's what he is going to say all the time. He doesn't necessarily have to bring somebody in to verify. He just says, I called over there, and I think that goes to Mr. Robles's point. You shouldn't be able to just say, I talked to somebody over there and it be that broad and it be enough to get you a defense. But I think in this case, we had -- he is not going to have the actual person's name, if it did happen. And I don't know whether it did, but how many years ago has that been?

MS. CASSINELLI COUCH: 15 years ago.

THE COURT: And the likelihood of being able to say

that Harold Jackson in the legal department gave me -- of course, it's -- I am going -- I will give the instruction; although, this instruction is -- I am still worried. I am not totally convinced about this instruction, I will tell you. And so that's why I put a star on it before I --

MS. CASSINELLI COUCH: Do you want to put, maybe, ATF official?

THE COURT: What's that?

MS. CASSINELLI COUCH: Like before, is it your --

MR. ROBLES: The submission of the instruction entirely --

MS. CASSINELLI COUCH: Well, if he is going to give the instruction, we prefer "ATF official."

THE COURT: I would imagine the government would rather have "an official" because that may be a little less legitimate than if you said ATF official. Now, I don't want to speak for anybody, but they object to this instruction all the way. And so I would rather just leave it like it is and give it as it is.

MS. CASSINELLI COUCH: Okay.

THE COURT: Also, you want to add ATF official and make it -- and withdraw your objection?

MS. CASSINELLI COUCH: No, sir.

THE COURT: Count 5, unregistered firearm.

MS. CASSINELLI COUCH: This is the one where -- knowingly possessed --

MR. LASSITER: 5 or 6 now?

MS. CASSINELLI COUCH: 5. This is the one we added in later, I think.

MR. LASSITER: I'm sorry.

MS. CASSINELLI COUCH: I have no objection.

THE COURT: Any objections?

MS. CASSINELLI COUCH: I said no objection other than what I already stated.

MR. GORDON: I guess just to put this on the record, I guess this applies to all of the firearm counts. *United States v Elliott*, our proposed instruction, we include language that states: In order to convict the defendant of a violation of the NFA, the government must prove beyond a reasonable doubt that the defendant had knowledge of the characteristics of the weapon and the definition of firearm under that act. Thus in Count 5, the government must prove beyond a reasonable doubt that the defendant knew the firearm was designed to fire automatically more than one shot without manually reloading by single function of the trigger. You may consider any statements made and actions by the defendant and all facts and circumstances in evidence which may aid in a determination of the defendant's knowledge.

MS. CASSINELLI COUCH: Object. That last part is from other instructions. It bolsters that one. So I would object to that, including whatever other requirements that they want to

add to their burden.

THE COURT: I think we ought to add language that explains the defendant's rights.

MS. CASSINELLI COUCH: I have no problem with that. I just have a problem with that last bit that's taken from another instruction and inserted into this one.

THE COURT: Do you have a copy of your instruction for Count 5?

MR. GORDON: I do.

THE COURT: May I see it? Do you-all want a copy of Mr. Gordon's Count 5?

MR. LASSITER: I have the instruction.

THE COURT: I'm going to take out our proposed Count 5, and I am going to give the government's -- I mean --

MS. CASSINELLI COUCH: What page is it on there?

MR. GORDON: I don't know.

MS. CASSINELLI COUCH: Okay. I flipped right open to it. I mean, I think we would just object to the part where he is talking about statute and acts and facts and issues. I don't really see why that's necessary. That's written instructions that the Court gives about all the evidence.

THE COURT: Any other instruction? I'm going to give this instruction, this Count 9 -- Count 6?

MR. LASSITER: I object to Count 6. As it appears, there is no way to lawfully own a machine gun.

THE COURT: That's right.

MS. CASSINELLI COUCH: We really did struggle with how to present this in an instruction.

MR. GORDON: And I agree. I mean, I completely missed that when I read their instruction. I was like, yeah, they're -- they're right. And that's something that needs to be changed, but I don't quite know that their solution was the answer.

THE COURT: So what do we have? Do we change this one or do we have another instruction?

MS. CASSINELLI COUCH: We could just do a defense instruction, like a separate one that says, you know, it's a complete defense if he legally possessed the machine gun.

MR. GORDON: I think that would be a better way to do it.

THE COURT: Okay.

MS. CASSINELLI COUCH: Okay. I guess we have to tell them the legal way to possess a machine gun is and -- so that becomes -- I mean, I don't -- I am on the fence on that because we struggled to even articulate because there is a third category of ownership that we didn't get into because it's so complicated and I couldn't understand it to explain it. So, I mean, once I started trying to make a definition, I couldn't actually include everything. But I am okay if you want to include what we know we have in the record, like it's post '86

and if he is a dealer and it's registered, it's legal.

THE COURT: Do you want to bring a proposed instruction tomorrow?

MS. CASSINELLI COUCH: Do you want me to take what we already have or just generally say if you legally possessed, then you're good?

MR. LASSITER: Perhaps a better way to do it is in a separate instruction that it's lawful to --

MS. CASSINELLI COUCH: Can it say this, Mike? As a complete defense, if the machine gun is lawfully registered, a person is in lawful possession of a machine gun if they're a Class 3 dealer and the gun was manufactured after 1986 and was properly registered with ATF? Or properly transferred?

MR. LASSITER: Properly transferred is probably more accurate.

MS. CASSINELLI COUCH: Can I leave out all the other scenarios? I mean, I think you could -- it's so confusing. I think that's what the evidence is, but I wanted to make sure that you don't think that there is some issue with what type of machine gun possession we have.

MR. GORDON: No. Because it's all going to be is that the gun or it's not the gun.

MS. CASSINELLI COUCH: Okay. Well, I will just do something and e-mail you, and it sounds like we can reach an agreement on it.

THE COURT: That's fine.

Okay. So Lloyd Hahn and the other guy's testimony as to -- so if we are going to keep 22, which is page 31 and if we are going to leave -- I am going to leave both in, 32 -- or 23 -- and 24 is dealing with possession, it deals with -- what is it? Constructive possession and all that.

MS. CASSINELLI COUCH: This is the pattern. I don't have any issue with it except that I think it should be tied to the count.

MR. GORDON: Sorry. I hate to go back, but on Count 6, Instruction No. 22, I guess I would request that the Court include the same language that we added to Count 5, based on *United States v Elliott*.

THE COURT: Aiding and abetting?

MR. GORDON: Well --

THE COURT: Count 5, not Instruction 5 -- do you have your Count 6?

MR. ROBLES: I have it. It's written on.

THE COURT: This is going to be essentially the same instruction, right, as No. 21 that you gave?

MS. CASSINELLI COUCH: Was *Elliott* NFA or just a regular, plain old criminal possession?

MR. GORDON: I think it was an NFA case. The guidance we have is to treat 9220 as the same as an NFA case.

THE COURT: Your book says you are supposed to pick one

or the other. So I wouldn't guess that this is --

MR. GORDON: Here is my concern, was that we introduced guns and pictures of guns to show that he knew -- you know, that there was knowledge element that we were introducing, that evidence to note -- and I don't know that -- I am like -- Court's Instruction No. 22, Element 2 says that we have to prove that the defendant knew the firearm, which was a machine gun -- is that sufficient to cover what *Staples* and *Elliott* says.

MS. CASSINELLI COUCH: Oh, I see what you are saying. Well, most of the ones I looked at "knew had the characteristics of a machine gun." I have not seen anything that goes into a long --

MR. LASSITER: We don't have a problem with --

MS. CASSINELLI COUCH: We don't like the end of that paragraph where you take other instructions and put them in this one. I think it gets confusing about what evidence they're using to fill what element, the very last part of the paragraph about facts and circumstances and -- I don't think there is a whole lot of dispute about whether he knew it was a machine gun or not.

MR. GORDON: I was just making sure on appeal that, you know, I am not going to get in trouble on appeal. That's where I am going with this language.

MS. CASSINELLI COUCH: I don't think that I would have a leg to stand on arguing that he didn't know that that was a

machine gun, but I think that I understand your issue though with *Staples*. And I think all you have to do is put: The defendant knew the firearm was a machine gun or had the characteristics that made it a machine gun.

THE COURT: So for No. 2, and this is Count 6, the defendant knew the firearm was a machine gun or had the characteristics of a machine gun?

MS. CASSINELLI COUCH: *Staples* only requires that you knew that what you have possesses the characteristics that render it a violation to possess it.

MR. GORDON: Just because or just to make sure I am following what my guidance is, I would request the same language that we used in Instruction No. 19 on Count 4.

MS. CASSINELLI COUCH: 19, Count 4?

THE COURT: Are you sure it wasn't Instruction 21, Count 5?

MR. GORDON: That's exactly what I meant.

MS. CASSINELLI COUCH: I was like: Count 4?

THE COURT: I am going to stick with what we have. I know that it is almost identical. The defense said they have objection to this. Change the language in the second element to defendant knew the firearm was a machine gun or had the characteristics of a machine gun, and they agree with that. So -- plus, it gives --

MS. CASSINELLI COUCH: Really, we need to say: Knew

the firearm possessed the characteristics that made it a machine gun. It's not really an "or." It's the same thing.

THE COURT: And the possession, characteristics of possession or kind of possession, I'm sorry, there is no objection to that?

MS. CASSINELLI COUCH: I think we just would like it to be tied to what you are alleging, constructive possession.

MR. GORDON: Well, I think it's explained multiple types of possession, and so it's possession of the machine guns, possession of the grenades.

MS. CASSINELLI COUCH: Oh, are you using constructive possession on the machine guns and --

MR. GORDON: No.

MS. CASSINELLI COUCH: That's fine.

THE COURT: And crime of conspiracy, Mr. Dudley, what's your position on that? This is Count 7.

MR. DUDLEY: Your Honor, I have got a whole bunch of objections, but let me focus on my main one. The argument I made before -- and the government has never responded to it and the Court has never explained to me why I am wrong on it and -- bill of particulars on Count 7 says concealing documents and influencing witnesses. Concealing document is charged under 1512(c)(1). They're not charged with that. Intimidating or persuading a witness is charged under 1512(b)(1). They're not charged under that. So the proof we have is on two things that

are specifically in the statute they have not been charged with. How are we going to instruct on that because --

THE COURT: Do you have a statute?

MR. DUDLEY: I do, Your Honor.

THE COURT: And you are saying -- explain it to me again.

MR. DUDLEY: Okay.

THE COURT: Okay. Show me.

MR. DUDLEY: 1512(c)(1) prohibits concealing a record, document, or other object with intent to -- they're not charged under that, but that's what they're saying happened.

THE COURT: Do you have --

MS. CASSINELLI COUCH: I do.

MR. DUDLEY: I will tell you what the indictment says, Your Honor.

THE COURT: Okay. It will cite the statute?

MR. DUDLEY: It will.

THE COURT: Okay. 18 U.S.C. 1512(c)(2). So you are saying they are not charged with (c)(1)?

MR. DUDLEY: That's right. So if we are not charged with that, we can't instruct on that. Are you amending the indictment?

THE COURT: Count 8 is 1512(c).

MR. DUDLEY: That's right. But not Count 7. So they have charged "otherwise obstructs," but what they tried to prove

is concealing a document or corruptly influencing a witness, which is under Section B.

THE COURT: Now, Count 7 is, (c)(2) obstructs means impedes an official proceeding or attempts to do so. And you are saying that the evidence has come in --

MR. DUDLEY: If you recall, you made them file a bill of particulars on Count 7. It says concealing documents or influencing what -- that's not what they are charged with.

THE COURT: Okay. So you are saying the bill of particulars does not set forth the -- does not set forth the facts that satisfy Count 7 or the statute?

MR. DUDLEY: Judge, I am saying the bill of particulars amends the indictment because, if the Court let's that stand, they are no longer charged under (c)(2). They're charged under (c)(1) in subsection (b).

THE COURT: You say if I let that stand, if I let the bill of particulars stand, it -- the count --

MR. DUDLEY: If you let the count stand or go to the jury on the grounds that they attempted to influence witnesses or hide documents --

MS. CASSINELLI COUCH: And I think you filed a brief on this at the time that they provided the bill of particulars.

MR. DUDLEY: I did.

THE COURT: What is the response to that?

MR. GORDON: First of all, Count 7 is a conspiracy.

It's really 1512(k).

MR. DUDLEY: A conspiracy to violate? They specified what the conspiracy was, which was to violate 1512(c)(2). What's -- that's what the indictment says.

MR. GORDON: Right.

MR. DUDLEY: Here is the thing, Judge. The specific statute that says you can't threaten, intimidate -- they didn't charge them with a conspiracy to violate that. There is a specific statute that says you can't conceal documents from the grand jury. They didn't charge them with conspiracy to violate that. But that's what they're trying to prove their case on, and that's amending the indictment --

THE COURT: And you are saying that is not (c)(2)?

MR. ROBLES: Your Honor, I would like to make a distinction. We did not offer any proof showing that this was violent or that any threat of violence was being made, and I believe that (b), 1512(b) specifically applies only to violent conduct or threat of violent -- or violence towards witnesses.

MR. DUDLEY: I am sorry, Your Honor. It's corruptly persuade or -- corruptly persuade.

MS. CASSINELLI COUCH: And then there is also D that is you're intentionally harassing somebody by hindering, preventing, dissuading, delaying them from testifying. So there are three other options that are --

MR. ROBLES: I apologize. I was looking at A.

MS. CASSINELLI COUCH: And you were correct on A.

THE COURT: I can't -- I can't process that right now. I will be very honest with you. I will give you another chance tomorrow, when I am fresh, to hit me up again, and I will be thinking more clearly. This is very jumbled right now. I am looking at the statute and the statute seems to be the same that's identified in the -- in the indictment and it seems like what you are arguing fits, what's in the statute is in the indictment, and you are saying that it's not. And you are saying that what they set forth in the bill of particulars is different than what the statute --

MR. DUDLEY: And what the proof is.

THE COURT: Do you say the proof follows the bill of particulars or --

MR. DUDLEY: Partly follows the bill of particulars. The problem is they charged him with otherwise obstructing. Okay. In otherwise, and I -- this definition locally means in some other way or in some other manner. So they charged him -- they have charged them with obstructing in some manner other than the manner already set forth in the statute. The statute specifically says you can't hide documents, you can't corruptly -- so it has to be some way other than that. Some way other than that.

THE COURT: Otherwise obstructing?

MR. DUDLEY: Right.

MS. CASSINELLI COUCH: So --

THE COURT: And otherwise would have to be something other than what is specifically set forth in the statute?

MR. DUDLEY: Right.

THE COURT: Okay.

MS. CASSINELLI COUCH: So it's a matter of instructing the jury on the statute that we are not charged with.

MR. DUDLEY: That's right.

MS. CASSINELLI COUCH: And --

MR. DUDLEY: And the proof, the proof is different from the charge. So there is --

MS. CASSINELLI COUCH: Is that an amendment and a variance?

MR. DUDLEY: It's both amendment and variance.

But, Judge, I agree with you. I'm tired too. I am not sure I can explain my reasoning very well, and I have got a lot more on this one. So I would prefer we knock it off and try to do this in the morning.

THE COURT: I will tell you, if this is what -- if we come back tomorrow and start back on this, we probably won't get to close until tomorrow early afternoon. And if we close early afternoon, I probably won't hand the case to the jury until Thursday morning. I know you have a vacation planned, but that's what I -- I would not want to go to the jury if we -- if we closed tomorrow afternoon and give it to the jury tomorrow

afternoon because then we would be holding them again tomorrow night. And I would rather not that they start deliberating and go home and have to come back on Thursday to continue to deliberate.

MR. DUDLEY: Okay. Your Honor, we will push on.

THE COURT: Now, what are your -- does anybody have any thoughts on that?

MS. CASSINELLI COUCH: Are we -- is the -- has the Court decided what time to let the jury go each day or are you planning on keeping them into the evening each night if they want to stay or --

THE COURT: I would rather, when I give it to them -- hopefully, they can get it done in the same day I give it to them. Now, you are thinking --

MS. CASSINELLI COUCH: A verdict?

THE COURT: Yeah. You are thinking we are going to be here for days?

MS. CASSINELLI COUCH: Yes. Absolutely.

MR. GORDON: Yes.

THE COURT: You really do?

MS. CASSINELLI COUCH: Yes. I mean, last murder case we had, we were out for five or six days, and that was a couple of counts.

MR. DUDLEY: Two days is my prediction.

THE COURT: So you are saying I can give it to them and

let them start on it -- I guess justice is much faster in Phillips County. We can knock out a capital murder case in three or four days and get a verdict out after a couple of hours.

MS. CASSINELLI COUCH: This is complicated stuff.

THE COURT: Okay. Okay. Let's come back tomorrow. I was hoping to give it to them and maybe they can get it done in a day, and you-all have convinced me that's not happening. Let's come back tomorrow at 10:00. I will probably try to get word out to the jury to hold up on coming in and, if they do come in, stay down in the jury room. We have still got some stuff to get through.

MR. GORDON: How do you feel about weekend deliberations?

THE COURT: I don't mind at all. I have to be at the Eighth Circuit judicial conference on Tuesday.

MR. GORDON: And you have a juror that has to be somewhere at the same time.

THE COURT: Tuesday.

MR. DUDLEY: We will have a verdict.

THE COURT: I just really don't believe they're going to go into the weekend.

MS. CASSINELLI COUCH: What's the Court's position on when they're going to come and how long they're going to stay? Are you going to let the jury decide?

THE COURT: No, no. What we will probably do is if we give it to them tomorrow, we will let them stay until about 6:00 o'clock, and then we will let them go home. And then they will come back on Thursday, and I will bring them in at 9:00 o'clock in the morning, bright and early, to work a regular day. And if they work a regular day starting at 9:00, I think they will have a verdict on Thursday. Maybe I am just kind of -- you know, you're right. It may go a couple of days.

MR. DUDLEY: I have had one in seven minutes and four and a half days. I think it's going to be between there.

MS. CASSINELLI COUCH: It's going to take them a while to figure out how they're going to go through stuff.

THE COURT: I have a birthday party Saturday that I am going to try to make.

MR. GORDON: What time do you anticipate starting instructions, sir? Karen is going to want to know as soon as I walk downstairs. If I don't have an answer --

THE COURT: You will get beat up a little bit?

MR. DUDLEY: I think we can go off the record.

THE COURT: Yes. We can go off the record.

(Overnight recess at 8:30 p.m.)

C E R T I F I C A T E

I, Cheryl Nelson Kellar, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Cheryl N. Kellar, RPR, CRR, CCR Date: March 8, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

August 4, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 10:32 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 16
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
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Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

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MOTIONS.....P. 3382

* * * * * * *

(Proceeding continuing in chambers at 10:32 a.m.; Defendant Randeep Mann not present.)

THE COURT: Now, I think we were about to get to the conspiracy in Count 7.

MR. GORDON: Yes, sir. We wanted to go back and, unfortunately, if you agree with us, it's going to require renumbering a lot of these.

THE COURT: Okay.

MR. GORDON: For Court Instruction No. 8 dealing with accomplice testimony, when you look at the Model Jury Instructions 4.05, there is a note down there that says not to give the accomplice testimony instruction. First of all, it's discretionary, but then it says not to give it if you are also giving an immunity instruction on the same witness. And that's exactly what we're doing in this case.

MS. CASSINELLI COUCH: I agree that it says that. I hadn't read the notes since we put these together.

MR. GORDON: And I hadn't read them.

MS. CASSINELLI COUCH: I still want it, but you're right about the --

THE COURT: So which one do we want to take out? So -- which one was the immunity?

MR. GORDON: Lloyd Hahn.

THE COURT: And I don't remember having two in here. Okay. 7 and 8.

MS. CASSINELLI COUCH: It was No. 8.

THE COURT: Which one are we taking out?

MR. GORDON: 8.

THE COURT: Does anyone want to make a record on 8 and proffer 8?

MS. CASSINELLI COUCH: I think we would still ask for it because there are so many charges and that relates to one specifically, but that's all.

THE COURT: Now, didn't the defense proffer another instruction yesterday? And I don't remember. I just want to make sure that we have them so I can make them a part of the record.

MR. GORDON: There was one on Count 6 where they were supposed to craft the defense instruction, which was done.

THE COURT: But that was going to be Instruction 23, but we --

MS. CASSINELLI COUCH: Maybe when I read the final set I will think of --

THE COURT: And if you have some that you wanted to proffer, make sure you do that before we instruct the jury.

MS. CASSINELLI COUCH: Okay. Going in order, I have a change on the next one right after that. Do you want to go in order or do you want to go through all of yours?

MR. GORDON: Go ahead.

MS. CASSINELLI COUCH: I was going to say on

Instruction No. 9, we have Curlan McCray and Cecil Norwood for reduced sentences. I think that Curlan McCray had a mandatory minimum, and there is special language in the instruction for when you have a mandatory minimum sentence and a substantial assistance motion that would be the only way to get below it. And so I would ask that we separate these into two separate instructions and give the full mandatory minimum language for Mr. McCray.

THE COURT: Can you come up with some language for me?

MS. CASSINELLI COUCH: Yes, sir. It's a model instruction.

THE COURT: Do you know which one it is?

MS. CASSINELLI COUCH: I just looked at it.

THE COURT: So Cecil Norwood would be okay with Instruction No. 9, and we could make Curlan McCray Instruction No. 8?

MS. CASSINELLI COUCH: Yes, sir.

Do you know what number that is, Mike?

MR. GORDON: (Shaking head.)

MS. CASSINELLI COUCH: I can have one put together after we finish this and e-mail it.

Mike, do you want to go ahead and do our agreed?

MR. GORDON: Sure. I gave you all my copies.

MS. CASSINELLI COUCH: I know.

THE COURT: So with the ones we did yesterday, are

there any that we need to go back and do or are we going forward?

MS. CASSINELLI COUCH: We have one, Your Honor, that we discussed yesterday, which was the defense on the machine gun count, and Mike did give me his copy. And I have so many copies of everything that it's going to take me a moment. Here.

THE COURT: Okay. That's going to be 23.

MR. GORDON: Judge, I did have one more on Count 12 -- I'm sorry -- on Instruction 12.

THE COURT: Yeah.

MS. CASSINELLI COUCH: Is that where we are?

MR. GORDON: (Shaking head.)

THE COURT: No. We were up to Instruction 24.

MS. CASSINELLI COUCH: Oh, yeah.

THE COURT: Yes, sir.

MR. GORDON: On Element No. 3, it should say: The use or the results of the use of the weapon of mass destruction.

THE COURT: So the use or results of the use?

MR. GORDON: Yes, sir.

MS. CASSINELLI COUCH: Is that the statutory language?

MR. GORDON: (Nodding head.)

THE COURT: Now, and I am going to tell you what, I was looking over this just before you walked in. Where it has -- I think the way this breaks down is we have definitions under that and we have one definition of weapon of mass destruction

includes destructive device, such as any explosive grenade. And we have the term "interstate commerce" includes commerce between one state territory -- all of that.

And then we have -- it looks like we brought two different instructions together, and we started addressing the second element, target of a weapon. And the second element involves target of the offense, but all that does is re -- is combine 2 and 3 and restate. So I am going to take that out. Do you understand what I am talking about here?

MS. CASSINELLI COUCH: I think you said definitions are elsewhere in the instructions?

THE COURT: All it does is restate 2 and 3.

MS. CASSINELLI COUCH: Back to what Mr. Gordon said, I think that the statute on Element 3 says: The offense or the results of the offense affected interstate commerce. So I would argue that we should use that language.

MR. GORDON: That's fine.

THE COURT: Make a note of that.

MS. CASSINELLI COUCH: Would you like me to write that on here?

MR. GORDON: The offense or the results of the offense?

MS. CASSINELLI COUCH: Yes.

THE COURT: I think we were down to Count 7, crime of conspiracy to obstruct an official proceeding. And I couldn't follow him right there at the end, but I was trailing off. So

he said we would take it up today.

MR. DUDLEY: Your Honor, the objection that I was attempting to articulate yesterday is that the proof in this case has been directed at attempting to influence a witness and concealing documents. 1512(b) prohibits attempting to influence a witness. They're not charged with conspiracy to violate 1512(b). 1512(c)(2) -- excuse me -- (c)(1) prohibits concealment of documents. They are not charged with conspiracy to violate 1512(c)(1). They are charged with conspiracy to violate 1512(c)(2), which prohibits otherwise obstructing justice. "Otherwise" legally means in a different manner or in a different means. That's got to mean some manner other than specifically identified in the statute.

THE COURT: Is "otherwise" not just a catchall, any way that you could obstruct?

MR. DUDLEY: Well, Your Honor, if a -- I can find you some law on this, but if a statute specifically prohibits conduct and then has a catchall phrase, the catchall phrase can't include what the statute specifically prohibits.

THE COURT: What's the position of the government on that? Do you understand the point he is making? The point is that you have a statute that specifically says for certain acts that are -- that violate the statute, and then has "otherwise violates." And he says you charged her with "otherwise violating," but you have proven everything that the statute --

well, you have attempted to prove. You have put on evidence of the specifically enumerated offenses. And so, therefore, since you have only put on evidence of the enumerated offenses, then you can't say that she otherwise violated or that they otherwise violated because you haven't proven any other way other than the enumerated. It's almost like you proved your case too well or the -- or you did not prove your case too well, but the evidence that you put on was strictly in conformance with the enumerated violations. And you failed to find some other way that they might have violated the statute.

I have not looked at the law on that, and I will just be very honest with you. I know the basis of statutory interpretation, but I have never looked at any case law on that particular argument.

MR. GORDON: Your Honor, I guess my response to that would be that the indictment, between the indictment and the bill of particulars, that the defendant is on sufficient notice. And that's really all the indictment is. And we proved what was in -- it's a conspiracy under 1512(k), and we have proven what we said we would prove. And I think the indictment gave them sufficient notice as it was written, and it's consistent with the proof that bore out during trial.

MR. DUDLEY: This isn't a notice issue, Your Honor. I say, yes, the bill of particulars gave us notice, but the bill of particulars amended what they charged in the indictment. The

bill of particulars charges a violation -- I mean, it sets forth conduct which would be a violation of 1512(b) and 1512(c)(1). It does not set forth conduct which would be a violation of 1512(c)(2). So in -- and that was my argument when I filed a motion to dismiss on the grounds they amended the indictment when they filed a bill of particulars.

MS. CASSINELLI COUCH: It's a Fifth Amendment issue, a grand jury issue.

THE COURT: How specific is -- when one is charged, how specific is the requirement that they know the particulars of the crime for which they are charged? I mean, is it specific down to the point of here is what you did or -- and that's not what Mr. Dudley is arguing. He is arguing not only is that not shown, but that you charge under one section of the statute and then you prove another section of the statute. And I don't think -- I think it might be more than that because it's the same section, but it's a different subsection.

MR. GORDON: Your Honor, I know Josh has been researching this whole issue, so I think I defer to him.

MR. ROBLES: In answer to your initial question, Your Honor, what is required and what is the standard for a bill of particulars, and -- *United States v Wessels*, W-E-S-S-E-L-S, 12 F.3d 746, Eighth Circuit, which is very common knowledge that the primary purpose of a bill of particulars is to inform the defendant of the nature of the charges against him and to

prevent or minimize the element of surprise at trial. That's the extent of the requirement for the bill of particulars, the standard.

MR. DUDLEY: I am not arguing the bill of particulars.

THE COURT: I know.

MR. DUDLEY: That's not --

THE COURT: I'm following you all the way. I just -- you know, I don't know the answer to that question. If I have subsection (c) and then I have -- under (c), I have a number of offenses that could be considered violations of the statute, if I say that I am going to prove 1, 2, and 3 -- no. Say I am going to prove 4, and I show 1, 2, and 3, have I not met my burden of proof?

MR. DUDLEY: No, sir. Because that's not what you are charged with. And, Judge, I can find you --

THE COURT: Will you do that for me? Just give me a case, and let me see what the law is. My gut would be that it's sufficient. It is. That's my gut, but that's because I haven't seen any law that tells me otherwise.

MR. DUDLEY: There is --

THE COURT: Because the proof that they put on proves these elements that are set forth in the statute, but you are saying they have to charge her specifically with that particular subsection of the statute.

MR. DUDLEY: Yes, sir. There are cases which say you

charge (c)(1) and prove (c)(2) and that's an amendment of the indictment or a variance from the indictment. You can't do that.

MS. CASSINELLI COUCH: Your Honor, if I may, this is a Fifth Amendment grand jury issue. The grand jury found probable cause to indict her for Section (c)(2). When we get to trial and the government changes it to a different section, to submit a different statutory section to the jury, that's where the amendment comes in because that's not the grand jury's finding.

THE COURT: And like I say, this is the first time -- we always charged people with informations in state court and didn't deal with grand jury very much at all. But it seems as though the grand jury -- or she was indicted for tampering with a witness, and that getting down into, okay, what all the factors that -- did they process to come up with that indictment, I don't know that that's what the grand jury did. Now, I don't know. Like I said, I have to see the law, and I will look at it.

MS. CASSINELLI COUCH: And I think we need to make a record that it's not just -- you know, the grand jury found probable cause for (c)(2). So we know that that's what they found because that's what's in the indictment, and there is also a variance issue. A constructive amendment occurs when the offense that is set forth in the indictment is altered actually or in effect by the prosecutor or the Court, so in instructions

or by proof, after the grand jury has made a finding in the indictment.

A variance is a little bit different, and it's when at trial the facts are changed. You know, you charge one thing and you get to trial and you kind of use a different theory.

And I think in this case we have both situations because we got to trial, we got a bill of particulars, and I think we addressed the notice issues in our briefs. But once we get to trial, they dropped off some of those allegations in the bill of particulars and didn't provide any proof of those. I think we originally said (c)(2) didn't include the two witness tampering and removal of documents because (c)(2) didn't include that. So to present evidence of that would then also be varying from the facts that would be in support of (c)(2). Does that make sense?

THE COURT: Let's do this. Let's --

MS. CASSINELLI COUCH: It's a Sixth Amendment issue.

THE COURT: Let's deal with the instructions and let me see the law and if we have to change the instruction at the last minute because of a different ruling, we will do that. But --

MR. HENDRIX: I think the case to look at is called *Stirone*, S-T-I-R-O-N-E, *v United States*, from the '50s or '60s, U.S. Court case.

MS. CASSINELLI COUCH: 361 U.S. 212.

THE COURT: Can you get on that?

THE LAW CLERK: Yes.

MR. DUDLEY: Okay. Your Honor, going on to the form of the instruction -- and I don't have mine numbered. What, the conspiracy -- do you have a number on that conspiracy to obstruct an official proceeding?

MR. GORDON: 24 is the definition of possession.

THE COURT: Did we not have another definition that we, another -- we were going to do another instruction for something and stick it in. Somebody was going to provide me with another instruction on something.

MS. CASSINELLI COUCH: The defense? Is that what you are talking about?

MR. GORDON: It was 23.

MS. CASSINELLI COUCH: Oh, I was going to give you one on Curlan McCray.

THE COURT: No. Because that is going to take the place of one of the other ones we have already had.

MS. CASSINELLI COUCH: That was going to be 8, I think.

THE COURT: So this one will be 25.

MR. DUDLEY: Your Honor, on Instruction No. 25 then, I object to the form of the instruction because the pattern instruction requires that the instruction list the object of the conspiracy and the means by which the conspiracy was accomplished. This instruction has neither. I think that is important for two reasons. One, it focuses the jury on what they're really charged with and, two, it's important for double

jeopardy reasons.

THE COURT: You submitted an instruction on that, and I don't know what I did with it. Do you have an extra one?

MR. CRABTREE: We do.

THE COURT: Can I take a look at it?

MR. DUDLEY: I did submit one, Your Honor; although, I left blanks for the government to fill in on what they thought the --

THE COURT: And that might have been why I left it out. Do you have a copy of Mr. Dudley's instructions?

MR. GORDON: I do. I know that there were a few changes that were made, and at this point I am not sure which version I have.

THE COURT: Another reason, that was a four-page instruction.

MR. DUDLEY: It's only the first page that's important. The last three were boilerplate.

THE COURT: And I am going to put these in 14-point font because, after reading for a period of time, it all starts blurring together.

Mr. Dudley, this is based on the pattern instruction?

MR. DUDLEY: The -- yes, sir, Your Honor. 5.06A.

MR. GORDON: And I guess the problem with using 5.06A is that is a conspiracy under Section 371. Because this is a specifically enumerated conspiracy under 1512(k), we're not

required to -- it's treated differently under the law than a conspiracy under 371. So I think we need to find the --

MS. CASSINELLI COUCH: I think we looked at 1512(b)(1) because I don't know that there was a specific instruction for the (c)(2), otherwise obstructs. So that might be helpful, but they all require what Mr. Dudley has suggested.

THE COURT: Do we have any resolution on this or are we still reviewing?

MR. ROBLES: Your Honor, I do have specific objections to phrases in his instruction, but as far as the form -- because I think if, in the instructions handed out by the Court, essentially what Mr. Dudley's instruction does is incorporates some of these definitions of material and -- well, not material, but the official proceeding, those elements into the obstruction. I don't think there is anything inherently wrong with that, but we would have objections to specific language in the instruction.

THE COURT: Maybe we can get to a resolution if we can point out what language you specifically object to.

MR. ROBLES: Sure. Element 2, after the space there, it says: The defendants must have specifically contemplated some particular official proceeding in which the documents or testimony might be material, *United States v Riskin*, 788 F.2d 1361, page 1369, Court states -- this is Eighth Circuit. Proof of a violation of 1503 -- which I know is not 1512 -- requires

proof of the defendant's knowledge of a pending judicial proceeding, which is expressly not an element of a violation of Section 1512. I would argue that knowledge or specifically contemplated some particular official proceeding is not a correct statement of the law.

THE COURT: What's the response? I think the issue is not whether they knew that a grand jury proceeding was taking place, or was about to take place, but that they knew that one had the potential of taking place. They are trying to get rid of some evidence before that could happen. Now -- but this language seems to indicate they specifically contemplated some particular -- when you say "some particular," it would, in my mind, indicate that they knew a specific grand jury proceeding was going to take place.

MR. DUDLEY: And I believe that was the holding of the United States Supreme Court in *U.S. v Aguilar*. And in that case, he lied to an investigating agent. The agent told him a federal grand jury was meeting, and he was charged with obstruction of justice in regard to the grand jury. The Supreme Court said that's not enough. You have to prove that when he lied to the agent, he knew the agent was going to testify, so he knew that he was going to influence the grand jury. And I invite the Court to read that opinion because -- and *Aguilar* and *Arthur Andersen*, which followed it, have been applied to 1512(c)(2) by every circuit that has considered it.

THE COURT: If I commit a crime today and I get with some of my buddies to hide the evidence of the crime, I can never be charged with conspiracy?

MR. DUDLEY: You can, Your Honor. There are specific statutes for interfering with an investigation, but if you are charged with interfering with an official proceeding, the government has to prove you contemplated a specific official proceeding to interfere with it. How could you intend to interfere with an official proceeding unless you knew what was going on and you had some intent to do that? And that's what the Supreme Court said in *Aguilar*.

THE COURT: So it's the statute under which they were charged?

MR. DUDLEY: Absolutely.

THE COURT: They could have been charged with obstructing government operations or something else.

MR. DUDLEY: There is a statute for obstructing an official investigation. They don't have to prove anything about a grand jury if they charge under that. They are the one who chose this charge, and under *Aguilar*, they have to prove they contemplated a specific proceeding.

THE COURT: What's the response?

MR. ROBLES: I believe the issue that Mr. Dudley is picking up on is the nexus requirement as stated in *Aguilar*. The specific statute issue in *Aguilar* was Section 1503. That

was the distinction here that *Riskin* was making. Although *Riskin* was decided before *Aguilar*, it was in the Eighth Circuit. The Eighth Circuit has not decided whether or not the nexus requirement applies to 1512 at all. Only, I believe, the Second Circuit and possibly -- I think it's the First or the Third.

THE COURT: What are the other circuits that have addressed this issue?

MR. ROBLES: Have applied?

MR. DUDLEY: Second and the Eleventh. I know. I have got the cases here.

THE COURT: Have any rejected the nexus?

MR. ROBLES: I don't believe so.

THE COURT: Okay. I will leave the language alone. Let me ask you this. How about the blank sentence, the blank line here? What was that going to say?

MR. DUDLEY: You got mine and they got it and so --

THE COURT: This is the agreement to improperly obstruct, influence an official proceeding by --

MR. DUDLEY: By whatever they did to do it, the means by which they accomplished it.

THE COURT: So we have to fill in whatever.

MR. DUDLEY: Whatever they claim the conspiracy was aimed at doing. I mean, how they intended to do it, and that comes directly out of the pattern instruction.

MR. GORDON: For 371.

MS. CASSINELLI COUCH: We have the same thing in ours. We looked at all the other sections of that statute and the instructions that go with those and that's -- the typical bracketed language is fill in what you think he did. And this goes to the point on the bill of particulars. We need to move to exclude those items in the bill of particulars that there was no proof of. Like we would object to them offering, for instance, influencing Pete Patel. There was no testimony about that at all.

MR. DUDLEY: That's why I think they need to fill it in.

MS. CASSINELLI COUCH: Right.

MR. DUDLEY: How are you going to plead double jeopardy if the jury is not charged with whatever it is that they say we did?

THE COURT: Can the government fill in that sentence?

MR. GORDON: I guess we would fill it in with the language we use in our bill of particulars.

THE COURT: We can do that.

MS. CASSINELLI COUCH: I would object to offering things that there was no testimony or evidence presented at all of. There is zero evidence. Like, I don't think it gets to a jury because, for instance, Pete Patel, nobody testified that there was any even attempted influencing Pete Patel. Nobody testified -- Tim Harrell didn't testify at all. So there was no

testimony about his being influenced.

THE COURT: Wouldn't that actually help the defense if it had it in here that they had to show that and then you could argue to the defense they didn't show any of that? I understand your point. If there has been no evidence of it, it shouldn't be in the instruction. But if the government says put all that in there, that gives you more to argue about. I would say narrow it down. You don't have to do -- we need to do it fairly quickly, but think about what language you would want us to put in there.

MR. ROBLES: Your Honor, I would like to offer also a statement from *Riskin* just to complete our record on the federal nexus issue in case this issue becomes an issue on appeal. *Riskin*, page 1368, states: In addition, Section 1512 is expressly not limited to pending official proceedings or by considerations of admissibility, and thus explicitly covers potential witnesses and those witnesses whose testimony might not be admissible at trial. Thank you.

MR. DUDLEY: Okay. Your Honor, if we can move on. I am certainly ready to.

THE COURT: Okay.

MR. DUDLEY: I am also objecting to their instruction because it has no requirement of an overt act.

THE COURT: Well, we were dealing with your instruction now.

MR. DUDLEY: Okay.

THE COURT: I think what we have done is, I have picked up your instruction and I was getting from the government -- since you have objected to theirs, what portions of this do they object to. You know, and we will see where we go. They objected to having this language dealing with specifically contemplating a particular official proceeding.

What other language in here did you object to?

MR. ROBLES: Is Element 4 the overt acts language? Is that the language that you are --

MR. DUDLEY: Yes.

MR. ROBLES: Okay. And then just let me discuss the elements with you in more detail. Is it those acts or are you wanting us to fill in the overt acts?

MR. DUDLEY: Yeah. There needs to be an overt act.

MR. ROBLES: Okay. We would object to Element 4 on the grounds that 1512(k) is the -- that's the conspiracy charge that Count 7 is charged under, and there is no requirement of overt acts, unlike Section 371.

MR. DUDLEY: Your Honor, if you look at the notes, I think it's 5.06C. I am getting confused on where these are coming from, but they list the conspiracies which do not require -- the statute charges conspiracies which do not require an overt act. 1512 is not in the list. I mean, there are certainly --

May I, Your Honor?

THE COURT: Yes, sir.

MR. DUDLEY: There are certainly some conspiracies which do not require an overt act, but the pattern instructions list those conspiracies. But it omits 1512.

THE COURT: This was charged under what statute?

MR. ROBLES: 1512(k).

THE COURT: So it's not -- I think these notes the conspiracy is charged under, 18 U.S.C. 371, require an overt act and then they say an overt act is not required -- but neither one of them cites the statute under which this case was brought. So how do you determine which one requires, whether this requires an overt act or not?

MR. DUDLEY: Your Honor, I will be perfectly honest with the Court. I tried to find a case that said yea or nay, and I couldn't find one.

THE COURT: Does -- and you are saying that the statute here does not have an overt act requirement?

MR. GORDON: Correct.

THE COURT: If it did require an overt act, it would be in the statute?

MR. DUDLEY: Your Honor, I disagree with that because some statutes don't expressly require an overt act. The Courts still require an overt act. And so I will make my objection, and I will at this time move to dismiss Count 7 of the

indictment because it did not allege an overt act and I say they omitted an essential element of the offense.

MS. CASSINELLI COUCH: We join.

THE COURT: That's denied.

MR. DUDLEY: Your Honor, that's all of my objection to the form of Instruction No. 25.

MS. CASSINELLI COUCH: Your Honor, we would ask for a definition of corruptly.

THE COURT: Hold on just one second.

Mr. Dudley, the original 25, I was going to -- the 25 you offered, I was going to use it, but then I started looking. What's the distinction between the initial 25 I had and your 25 except for Element 2 requiring the government to -- requiring the government to list what it actually showed and the defendant must have specifically contemplated some particular --

MR. DUDLEY: The other difference is I was requiring an overt act, and they were not.

THE COURT: I am going to take yours and take out the overt act, the fourth element.

I have the instruction here, the instruction we're agreeing on. Is that what you are asking about?

THE LAW CLERK: Right. I was going to get a digital version.

THE COURT: I am going to take the one we have, and I am adding this language to it because it is not all that

different except for the four elements.

That brings us to No. 25, the crime of -- Count 8 -- no, not 25.

MS. CASSINELLI COUCH: Your Honor, on Count 7, we would ask for the definition of corruptly.

THE COURT: Do you have a definition of --

MS. CASSINELLI COUCH: Yes. It was in our proposed: To act corruptly means to act with consciousness --

THE COURT: Just a second.

MS. CASSINELLI COUCH: Okay. To act corruptly means to act with consciousness of wrongdoing.

MR. ROBLES: Your Honor, I would object to that definition.

THE COURT: What is an alternative definition?

MR. ROBLES: Section 1515 has a specific definition for corruptly as used in Section 1512. It is 1515(b). As used in Sections 1512 of this title, the term corruptly means acting with an improper purpose personally or by influencing another. Essentially, we would just ask that the statutory definition be used.

MR. GORDON: And, Your Honor, if you will just flip two instructions ahead to 27, it will say "corruptly" defined and --

MS. CASSINELLI COUCH: I know. I object to that, but I want to know what we're reading though.

MR. ROBLES: If you are in the code book, page 835,

1515(b).

MS. CASSINELLI COUCH: Okay. I object because that is limited to 1505, and this is 1512.

MR. LASSITER: And, Your Honor, we have an Eighth Circuit pattern instruction under 1512, and it's Pattern Instruction 6.18.1512, which corresponds with 1512(b)(1(A): To corruptly persuade someone means to persuade with consciousness of wrongdoing. And that's where we picked up that definition.

MR. DUDLEY: Your Honor, I hate to disagree with my codefendant's counsel, but I have found only one case in which a definition of corruptly in a jury instruction under 1512(c)(2) was approved, and the case is *United States V Mintmire*, M-I-N-T-M-I-R-E, 507 F.3d 1273, Eleventh Circuit case from 2007. The instruction they approved said: He acted corruptly, i.e. with an improper purpose, and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede, or obstruct the grand jury investigation. And I will be happy to give the Court --

MS. CASSINELLI COUCH: I wouldn't object to that.

THE COURT: Do you want to take a look at this?

MR. ROBLES: Sure. We simply submitted the 1505 definition because we think that obstruction statutes defining corruptly, it would be helpful to remain consistent to those that are defining corruptly in other obstruction statutes.

MS. CASSINELLI COUCH: I think the instruction makes

clear that that's not the case for 1512.

MR. DUDLEY: If we go back to the source of all this, *U.S. v Aguilar*, and I will be perfectly happy to take the language the Supreme Court used in *U.S. v Aguilar* because that's where all this debate about corruptly started.

MS. CASSINELLI COUCH: If this helps, in 1515, it specifically -- the title of that section is Definitions for Certain Provisions, General Provision, and so it -- it tells you when it's 1512 and 1513, when it applies to those and when it doesn't. And specifically, the definition of corruptly in that section does not apply. It applies only to 1505.

THE COURT: Now, does that -- trying to remember all the 1515s, 1505s, does that now -- what is the best definition for this case? I know Mr. Dudley will say that the definition is *Aguilar* first and the case he just cited second and, of course, the government will say its definition is better.

MS. CASSINELLI COUCH: I agree with Mr. Dudley if the Court has considered it and decided that it's appropriate for 1512(c)(1). I think we can't get any better than that.

THE COURT: You don't want to stand on the corruptly means to act --

MS. CASSINELLI COUCH: No. But as a fallback position, since that's in the instructions under other sections of 1512 --

THE COURT: I think that's easier. I think giving a very short instruction is probably easier than giving a long

one, for the jury to understand.

MS. CASSINELLI COUCH: I mean, my opinion is that -- my research indicates that these issues under the obstruction statutes, what intent of wrongdoing you have to have has been kind of debated. So if there is a case where they have settled, I mean, that's a pretty solid movement towards --

MR. GORDON: The Eleventh Circuit, what was the instruction you-all originally proposed? Or Mr. Dudley was kind enough --

MS. CASSINELLI COUCH: I can't remember.

THE COURT: I think it was to act corruptly means to act consciously of wrongdoing.

MR. GORDON: I am okay with that.

MS. CASSINELLI COUCH: I think if the Courts have considered it since these instructions were written and is -- you know, *Aguilar* and stuff -- I think that's what should be offered.

MR. DUDLEY: Your Honor, I can -- my cocounsel just pointed out what the United States Supreme Court said in the *Arthur Andersen* case. They said corruptly means acting in a wrongful, immoral, depraved, or evil manner. I can certainly live with that.

THE COURT: I am sure you can. I am going to add the definition of corruptly: To act corruptly means to act with conscious wrongdoing -- or consciously wrongdoing.

MS. CASSINELLI COUCH: Consciousness of wrongdoing. That's an '05 Supreme Court case, so I think that we should stick with -- I think it would be error not to give the *Arthur Andersen* definition.

MR. DUDLEY: If I can make a record on that, my problem with that is that adds nothing to the intent requirement of the statute because acting knowingly or willfully requires acting with consciousness of wrongdoing and corruptly adds to the intent requirement. So I object to that on the ground that it adds nothing to the normal intent requirement and the -- again, going back to the pattern instructions under 1503C. They say the jury should be instructed on the meaning of corruptly endeavored, and it should include an intent to act and knowledge that obstruction would or could result from such act. So I made my record, Your Honor.

THE COURT: Yes, sir. So we are now down to 26, which is -- are definitions. I am going to take out this corruptly definition because we have already defined corruptly. And I think an official proceeding definition is -- I got this from two different sides, and it's the same one. And I am going to -- I was supposed to -- I should have brought up material or materially from third page of this. That's not going to be a separate instruction. So we will have in this instruction: Official proceeding knowingly, willfully, and materially.

MS. CASSINELLI COUCH: Are we on 7 or have we moved to

Count 8?

THE COURT: No. We had a definitions section that was after Count 7.

MR. GORDON: So will the definitions come between Counts 7 and 8?

THE COURT: Well, this is just where I had them. We can put them wherever. This is adjustable. I don't care.

MS. CASSINELLI COUCH: On the official proceeding, is the Court -- I guess I would object to the last two sentences under official proceeding.

THE COURT: What's the position of the government on this?

MR. GORDON: I think that's straight out of the code book. It's 1512(f), I think, (f)(1)?

MS. CASSINELLI COUCH: Well, it's a part of the offense, is that the person committing the crime has to contemplate the proceeding. So when we tell them it doesn't have to be pending or instituted or they don't have to know about it, that doesn't really jibe with the instruction.

MR. GORDON: I think it does. It just goes back to is it reasonably foreseeable. It doesn't have to be going on right now, but is it reasonable that it might be coming down the road.

MS. CASSINELLI COUCH: I know, but if we say that it is not necessary for you to know there is a proceeding, but in a prior instruction we said you have to have contemplated that

this proceeding was going to be occurring, why even give this sentence if you have already given the instruction --

THE COURT: Why not the first sentence and not the second one? The proceeding didn't have to be going on at the time for there to be an official proceeding. It could be coming up, but the second sentence, they didn't have to go before a Judge or whatever, that's a different story.

MS. CASSINELLI COUCH: I think on the first sentence, that sounds like that's inconsistent with *Aguilar*. And also, if you are going to provide -- if you are going to give that sentence, I think that there should be more to it. You know, like, for instance, it should say: But the defendant must have contemplated a proceeding.

THE COURT: I think that's fair.

MR. GORDON: That's fine.

MS. CASSINELLI COUCH: I think that *Aguilar* is probably more clear. Mr. Dudley is the expert on that.

THE COURT: What was the sentence you just said, that the defendant what?

MS. CASSINELLI COUCH: I said but the defendant must --

THE COURT: Have contemplated.

MS. CASSINELLI COUCH: Have specifically contemplated a particular official proceeding because that's what the instruction is.

THE COURT: And, Mr. Dudley?

MR. DUDLEY: Your Honor, I think it is a requirement that an official proceeding be taking place. I think that's clear under *Aguilar*. Under the *United States V Mintmire,* that's what the jury was instructed and the Eleventh Circuit approved that instruction and the instruction says: The government must prove there was an official proceeding taking place. So --

THE COURT: To be charged out of that specific statute?

MR. DUDLEY: That's what, 1512(c)(2)? Yes, Your Honor.

MR. ROBLES: In *Aguilar,* though, the issue was 1503 and not 1512. And 1512F(1) specifically says an official proceeding need not be pending.

MR. DUDLEY: It does, and the Eleventh Circuit says: But it does, regardless of what the statute says.

MR. ROBLES: What Mr. Dudley is discussing is the nexus, and it's in our instructions here because of a relationship of causation, time, logic. And there can be a nexus in my opinion between the defendant's conduct and an official proceeding without that proceeding pending at that moment in time.

THE COURT: Here is what I am going to do. In this "official proceeding" definition, I am going to add the language that Ms. Couch proposed, "but the defendant must have contemplated the proceeding," and I am going to strike that last sentence.

MS. CASSINELLI COUCH: Thank you, Judge. Although, for

the record, I would join Mr. Dudley and say that proceeding is required.

THE COURT: You offered language, but you don't necessarily agree that that's the appropriate remedy. I understand.

Now, with the other definition -- willfully, knowingly, and then material, materiality.

MS. CASSINELLI COUCH: I'm fine with those.

THE COURT: I'm going to take out the case citation though.

MR. GORDON: Judge, actually on the language, an alleged perjury statement is material.

MS. CASSINELLI COUCH: Oh, I am not on -- where are we?

THE COURT: Page 41. It should be material or materiality.

MS. CASSINELLI COUCH: So just so I am clear, Judge, we have two proposed instructions with definitions, and we are kind of putting them together?

THE COURT: Yes.

MS. CASSINELLI COUCH: Okay.

MR. GORDON: For the definition of material or materiality, I think the language "an alleged perjurious statement" is unnecessary. It's real close to being a comment on the evidence.

MR. DUDLEY: I agree.

THE COURT: Just a statement is material.

MR. GORDON: Statement is material.

THE COURT: Okay. Now to concealing object from use in an official proceeding.

MR. DUDLEY: Your Honor, I have asked under Element 2 that the instruction specify what it is the government claims was concealed instead of just "an object." And I think the pattern instruction indicates you ought to insert what it is the government asserts was concealed there.

MR. GORDON: Is this 27 or 28?

THE COURT: This would be 27.

MR. GORDON: What was 26?

THE COURT: Those definitions that we just did. 25 would be the conspiracy as charged in Count 7. 24, several kinds of possession. 23, law of possession is a complete defense.

MR. GORDON: I give up.

MS. CASSINELLI COUCH: I gave up on numbering.

THE COURT: We're going to redo them and get you a full set.

MR. GORDON: Okay. Thank you.

THE COURT: This is the aiding and abetting the concealing of an object from an official proceeding. Mr. Dudley says Element No. 2 should have the specific item that was concealed, which I guess in this case would be the envelope

maybe.

MS. CASSINELLI COUCH: I think you included the language in the indictment, right? Why don't we just copy that?

MR. GORDON: I am just not sure what the heck we are talking about anymore.

MS. CASSINELLI COUCH: This is the one where you listed the power of attorney, blank checks, financial documents relating to bank account ending in number whatever. That, I think, should be included in the instruction as well.

MR. LASSITER: Power of attorney and general power of attorney, pre-signed blank checks -- ending in numbers 8796.

MR. GORDON: Is this the elements or is this the aiding and abetting?

MR. DUDLEY: Elements.

THE COURT: You know what we should do? The next instruction, I think, should come from -- well, this is right. This is counted.

MS. CASSINELLI COUCH: Only one more left.

MR. GORDON: And so the defense wants us to list what's in the indictment as part of Element 2?

MR. ROBLES: Yes.

MR. GORDON: That's fine.

MR. DUDLEY: If you want to abbreviate it, that's fine too.

THE COURT: So crime and say "to wit" -- I don't want

to say "to wit" to the jury.

MS. CASSINELLI COUCH: I think it should say they corruptly concealed these things in order to make them unavailable for use in the proceeding.

THE COURT: Okay. On Mr. Dudley's proposed instruction, he has, 2, that the defendant corruptly, that is with improper purpose and to engage knowingly and dishonestly with a specific intent to conceal bank records and sign blank checks of Sandip Mann in order to make them unavailable for use in the same proceeding.

Do you have a copy of this?

MR. GORDON: I don't anymore.

THE COURT: Here, take a look at this.

MR. GORDON: I think we're adding a whole lot with Mr. Dudley's -- corruptly is defined earlier, and it's not defined in the way that his second element is.

THE COURT: Okay. Let's take a look at the indictment. Okay. Let's take it from the indictment and see if we can get some agreement on this. Okay. No. 2, have knowingly acted in some way for the purpose of causing, encouraging, or aiding in the attempt to corruptly conceal the following documents and objects: A special power of attorney, a general power of attorney, pre-signed blank checks -- I can't read it. And other financial documents for objects relating to bank account numbers ending in 8796.

MS. CASSINELLI COUCH: Are we looking at the aiding and abetting?

MR. DUDLEY: The language is fine for aiding and abetting.

THE COURT: Okay. What are you looking at?

MR. CRABTREE: Your Honor, I was doing the same thing. You were looking at this instruction. This is the one --

THE COURT: Oh, they're --

MR. CRABTREE: I think our pages got out of order.

THE COURT: Apparently. Well, let me get rid of this. Let me see what you are looking at.

MR. CRABTREE: Page 38 at the bottom, isn't that what you-all were looking at?

THE COURT: And this came after the definitions section?

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: So this would be 27. So we will add in: The defendant corruptly concealed --

MR. GORDON: Or attempted to corruptly conceal.

THE COURT: Yeah -- the following documents in order to make them unavailable for use at the same official proceeding.

MR. GORDON: Yes, sir.

THE LAW CLERK: It's 11:40, and do we want to let the jury go to lunch now or --

THE COURT: Yeah. Just tell them to go on.

THE LAW CLERK: When do we want them back?

THE COURT: Tell them to be back at 1:30.

Okay. So that's 27. What we are going to do is say that the defendant corruptly concealed or attempted to corruptly conceal the power of attorney, general power of attorney, bank -- pre-signed bank checks, and other documents, financial documents ending in bank number whatever, whatever.

Anything else on that one?

MR. DUDLEY: Yes, Your Honor. I think the law requires that the jury be instructed that the natural and probable -- that the defendant know the natural and probable consequences of his actions would be the obstruction of justice. I think I put the right language in the instruction I submitted.

THE COURT: Any objection to adding that language to this?

MR. GORDON: I am still not sure what he is talking about, Your Honor.

THE COURT: Here is what he has, No. 4.

MR. DUDLEY: Your Honor, I will tell you where I am taking it. I am taking it out of *United States v Mintmire*, and they had the fourth element was the natural and probable effect of the defendant's conduct would be interference with the due administration of justice.

THE COURT: Do you have it in your proposed instruction?

MR. DUDLEY: Oh, that's it. Yes.

MR. ROBLES: I do have a question. In the instructions handed out by the Court, there are -- there seems to be two -- two instructions for Count 8.

MR. DUDLEY: And I agree, Your Honor, and I am the one that submitted that and messed it up. I -- we can withdraw the -- there was one submitted to say -- to help you determine whether there is an agreement to obstruct justice, here are the elements of the underlying charge. But we're already charging them on those. So we don't need that instruction.

THE COURT: Is that in the group?

MR. DUDLEY: Page 45, Judge. We don't need that.

MS. CASSINELLI COUCH: But you want the fourth element off of that, right?

MR. DUDLEY: I do.

MS. CASSINELLI COUCH: I agree.

THE COURT: Do you have any objection to adding the fourth element? That's the only issue on the table.

MR. ROBLES: We do, Your Honor. I would just argue that "corruptly" covers all intent required by the statute. I mean, the statute has no specific intent requirement other than whoever corruptly does these actions. So I think the term corruptly and corruptly is defined --

THE COURT: But I don't think fourth is an intent requirement. What it says is to assist in determining whether

there was an agreement or understanding, these things: First, there was an official proceeding. Second, defendants engaged in conduct. Defendants acted corruptly is three. And then four, the natural and probable effect of the defendants' conduct would be to interfere with the due administration of justice.

MR. ROBLES: I don't see how that is any --

MR. GORDON: This is Count 8. There is no allegation of agreement or understanding.

MR. DUDLEY: I agree, and the instruction you have, Judge, is the one I am withdrawing.

THE COURT: Okay. I am holding the one you have withdrawn. And what happened to the other one I had? Do you still have my version over there or did I get it back?

MR. DUDLEY: All I am asking is that that fourth element be added to instruction -- I have lost --

MS. CASSINELLI COUCH: Count 8.

MR. DUDLEY: 27.

MR. CRABTREE: Page 38, the bottom.

THE COURT: And I have lost the one Mr. Dudley gave to me. I don't have your version, the one that you offered up.

MR. DUDLEY: Well, Your Honor, you had it. It's not in the right form, but it has the language that I want.

MR. CRABTREE: That's it. Just add that element to this.

THE COURT: Right. But what I am -- my response to the

government was I don't know that this creates an intent that there was an intent that it would interfere with the due administration of justice, just that the probable effect of it would be to do that.

MR. DUDLEY: And that's part of the nexus requirement under both *Aguilar* and *Arthur Andersen*.

MR. ROBLES: The nexus requirement does require a connection in time, logic, and causation. Adding an element to a -- to an instruction -- I mean, I think it's already incorporated into the definitions previously given for official proceeding, but if that's -- I mean --

THE COURT: I am just saying, is it a requirement that if I take an act that obstructs an official proceeding, that my act has to actually -- or have the probable effect of actually interfering with the proceeding?

MR. ROBLES: Yes, it does.

THE COURT: So I could be out here trying to interfere, but if it has no, if it doesn't interfere, I can't be found guilty.

MR. ROBLES: Under the nexus requirement --

THE COURT: So there has to be some effect on it or --

MR. ROBLES: Foreseeable effect. And I believe that is already incorporated into previous definitions, and I don't know how -- form-wise how we want to organize that, but I would just object to adding a separate element to --

THE COURT: Well, but if this defines what the crime requires, and it requires that they have a probable effect, then I think it goes in.

MR. ROBLES: Okay.

THE COURT: So you just want that fourth element?

MR. DUDLEY: Yes, Your Honor.

THE COURT: So it has four essential elements and not three?

MR. DUDLEY: Correct.

MR. ROBLES: The -- specifically, the language with "the due administration of justice," is that language pulled directly from *Mintmire* or from --

MR. DUDLEY: Directly from it.

MR. ROBLES: Okay. Then I have it.

THE COURT: All right. How about -- I guess it would be -- 28 would be the next one. That's what I was looking at earlier. Any objection to this? This is the concealing an object from use in an official proceeding.

MR. DUDLEY: That's the aiding and abetting, Your Honor. I don't have any objection with that.

MS. CASSINELLI COUCH: No objection.

THE COURT: Any objection from the government?

MR. GORDON: No, Your Honor.

THE COURT: The next one is attempt to conceal?

MR. DUDLEY: Your Honor, I do object to this on the

grounds that it completely abrogates the nexus requirement. This says if you try, you're guilty regardless of whether it has any effect or not.

THE COURT: Are you guilty of the underlying offense or of the attempted? I guess you are not being charged with attempted in Count 8.

MR. GORDON: She is. They are. Yes, they are.

MR. DUDLEY: But under *Aguilar* and *Arthur Andersen*, got to prove the natural and probable effect of the conduct would interfere with the due administration of justice. Just to say if she attempted to conceal she is guilty doesn't add that element in there.

THE COURT: Explain this to me. Attempted murder is not murder. It is two separate charges. I can be found guilty of attempting to murder somebody if the murder never occurs and I take a step towards trying to kill the person. I can't be found guilty of murder though. Does Count 8 charge the Manns with both concealing and attempting to conceal or just with concealing and we are trying to now say, if they just attempted to do it, that's the equivalent?

MR. GORDON: The indictment says both, Your Honor.

THE COURT: If they were found guilty of attempting, but not of concealing, is there a different punishment for that if you are found guilty of that? I mean, under the guidelines, what would be the difference?

MR. GORDON: I have never run an attempt through the guidelines. I am assuming there is some provision in there for that.

THE COURT: The only reason I ask is if I could go to prison for attempting to murder somebody and spend the same amount of time I could for murdering somebody, it is essentially the same crime. And I don't know that that's what we have.

MS. CASSINELLI COUCH: What is the attempt section in the code?

MR. DUDLEY: Well, that's -- 1512(b)(1) covers attempts.

Judge, I am kind of stumped on this one too because I don't know if you can be convicted on attempting to obstruct justice under *Aguilar* and Arthur Andersen.

MR. GORDON: The statute under (c)(1) specifically says: Whoever corruptly alters, destroys, mutilates, et cetera, or attempts to do so.

MR. DUDLEY: I agree the statute covers attempt.

THE COURT: So it's not attempt to -- it's not -- you could attempt to destroy or conceal and it's the equivalent of --

MR. DUDLEY: Here is my problem.

THE COURT: -- the underlying offense if you are attempting to do it.

MR. DUDLEY: Say you did conceal a document, but it

didn't have a natural and probable effect of interfering with the administration of justice, you are not guilty of obstruction. But if you attempt to do the same thing with the same documents, you can be found guilty, even though if you were successful, it wouldn't interfere with the administration of justice? That conceptual doesn't fit, to me.

THE COURT: How do we craft an instruction that takes that into consideration because you have to have -- I think the way the statute reads, if somebody attempts to do it, that is sufficient. But I think the point that the documents that they're attempting to conceal or destroy have to actually have some bearing on the investigation --

MR. ROBLES: Let me clarify because we keep coming back to *Aguilar*, and the nexus requirement is a relationship only. *Aguilar* actually says, page 599: In other words the endeavors -- it's talking about the nexus -- must have the natural and probable effect of interfering with the due administration of justice. This is not to say that the defendant's actions need be successful.

So actually, I would go back to our objections in Count 8 or the instruction for Count 8 and say, no, there is no -- success is not necessary under *Aguilar*, and that in this case a actual effect on the proceeding is not necessary under the nexus requirement. It's only that the actions have a natural and probable or foreseeable effect upon the proceeding.

THE COURT: Mr. Dudley?

MR. DUDLEY: That's what the instructions say.

THE COURT: I understand. I don't --

MR. DUDLEY: Your Honor, I don't know how to resolve this. I will just object to submitting attempt to the jury under the circumstances of these -- of this case because I don't know how to fix the instruction.

Is the evidence that we have heard so far that they attempted to impair the proceeding or that they did? What is the evidence? I know what the witness has said and I know, But --

MR. GORDON: Right.

THE COURT: I think that the arguments have been that Sandip Mann, that these documents related to him, and that at that point everything was on the table who ATF was investigating and simply by taking those documents and removing them and taking them to a different place, that that did affect -- I don't know if it was an -- if they attempted to, but I don't know. I am not offended by the attempt, the attempt instruction, but I want to make sure that it's a good instruction and that it -- I have always had a little, been a little uneasy about the removal of those papers of Sandip, considering they never did show anything ultimately.

MS. CASSINELLI COUCH: I think the testimony was Agent Oliver, right, and I think his testimony was that the

obstruction was when the documents were removed. That was the position that the government took in the trial, was that that was the obstruction. So there wouldn't be an attempt because he said, They don't get to decide what they take out before I do a search warrant. And so I mean, I think that would mean, under the government's theory, the obstruction occurred at that moment and, therefore, attempt wouldn't be at issue.

THE COURT: I think it's bigger than that. I think the telephone calls, the removal of the documents, taking them somewhere else, I think all of that was put on to show what the obstruction was.

MS. CASSINELLI COUCH: But how could that be an attempt?

THE COURT: That was my question. Is that the actual obstruction or is that an attempt to obstruct or does it matter?

MS. CASSINELLI COUCH: I think it matters. I don't think there is any evidence in the record to support attempt. I think there is evidence in the record that could support the obstruction.

MR. GORDON: Well, y'all turn around and argue she gave it back, so she never concealed it. So that's why the attempt language was included when we did the indictment.

MS. CASSINELLI COUCH: Well, I think that you have presented your case, though, as the obstruction having occurred prior to that time, and you have argued that it didn't matter

that she gave it back.

MR. GORDON: I haven't argued anything yet.

MS. CASSINELLI COUCH: That it already occurred.

MR. GORDON: I haven't argued anything yet.

MS. CASSINELLI COUCH: At the bench and when Oliver was testifying.

MR. ROBLES: For purposes of the instruction, Your Honor, I don't see legally any problem with the attempt and a conviction based on an attempt because there is no requirement that the defendants' actions actually be successful.

MS. CASSINELLI COUCH: I object to the attempt based on our conversation right now, but if you are going to give it, I think it has to tie back to all the elements in the -- in the elements instruction of concealing the object.

THE COURT: We wouldn't have to go through all of them again, would we?

MS. CASSINELLI COUCH: Or at least reference it and say all these things have to be -- I can't honestly think of a way to say that that makes a whole lot of sense, but --

Isn't that what you are saying, Tim? If you are going to give it, it should require all the underlying requirements to be met plus a substantial step?

MR. DUDLEY: Yeah. I mean, at least has to have the probable effect of interfering with the due administration of justice.

THE COURT: I just don't know how to write that. I am being very honest. If you give me some language, I will see if we can put something together.

MR. DUDLEY: The only suggestion I have is put a comma at the end of the last sentence and put: And if successful concealment would have the probable effect of interfering with the due administration of justice.

THE COURT: Would have the effect of doing --

MR. DUDLEY: I'm sorry?

THE COURT: Would have the effect of doing?

MR. DUDLEY: Interfering with the due administration of justice.

MS. CASSINELLI COUCH: Also, the word "corruptly" should be before the word "concealed."

THE COURT: Let me read this, and I don't know how this -- second sentence: A person may be found guilty of an attempt if he or she attempted to conceal documents and voluntarily and intentionally carried out some act which was a substantial step toward that concealment and, if successful, the concealment would have the effect of interference with administration of justice.

MR. DUDLEY: Have the probable effect. I don't think they have to prove it had an actual effect.

THE COURT: What is the government's position?

MR. ROBLES: I agree that there is not -- it's not

necessary to show success or an actual effect, just the probability.

THE COURT: Is that supplemental language -- do you have any objection to that?

MR. GORDON: I think before we used "natural and probable effect." I think that would be --

MR. DUDLEY: That's fine.

MR. GORDON: -- consistent.

THE COURT: The objections are duly noted and we will let the record reflect that this is a -- that you object, but if we are going to give the instruction, that this is the language that we would --

MS. CASSINELLI COUCH: "Corruptly" should be before the word "conceal" in the second sentence.

THE COURT: Intended to corruptly conceal documents?

MS. CASSINELLI COUCH: Yes.

MR. GORDON: That's right.

THE COURT: That is 28.

Crime of making a false declaration, Count 9.

I think this probably was yours. Yeah. This is his.

MR. DUDLEY: Your Honor, actually I don't have a whole lot of objection to this. I do object to the way they have summarized testimony under 1. I am looking at the instruction, and I don't have this one numbered.

MR. CRABTREE: Page 46 at the bottom.

MR. DUDLEY: Page 46 at the bottom. Under 1, she testified the only reason she removed the item was so they would be safer. That's not what she said. She said because she thought they would be safer.

THE COURT: What is the position of the government on that? What I have right now is, 1, the defendant testified under oath or affirmation before a grand jury that she removed items from the clinic because she thought that they would be safer.

MR. GORDON: The only reason she removed the items was because she thought they would be safer?

THE COURT: No. His position is that before a grand jury --

MR. DUDLEY: I agree with "only reason." She did say that.

THE COURT: Okay. So because she thought they would be safer, and take out was so they would be safe -- or safer.

MR. DUDLEY: And then, Your Honor, the -- the only other objection I have is on the first false testimony is material if the testimony was capable of influencing the grand jury. I would request that we add: On the issue it was investigating. If you look at the comments to the pattern instruction, that's basically what it says, that it has to be capable of influencing the grand jury on the issue before it.

THE COURT: So should this say it was capable of

influencing the grand jury on the issue before it?

MR. DUDLEY: Before it or it was investigating, either one.

That's all I have on that one, Your Honor.

THE COURT: That's 29. Any objections on --

MR. ROBLES: Just to the language. If I remember correctly, I think we defined material or there is a definition of material where we took out the case citations.

THE COURT: Uh-huh.

MR. ROBLES: I would just suggest to the Court that we use that particular language here. I think *Ostertag* dealt strictly with perjury, 1623 specifically, and that was the case cited underneath the definition of material. And it's not substantially dissimilar. It's just a different way of saying things.

THE COURT: Who submitted this instruction? Whose instruction was this? Is this the government's?

MR. ROBLES: I believe that was the defendants'.

THE COURT: Well, I am sure -- I notice that both sides objected to the instruction, and I knew I took this instruction directly from --

MR. DUDLEY: This is my instruction. That's not the one that I was looking at though. That's not the one in the packet that I was given.

THE COURT: Okay. Because it should be just typed up

and put in 14-point font, I don't think it was -- maybe we made a change or two.

MR. DUDLEY: Okay. The one I have is actually the one that the government submitted.

THE COURT: Okay.

MR. DUDLEY: On materiality, Your Honor, I actually think we ought to be consistent. So I think if we are going to define it under definitions one way, it probably ought to go in this instruction the same way.

THE COURT: Do we need to put it in this instruction if we already have definitions?

MR. GORDON: That's what I wanted to bring up. It's included in the definitions section for the 1512 offenses, and I don't think it should be there because there is no materiality.

MR. DUDLEY: I agree. It ought to be taken out of definitions and put in here.

MR. GORDON: And put specifically with this count.

THE COURT: Do you-all remember what?

MS. CASSINELLI COUCH: Isn't every definition applicable to every count unless there is a specific --

MR. DUDLEY: No materiality requirement on the other.

MS. CASSINELLI COUCH: But if you have one definition, the definition applies each time that word is used in whatever count it's used in unless that count has a specific different definition.

MR. DUDLEY: I had that in No. 26, the definition.

THE COURT: Okay. And we will take that out. What definition are we going to use for material?

MR. DUDLEY: The one that was in the definitions section.

THE COURT: Okay.

MR. DUDLEY: I can show you.

THE COURT: Okay.

MR. DUDLEY: That's what you-all wanted, wasn't it?

MR. ROBLES: Yes.

THE COURT: Okay. And 30, intent or knowledge may be proved like anything else.

MR. DUDLEY: Your Honor, I object to that because I think it lessens the burden of proof required of the government.

MS. CASSINELLI COUCH: I agree. Also in this particular case, it implies that they can take evidence that is specific to one count and apply it to all the other counts.

MR. ROBLES: This the 7.05?

THE COURT: Yes.

MR. GORDON: It's a standard instruction, especially when Mr. Dudley wants to stand up and yell about how we have to prove what's going on in Sue's brain. I mean, this tells them they're allowed to look at what she is doing and the circumstances of the case. I mean, I think it's particularly relevant.

THE COURT: Do you have a response to how you prove what's in somebody's brain without showing --

MR. DUDLEY: That was the issue *in re Winship* because there was a --

THE COURT: Why are you laughing, Mr. Gordon?

MR. DUDLEY: Pardon?

THE COURT: He is over there laughing. You are citing all these cases.

MR. GORDON: It's great.

THE COURT: You have more cases in your mind than anybody I know, like a law professor.

MR. DUDLEY: In that case the jury was instructed that they could presume, different word, but they could presume a defendant intended the natural consequences of his act. And the Supreme Court said you relieved the government of proving guilt beyond a reasonable doubt by telling the jury they could presume something the government has to prove. This ain't a presumption, but it's along the same line of what the Supreme Court addressed in *in re Winship*.

THE COURT: Presumption is a little different than intent though. This doesn't shift a burden by saying you could prove that somebody intended to do something by looking at their acts.

MR. GORDON: And this instruction even includes the language that says you may but are not required to find or to

infer. I mean, that takes care of the concern.

THE COURT: That's just a qualifier.

MR. GORDON: But I think it alleviates the concern that Mr. Dudley raises from that case.

THE COURT: Any last words on --

MR. DUDLEY: No, Your Honor.

THE COURT: I think the way you can -- the only way you can prove that somebody intended to do what they did if you don't hear from them -- they have a constitutional right not to say anything -- it's to infer that their actions mean something, and I think that's what this attempts to address. I mean, if there is some other language you want to put in here, then --

MR. DUDLEY: No, Your Honor.

THE COURT: -- we can deal with it.

MS. CASSINELLI COUCH: I object to the "all facts and circumstances in evidence." You can consider all the circumstances in evidence, which may aid in determination of defendants' knowledge or intent because it's not specific to any count. I renew my motion for a severance on this basis.

THE COURT: Where now?

MS. CASSINELLI COUCH: The first paragraph. It doesn't say on this count you can infer Sue's intent from these facts and circumstances. So if this is a general instruction, what the jury is likely to read is we can consider all the evidence we have heard to decide intent and knowledge as to every count

and every element, and I renew my motion to sever.

THE COURT: Why can't we confine this instruction to Counts 7, 8, and 9, and not to 1 through 6?

MR. GORDON: Because 1 through 6 also has mens rea elements that this also applies to. I mean, it's -- it applies across the board on all crimes, not just 7, 8, and 9.

MS. CASSINELLI COUCH: Well, it needs to be clear that they can't consider all the evidence presented in the case to infer an element on a specific count, to infer -- I mean, it's like saying you can take all the evidence about the medical board stuff and infer that he's the kind of guy that would steal a document. That's not a proper consideration for the jury. Does that make sense?

THE COURT: That does. I'm going to give the instruction, and I think that's our last instruction.

MR. DUDLEY: Last one I have, Your Honor.

THE COURT: Now, we're going to clean these up, and I will get a clean copy out to everybody.

MS. CASSINELLI COUCH: Your Honor, we have a couple of instructions I want to offer, and on that last one I would ask that we at least put all of the facts in evidence as to each count or somehow make it clear that you are still required to consider the evidence on each count separately.

Impeachment by a prior conviction, 2.18. I think all your jailhouse people had priors.

MR. GORDON: I agree. I think they were slayed otherwise, but --

MS. CASSINELLI COUCH: That's just a pattern instruction, and I can type it and e-mail it if you like it.

THE COURT: If you tell me what it is, we can do it.

MS. CASSINELLI COUCH: Pattern Instruction 2.18, impeachment of witness prior to conviction. I have got -- I can give you this one, Judge. And we should actually add -- do we have any other criminals?

THE COURT: Who testified? I think we had three, right?

MS. CASSINELLI COUCH: I think Tao Li too.

THE COURT: Oh, yeah. I say put them all in there. So the one we're going to -- now, when -- we will do this at the end of the -- what was our last one, 30 or 29?

Instruction 30, you have heard evidence that the witnesses were once convicted of a crime, and you may use the evidence only to help you decide whether to believe a witness and how much weight to give each of their testimony. And it will also include Tao Li.

MR. CRABTREE: Intent or knowledge was 30, so I guess it would be 31.

THE COURT: Okay.

MS. CASSINELLI COUCH: We would also, if I could with Mr. Dudley's help, proffer a definition of corruptly after -- if

I could just send it to you after.

THE COURT: Yeah, you can.

MS. CASSINELLI COUCH: We have one more potential instruction, but we kind of need to discuss it with Mr. Hendrix as well and probably won't offer it, but --

THE COURT: Is he still around?

MS. CASSINELLI COUCH: I have no idea.

THE COURT: Okay.

MS. CASSINELLI COUCH: I kind of doubt the government would have objection to it if we did offer it.

THE COURT: Do you-all want to -- I will be here, so if -- the jury is coming back at 1:30. We will try to get these instructions out to you as soon as possible. We might go late if we do our closings tonight and then submit it to the jury and just have them come back in the morning and start fresh to deliberate. Okay?

MS. CASSINELLI COUCH: And we don't, we have -- Judge, did you --

THE COURT: Anybody have a chance to look at the verdict forms?

MS. CASSINELLI COUCH: I didn't.

THE COURT: Take a look at those.

MR. GORDON: Your Honor, I would ask that the Court's final instruction not be that 2.18 instruction about impeachment by prior convictions. I mean, I --

MR. DUDLEY: That ought to go up with the other impeachment.

MR. GORDON: I would think it would be up with 8 or 9. I think 2.18 should be No. 8.

THE COURT: This should? No. 8 and then push the rest of them back?

MR. GORDON: Yes.

MS. CASSINELLI COUCH: Don't forget about the extra one that I am going to send that goes in there too.

THE COURT: Okay.

MS. CASSINELLI COUCH: I do need -- you wanted me to make a record on the specific motions that we renewed.

THE COURT: Let's do that when we come back.

MS. CASSINELLI COUCH: I am happy to do it when we come back.

THE COURT: Okay.

(Recess at 12:22 p.m.)

C E R T I F I C A T E

I, Cheryl Nelson Kellar, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Cheryl N. Kellar, RPR, CRR, CCR Date: March 8, 2011
United States Court Reporter

(Continuing at 1:46 p.m., jury not present.)

THE COURT: Have the lawyers had a chance to take a look at the final set of jury instructions?

MS. CASSINELLI COUCH: We are right now, Your Honor.

THE COURT: You're doing it now?

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: Okay.

(Recess in place at 1:47 p.m.; continuing at 1:50 p.m., jury not present.)

MR. DUDLEY: Your Honor, while they finish that, may I hand you the case that I told you I would find over the lunch hour?

THE COURT: Yes, sir.

(Recess in place at 1:50 p.m.; continuing at 1:54 p.m., jury not present.)

MS. CASSINELLI COUCH: May we approach, Your Honor?

THE COURT: You may.

(Bench conference reported as follows:)

MS. CASSINELLI COUCH: First, I'm sorry, but I've been sent to do the dirty work. And I'll say before I say this that I think that we could supplement these so you can read and then have them fixed before you submit them so we don't hold up the proceeding any more.

Our issues are on Instruction No. 26. I don't know if we missed this or what, but this is conspiracy to obstruct an

official proceeding, Count 7.

THE COURT: Hold on just a second.

MS. CASSINELLI COUCH: Okay. First, we would ask for the pattern conspiracy instruction like we did on the other conspiracy. This language on pages 35, 36, 37, and 38, with the exception of the definition, is not the pattern conspiracy instruction and it's going into a lot of things that aren't in the pattern instruction. So we would ask that that be supplemented, which is the pattern conspiracy agreement explained instruction, which would be the same as Court's Instruction No. 15. Court's Instruction No. 26, it has several pages of conspiracy discussion. We would ask that the Court use the pattern conspiracy instruction instead of all those pages. The pattern conspiracy instruction would be the same instruction the Court gave as No. 15.

THE COURT: What's the objection to using the pattern instruction?

MR. GORDON: None from me, Your Honor.

THE COURT: Do we have a copy of the pattern instruction?

MS. CASSINELLI COUCH: It's in as No. 15. I think you can -- looks like No. 15 is the generic agreement explained, so you can just copy that and put a different number on it, I think.

MR. GORDON: Or you can just tack it on the bottom of

26. We don't have to renumber everything.

MS. CASSINELLI COUCH: It's the same language.

THE COURT: Where do we start?

MS. CASSINELLI COUCH: Well, I mean -- I would say that this can be cut out from here down (indicating).

MR. LASSITER: Yeah.

MS. CASSINELLI COUCH: Do you have a position on that? I would say it would go right there (indicating).

MR. GORDON: Or let me discuss these elements in more detail with you, and then insert it.

MS. CASSINELLI COUCH: Except you're not going to discuss the elements. It's just the agreement explained. And I'm okay if you want to leave those two paragraphs in and maybe you start it where it says "Now."

THE COURT: And cut out from there down?

MS. CASSINELLI COUCH: Yeah.

Is that better for you, to start it right there (indicating), if you want to leave that little blurb?

MR. GORDON: Sure.

THE COURT: So just cut out from "Now" down, on 26, and then add 15?

MS. CASSINELLI COUCH: Yes, the language of 15.

THE COURT: Okay.

MS. CASSINELLI COUCH: The only other issue we have, this definition also has the definition of "corruptly." We

think that should go in the definitions instruction because it applies to several counts, not just this one count.

THE COURT: Okay. Derrick, did you get that?

LAW CLERK: Uh-huh.

MS. CASSINELLI COUCH: That's all.

THE COURT: And move the definition of "corruptly" to the definitions page.

MS. CASSINELLI COUCH: Did Count 1 look correct to you? It looked funny to us. Just make sure it looks correct, Mike.

THE COURT: Do you all need the portable lectern brought up?

MR. HENDRIX: No.

THE COURT: Do you?

MR. GORDON: No, sir.

MS. CASSINELLI COUCH: Do you have --

MR. GORDON: Do you want to go off the record for us to talk?

MS. CASSINELLI COUCH: Yes. Can we go off the record?

THE COURT: Yes.

(Ms. Cassinelli confers with Mr. Gordon.)

THE COURT: Yes, sir?

MR. GORDON: On Court's Instruction 13, for element No. 1, the parties have conferred.

MR. DUDLEY: You've got my blessing.

MR. GORDON: We've agreed the first element should say from on or about February 2008 until on or about February 4, 2009, in the Eastern District of Arkansas, Dr. Randeep Mann knowingly used or conspired to use a weapon of mass destruction without lawful authority.

THE COURT: So it doesn't have to be against a person or property?

MR. GORDON: We're going to move that to "Two."

THE COURT: Without lawful authority.

MR. GORDON: Yes, sir. And we would request element 2 say Dr. Randeep Mann knowingly did so against a person or property within the United States. And then "Three," the second "offense" is a typo.

THE COURT: Take that out?

MS. CASSINELLI COUCH: The second "offense" is misspelled.

MR. GORDON: That will do it for now.

MS. WHATLEY: I wasn't at the conference. I was just making sure we were going to instruct and everybody is going to close tonight.

THE COURT: We're going to instruct, do the whole 30 something instructions, you're going to close, and then all I'm going to do is read this final instruction, "In conducting your deliberations, these are the rules you follow," and then I'm going to read one of the verdict forms and just say this is what

you do, and then I'm going to hand it to them. I will do a little talking after, but --

MS. CASSINELLI COUCH: Are you going to give them the verdict forms now?

THE COURT: Yes.

MS. CASSINELLI COUCH: I probably should take a look at those.

MR. GORDON: I know Mr. Lassiter had one thing he wanted to change on the --

MS. CASSINELLI COUCH: The enhancement needs to be beyond a reasonable doubt.

MR. GORDON: Special finding on Count 2 needs to read they find beyond a reasonable doubt the injury did or did not occur.

MS. WHATLEY: You just passed it.

THE COURT: What now?

MR. GORDON: Down on "special finding," on the bottom, "We, the jury, in the above-entitled case, find beyond a reasonable doubt" --

MS. CASSINELLI COUCH: I need to take a look at those.

THE COURT: -- "personal injury to another person did occur." Okay.

MS. CASSINELLI COUCH: Do you have verdict forms for aiding and abetting a conspiracy, like separate? Because the jury is going to have to decide in all the counts where there's

optional offenses, or methods of committing the offense, what method they unanimously agree on.

MR. GORDON: I don't think we submitted them like that.

MS. CASSINELLI COUCH: They need to be that way for double jeopardy purposes.

MR. GORDON: Then start writing.

THE COURT: Yeah.

MS. CASSINELLI COUCH: I can --

THE COURT: Just knock out a verdict form while you're sitting over there.

MS. CASSINELLI COUCH: Actually, I can. And I have a flash drive, and I can just bring it up here to Betty, if that's okay.

THE COURT: It's kind of late in the day.

MS. CASSINELLI COUCH: I thought we were going to do that after. I can do it really quick. They need to be separate findings.

THE COURT: Let's charge the jury and let's do your closing. You can bring those up during a break, because we're going to take breaks between each closing. And that's not until later anyway. Let's make sure you do it.

MS. CASSINELLI COUCH: I'll do it right now.

THE COURT: Mr. Dudley, remember, you're going to have to rest your case.

MR. DUDLEY: Oh.

THE COURT: Okay.

MS. CASSINELLI COUCH: I was reminded to ask you if I needed to make my record on my motion specifically or if the Court would deem all of them renewed and denied on all the bases I presented?

THE COURT: I deemed them denied. I also recognized that you raised every -- I think we did it on the record -- that you raised every motion again and that I denied all of them. I think what I said earlier was if you wanted to go down the list and specifically make your record, I would also permit that. You don't have to, as far as I'm concerned, but I don't know what the Eighth Circuit will do. So if you want to make all of your arguments regarding your motions, you can do that. But the record will reflect that you've raised them at the end of trial, you raised them at the end of the United States' proof, you raised them at every step along the way; you raised them in jury selection, you raised them as each witness came in. You did an effective job of consistently saying, I object to this and I raise it again. My point is, any time a lawyer wants to make a record so that they can be sure, I say do it. So if you want to, you can. But as we sit here right now, you've raised them all.

MS. CASSINELLI COUCH: Mr. Lassiter wanted me to come up here and make sure I had covered myself on that, so I would

say we renew everything. Specifically, 1 and 2 cannot be both prosecuted pursuant to the double jeopardy clause. And the 922 count on the machine gun, that's also an NFA count, those are also the same offense for double jeopardy purposes and both cannot be prosecuted. I think everything else is well represented in the briefs and I'll stand on those.

THE COURT: Those are denied. Thank you.

(Whereupon, proceedings continued in open court as follows, jury not present.)

THE COURT: Any final objections to the jury instructions? Have you had a chance to take a look at the final revisions?

MS. CASSINELLI COUCH: We're satisfied, other than our objections previously noted.

MR. DUDLEY: Same for us, Your Honor.

THE COURT: For the government?

MR. GORDON: No objection, Your Honor.

THE COURT: And the record will reflect that there were a number of objections to the various instructions and that each one of those objections is still in place. However, as to the form of the final instructions, we have agreement. If that is the case, let's bring in the jury.

COURT SECURITY OFFICER: Yes, sir.

(Whereupon, the jury entered courtroom and proceedings continued in open court as follows:)

THE COURT: Ladies and gentlemen of the jury, as I told you back in the jury room about 15 minutes ago, we've been working since we saw you yesterday on all of our jury instructions, and we went from whatever time we got out yesterday afternoon to 8:30 last night. We started back up at 10:00 o'clock this morning. We were able to come up with 32 initial instructions, which I'm about to give you. So I would say, since this is 40-something pages of reading that I'm about to do, sit back and listen, pay attention, but remember that you will have these instructions back in the jury room. So just note, if you don't catch something this time around, you'll have it with you.

"Members of the jury, the instructions I gave you" -- let me back up. I'm getting ahead of myself.

Mr. Dudley, we have some business to take up first.

MR. DUDLEY: Your Honor, the defendant Sue Mann rests.

THE COURT: Okay. That has to be done before we can instruct you.

Does the government -- I guess there's no rebuttal to Sue Mann's case.

MR. GORDON: No, Your Honor. We close.

THE COURT: Is there anything else we need to take up before we charge the jury? Okay.

"Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I

now give you some additional instructions.

"You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

"The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they're more important than the earlier instructions that I gave you. Again, all instructions, whenever given and whether in writing or not, must be followed.

"It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

"Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

"I have mentioned the word 'evidence.' The evidence in this case consists of the testimony of witnesses, the documents and other things received as exhibits, the facts that have been stipulated, that is, formally agreed to by the parties, the facts that have been judicially noticed, that is, facts which I

say you may, but are not required to, accept as true, even without evidence.

"You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

"Certain things are not evidence. I shall list those things again for you now:

"Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.

"Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

"Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

"Anything you saw or heard about this case outside the courtroom is not evidence.

"Finally, if you're instructed that some evidence was received for a limited purpose only, you must follow that instruction.

"In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it at all.

"In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether the witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

"In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

"The charges in this case are as follows:

"Under Count 1, the indictment charges that defendant Randeep Mann committed the crime of aiding and abetting the use of a weapon of mass destruction.

"Under Count 2, the indictment charges that Randeep Mann committed the crime of aiding and abetting the malicious damage or destruction of a vehicle by means of an explosive.

"Under Counts 3 through 5, the indictment charges that defendant Randeep Mann committed the crime of possessing unregistered firearms.

"Under Count 6, the indictment charges that defendant Randeep Mann committed the crime of possessing a machine gun.

"Under Count 7, the indictment charges that defendants Randeep Mann and Sangeeta Mann committed the crime of conspiracy to obstruct justice.

"Under Count 8, the indictment charges that defendants Randeep Mann and Sangeeta Mann committed the crime of aiding and abetting the concealment or attempted concealment of objects with the intent to impair the documents' use in an official proceeding.

"Under Count 9, the indictment charges that defendant Sangeeta Mann committed the crime of making a false declaration before the grand jury.

"Each defendant has pleaded not guilty to each crime with which he or she is charged.

"As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, each defendant is presumed to be innocent. Thus, each defendant, even though charged, begins the trial with no evidence against him or her. So the presumption of innocence alone is sufficient to find the defendants not guilty and can be overcome only if the government proves beyond a reasonable doubt each essential element of the crime charged.

"Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is

entitled to be treated separately, and you must return a separate verdict for each defendant. Also keep in mind that you must consider separately each crime charged against each individual defendant and must return a separate verdict for each of those crimes charged.

"There is no burden upon a defendant to prove that he or she is innocent. Accordingly, the fact that the defendants did not testify must not be considered by you in any way, or even discussed in arriving at your verdict.

"A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

"You have heard evidence that Lloyd Hahn has received a promise from the government that he will not be prosecuted. This testimony was received into evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by the government's promise is for you to determine.

"You have heard evidence that the witnesses Curlan McCray, Steven Briscoe, Cecil Norwood, and Thao Le were once convicted

of a crime. You may use that evidence only to help you decide whether to believe the witnesses and how much weight to give each of their testimony.

"You have heard evidence that Curlan McCray hopes to receive a reduced sentence on criminal charges pending against him in return for his cooperation with the government in this case. Curlan McCray entered into an agreement with the government which provides the government will recommend a less severe sentence which could be less than the mandatory minimum sentence for the crimes with which he is charged. Curlan McCray is subject to a mandatory minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling the witness's case believes he provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his sentence below the statutory minimum. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

"You may give the testimony of this witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by his hope of receiving a reduced

sentence is for you to decide.

"You have heard evidence that Cecil Norwood hopes to receive a reduced sentence on criminal charges pending against him in return for his cooperation with the government in this case. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

"You may give the testimony of this witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by their hope of receiving a reduced sentence is for you to decide.

"You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state" -- let me restate that. I'm getting ahead of myself. "You've heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education, or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

"Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's

education and expertise, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

"You will remember that certain summaries and charts were admitted into evidence. You may use those summaries and charts as evidence, even though the underlying documents and records are not here.

"The crime of knowingly using or conspiring to use a weapon of mass destruction against a person or property has three essential elements, which are:

"One, from about February 2008 until on or about February 4, 2009, in the Eastern District of Arkansas, Dr. Randeep Mann knowingly used or conspired to use a weapon of mass destruction without lawful authority.

"Two, Dr. Randeep Mann knowingly did so against a person or property within the United States.

"And three, the offense, or the results of the offense affected interstate commerce.

"If all of the elements have been proved beyond a reasonable doubt as to Randeep Mann, then you must find Randeep Mann guilty of the crime charged under Count 1. Otherwise, you must find Randeep Mann not guilty of the crime under Count 1.

"Definitions: 'Weapon of mass destruction' includes a destructive device, such as an explosive grenade.

"The term 'interstate commerce' includes commerce between

one state, territory, possession, or the District of Columbia and another state, territory, possession, or the District of Columbia.

"A person may be found guilty of conspiring if:

"One, he reached an agreement or came to an understanding with another person or persons to use a weapon of mass destruction against a person or property.

"Two, he voluntarily and intentionally joined in the agreement or understanding.

"And three, at the time he joined the agreement or understanding he knew the purpose of the agreement or understanding.

"The government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether the person is a defendant or named in the indictment.

"The agreement or understanding need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purposes of the scheme.

"You should understand that merely being present at the scene of any event, or merely acting in the same way as others, or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has

no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

"But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

"You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 1 of the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether Dr. Randeep Mann voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

"A person may also be found guilty of use of a weapon of

mass destruction, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of use of a weapon of mass destruction.

"In order to have aided and abetted the commission of the crime of use of a weapon of mass destruction, a person must, before or at the time the crime was committed:

"One, have known the crime of use of a weapon of mass destruction was being committed or going to be committed, and, two, have knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the crime.

"For you to find the defendant guilty of use of a weapon of mass destruction by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of use of a weapon of mass destruction were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

"You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

"The crime of damaging or destroying a vehicle by means of an explosive, as charged in Count 2 of the indictment, has three

elements, which are:

"One, the defendant damaged or destroyed a vehicle as described in the indictment, by means of an explosive.

"Two, the defendant did so maliciously.

"And three, the vehicle that was damaged or destroyed by the defendant, was used in interstate commerce or in an activity affecting interstate commerce.

"'Explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, other explosive or incendiary devices, including grenades.

"The term 'maliciously' as used in this instruction means to intentionally cause damage without just cause or reason.

"The term 'used in an activity affecting interstate commerce' means active use of the property for commercial purposes and not a passive, passing or past connection to commerce.

"'Interstate commerce' refers to commercial activity between places in different states, and it must be proved that the vehicle described in the indictment was actually used for a function that either involved interstate commerce or directly affected such commerce.

"If all of these essential elements have been proved beyond a reasonable doubt as to Randeep Mann, then you must find Randeep Mann guilty of the crime charged under Count 2. Otherwise, you must find Randeep Mann not guilty of the crime

under Count 2.

"A person may also be found guilty of damaging or destroying a vehicle by means of an explosive even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of damaging or destroying a vehicle by means of an explosive.

"In order to have aided and abetted the commission of the crime of damaging or destroying a vehicle by means of an explosive, a person must, before or at the time the crime was committed:

"One, have known the crime of damaging or destroying a vehicle by means of an explosive was being committed or going to be committed; and, two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the crime.

"For you to find the defendant guilty of damaging or destroying a vehicle by means of an explosive by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of damaging or destroying a vehicle by means of an explosive were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

"You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has

become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abetter.

"The crime of possession of an unregistered firearm, as charged in Count 3 of the indictment, has three elements, which are:

"One, the defendant knew that he had the firearm, that's the 98 40-millimeter HE M406 grenades in his possession.

"Two, the defendant knew the firearms were grenades.

"And three, the firearms or grenades were not registered to the defendant in the National Firearms Registration and Transfer Record.

"If all of the elements have been proved beyond a reasonable doubt as to Dr. Randeep Mann, then you must find Dr. Randeep Mann guilty of the crime charged under Count 3. Otherwise, you must find Dr. Randeep Mann not guilty of the crime under Count 3.

"Definitions: The National Firearms Act defines 'firearm' to include machine guns and destructive devices.

"The National Firearms Act defines 'destructive device' to include, one, any explosive or incendiary grenade, and two, any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which

have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes.

"You are instructed to use the above definitions when those terms are used in my instructions for Counts 3, 4, and 5.

"The crime of possession of an unregistered firearm, as charged in Count 4 of the indictment, has four elements:

"One, the defendant knew he had the firearm, and that's Interord Model USAS-12, 12-gauge shotgun, serial number A00020895A, in his possession.

"Two, the defendant knew the firearm was a shotgun classified as a destructive device.

"Three, the firearm was capable of operating as designed.

"And four, the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

"If all of the elements have been proved beyond a reasonable doubt as to Dr. Randeep Mann, then you must find Dr. Randeep Mann guilty of the crime charged under Count 4. Otherwise, you must find Dr. Randeep Mann not guilty of the crime under Count 4.

"If all of the elements have been proved beyond a reasonable doubt as to Dr. Randeep Mann, then you must find Dr. Randeep Mann guilty of the crime charged under Count 4. Otherwise, you must find Dr. Randeep Mann not guilty of the crime under Count 4.

"It is a defense to Count 4 of the indictment charging possession of an unregistered shotgun if an official assured Dr. Randeep Mann that possession was legal and Dr. Randeep Mann relied on that advice in continuing to possess the shotgun.

"The crime of possession of an unregistered firearm, as charged in Count 5 of the indictment, has four essential elements, which are:

"One, the defendant knew he had the firearm, a 7.62-caliber machine gun, bearing serial number BM-0834, in his possession.

"Two, the defendant knew the firearm was a machine gun.

"Three, the firearm was capable of operating as designed.

"And four, the firearm was not registered to defendant in the National Firearms Registration and Transfer Record.

"In order to convict the defendant of a violation of the National Firearms Act, the government must prove beyond a reasonable doubt that the defendant had knowledge of the characteristics of the weapon that brought it within the definition of 'firearm' under the act. Thus, in Count 5, the government must prove beyond a reasonable doubt that the defendant knew the firearm was designed to fire automatically more than one shot, without manual reloading, by a single function of the trigger. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge.

"For you to find the defendant Randeep Mann guilty of the crime charged in Count 5, the government must prove all of the essential elements beyond a reasoned doubt. Otherwise, you must find the defendant Randeep Mann not guilty of the crime charged in Count 5.

"The crime of possession of a machine gun, as charged in Count 6 of the indictment, has three essential elements, which are:

"One, the defendant knew he had the firearm, a 7.62-caliber machine gun, bearing serial number BM-0834, in his possession.

"Two, the defendant knew the firearm was a machine gun or had the characteristics of a machine gun.

"And three, the firearm was capable of operating as designed.

"The term 'firearm' means any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

"The term 'machine gun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

"For you to find the defendant Randeep Mann guilty of the crime charged in Count 6, the government must prove all of the essential elements of that crime beyond a reasonable doubt. Otherwise, you must find the defendant Randeep Mann not guilty

of the crime charged in Count 6.

"Lawful possession is a complete defense to the crime of possession of a machine gun, as charged in Count 7 of the indictment. A person is in lawful possession of a machine gun manufactured after 1986 if that person is a Class 3 dealer and the machine gun is properly registered in the National Firearms Registration and Transfer Record. If the 7.62-caliber machine gun bearing serial number BM-0834 was properly registered to Randeep Mann in the National Firearms Registration and Transfer Record, then he was in lawful possession of it, and you must find him not guilty of Count 7 of the indictment.

"The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

"A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it.

"A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

"If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

"Whenever the word 'possession' has been used in these

instructions, it includes actual as well as constructive possession and also sole as well as joint possession.

"The crime of conspiracy to obstruct an official proceeding, as charged in Count 7 of the indictment, has three essential elements, which are:

"One, that on or about the dates alleged in the indictment, an official proceeding was either pending, or was about to begin, or was reasonably foreseeable.

"Two, that two or more persons corruptly entered into an agreement to corruptly obstruct, influence, or impede an official proceeding. The defendants must have specifically contemplated some particular official proceeding in which the documents or testimony might be material.

"Three, that the defendant knowingly and intentionally became a member of the conspiracy to do such acts.

"Let me discuss these elements in more detail with you.

"The first element of the conspiracy count requires the government to prove beyond a reasonable doubt that, on or about the dates alleged in the indictment, an official proceeding was pending or was about to begin or was reasonably foreseeable.

"The second element of the conspiracy count requires the government to prove that two or more persons entered into an unlawful agreement. In other words, one cannot commit the crime of conspiracy by oneself. Rather, the proof must convince you that at least two persons had joined together in a common

criminal scheme.

"The government must prove that the defendants reached an agreement or understanding with at least one other person. It makes no difference whether the person is a defendant or named in the indictment.

"The agreement or understanding need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

"You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

"But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally

joins in it.

"You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 7 of the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether Dr. Randeep Mann or Sangeeta Mann voluntarily or intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others except to the extent that pretrial statements of others describe something that had been said or done by the defendants.

"'Corruptly' defined: To act corruptly means to act with consciousness of wrongdoing.

"'Official proceeding' defined: As used in these instructions, the term 'official proceeding' includes, (A), a proceeding before a judge or court of the United States, a United States magistrate judge, or a federal grand jury. An official proceeding need not be pending or about to be instituted at the time of the offense, but the defendant must have contemplated the proceeding.

"'Knowingly' defined: An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. The purpose of adding the word 'knowingly' is to ensure that no one will be convicted for

an act done because of mistake or accident or other innocent reason.

"'Willfully' defined: The word 'willfully' means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids. That is to say, with bad purpose either to disobey or disregard the law.

"The crime of concealing an object from use in an official proceeding, as charged in Count 8 of the indictment, has four essential elements, which are:

"One, that on or about the dates alleged in the indictment, an official proceeding was pending, was about to begin, or was reasonably foreseeable.

"Two, that the defendant corruptly concealed or attempted to corruptly conceal one or more of the following documents, to wit, a special power of attorney, a general power of attorney, and presigned blank checks and other financial documents or objects related to a bank account ending in the numbers 8796.

"Three, that the defendant acted knowingly and intentionally.

"And four, the natural and probable effect of defendants' conduct would be the interference with the due administration of justice.

"For you to find the defendant Randeep Mann or the defendant Sangeeta Mann guilty of the crime charged in Count 8, the government must prove all of the essential elements of the

crime beyond a reasonable doubt as to each defendant. Otherwise, you must find the defendant Randeep Mann or the defendant Sangeeta Mann not guilty of the crime charged in Count 8.

"A person may also be found guilty of concealing an object from use in an official proceeding even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of concealing evidence.

"In order to have aided and abetted the commission of the crime of concealing an object from use in an official proceeding, a person must, before or at the time the crime was committed, (1), have known the crime of concealing an object from use in an official proceeding was being committed or going to be committed; and (2), have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the crime.

"For you to find a defendant guilty of concealing an object from use in an official proceeding by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of concealing an object from use in an official proceeding were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

"You should understand that merely being present at the scene of an event, or merely acting in the same way as others,

or merely associating with others does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

"The crime charged in Count 8 of the indictment includes an attempt to conceal an object from use in an official proceeding. A person may be found guilty of an attempt if he or she intended to corruptly conceal documents and voluntarily and intentionally carried out some act which was a substantial step toward that concealment, and if successful, the concealment would have the natural and probable effect of interfering with the due administration of justice.

"The crime of making a false declaration, as charged in Count 9 of the indictment, has four essential elements, which are:

"One, the defendant testified under oath or affirmation before a grand jury that the only reason she removed items from the clinic was because she thought they would be safer.

"Two, such testimony was false in whole or in part.

"Three, at the time she so testified, the defendant knew her testimony was false.

"And four, the false testimony was material.

"False testimony is material if it tends to impede or hamper the course of the investigation of the grand jury. The

statements need not be material to any particular issue, but may be material to any proper matter of inquiry.

"For you to find the defendant Sangeeta Mann guilty of the crime charged under Count 9, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant Sangeeta Mann not guilty of the crime under Count 9.

"Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of a defendant's knowledge or intent.

"You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted."

That's 32 jury instructions.

Ms. Whatley, are you ready?

MS. WHATLEY: Yes, Your Honor.

THE COURT: You may proceed.

MS. WHATLEY: May it please the Court, counsel.

Ladies and gentlemen of the jury, we all recognize that you've sacrificed a lot to be here for the past month, and we want to thank you for your service and for your patience.

A few weeks ago when I stood before you and made the opening statement on behalf of the United States, I told you that this case is not complicated. And even after the testimony

of over 70 witnesses and the introduction of almost 1,000 individual pieces of evidence, I stand by that statement.

This really is a case about a man who was obsessed with firearms and who had access to explosives. It's a case about a man who didn't follow the law when it came to those weapons, and it was a man who was intent on harming someone with what he had access to and possession of, and it's about two people's desire to cover all that up.

Ladies and gentlemen, the defendants are guilty. The United States met its burden as to each and every count, and as I promised, I will go through each and every count, element by element, and show you how the United States met its burden. Like in opening when I told you I was giving you a road map of where we are going, I can't sit here and go through every piece of evidence that was admitted or summarize every witness's testimony. I'm going to give you a road map of where you've been. I know that you've all taken notes and you've all paid attention, and this will point you where in the trial the evidence came from.

I'm going to do this in conjunction with the 32 instructions that the Court just read. If something I tell you is different from what the Court read to you, follow the Court's instruction.

I want to start with the firearms counts, Counts 4, 5, and 6, and then we will go back to Count 3.

The Court read you the definition of a firearm. A firearm includes machine guns and destructive devices. And destructive devices include grenades, and that really long definition he read of nonsporting shotguns, such as a USAS-12. That definition applies to the first few counts we're going to be talking about. And the first one I want to talk about is Count 4, possession of an unregistered firearm. In this case, we're talking about the Interord USAS-12, Government's Exhibit 112, a gun that, according to ATF regulations, had to be registered, because in 1994 it was reclassified as a destructive device. There are four elements to Count 4, and I'd like to take them one at a time.

Number one, the defendant knew he had the firearm in his possession. Ladies and gentlemen, this is his gun. It came out of his gun safe. More importantly, this tag right here that's marked 100, that's his tag. It's a tag he put on it, not a tag the United States put on it. It's his tag. He knew he was in possession of that firearm. And the testimony points that out and the telephone calls point that out. Listen to this snippet of Exhibit 145-A.

(Audio played in open court.)

MS. WHATLEY: There was testimony about this gun that it was in his safe, it was listed as his weapons, and it wasn't insured.

That leads us to element No. 2, the defendant knew the

firearm was a destructive device. Michael Knapp, remember the guy from New Jersey who said they do everything fast in New Jersey? He testified to this, and he said that it was a destructive device. The defendant is a gun nut. He's a man who's obsessed with firearms. You'll hear that on some of the tapes. And he acknowledged that the law had changed. He knew it was a destructive device, just like Michael Knapp testified to. Michael Knapp also testified that the defendant, who has a federal firearms license, would have been some of those people that got the publications, that got the open letters to FFLs telling them that this gun had been reclassified as a destructive device. Now, I anticipate that the defendant is going, or the defense is going to argue it's not his fault, ATF told him he didn't have to register it. But he even contradicts himself on the tapes. On the one hand, he said, They told me I didn't have to register it. But on the other hand, he said, If they had just told me to wake up. I had seven years. If they had just told me to wake up. You don't have to tell somebody to wake up when they know it has to be registered. And why would he say if they had just told me to wake up if he didn't know he had to register it? He acknowledged the change in the law, he acknowledged he had seven years. And like I said, he was an FFL, he got all of those publications. The tape itself proves that he knew what he was supposed to do.

(Audio played in open court.)

MS. WHATLEY: He is at fault. It is his fault.

Element No. 3, the firearm was capable of operating as designed. Michael Knapp told you he took the firearm out, he shot it, it worked just like it was supposed to work. There's no doubt that the defendant knew he had the firearm. There's no doubt he knew it was a destructive device. There's no doubt that it worked like it was supposed to.

And element No. 4, there is no doubt that the firearm was not registered to him in the National Firearms Registration and Transfer Record. Gary Schaibble told you about this. Mr. Schaibble came in and said he had researched this gun, and Government's Exhibit 128 shows the thorough check of the records revealed that this gun was not registered to him in the NFRTR.

Ladies and gentlemen, the defendant Randeep Mann is guilty of Count 4, and he's also guilty of Count 5, which is another possession of an unregistered firearm. In this case, the RPD machine gun, Government's Exhibit 111, which is sitting here in front of me. Now, a lot of evidence has been presented about this gun, and I anticipate that the defense is going to get up here, and they're going to stand up and they're going to say this gun is registered. Ladies and gentlemen, it is not. They're going to say that this is the gun that is listed as 1142. I submit to you that this is not the same gun. The gun described on the form is not the gun, it is not the RPD that Lloyd Hahn manufactured in 2001 with serial number 1142. This

is the gun the defendant wanted to make look like 1142, but it's not the same gun. Defense may also stand before you and ask, If this is the not the real 1142, then where is it? The simple answer is, ladies and gentlemen, we don't know. All we know is that the defendant wanted to make this gun appear to be the one that was registered to him. Why do we know this is not the Lloyd Hahn gun? How do we know it's not the real one? Lloyd Hahn said so. Lloyd Hahn manufactured the gun with serial number 1142. They're trying to discredit him because he got immunity, but you can give his testimony the weight that you think it deserves.

Let's look at all of the circumstances about the gun. Lloyd Hahn said he did not scratch 1142 into the gun as is shown in Government's Exhibit 111-B, as is shown right here on the gun. And he says he didn't do that because in 1994 he got a warning from ATF that told him you can't scratch your numbers into the gun. They have to be a certain depth. And he said that this doesn't fulfill that requirement. Lloyd Hahn also stated that he is required and does put his stamp on guns that he manufactures. The stamp that he brought us, Government's Exhibit 235, this is what he uses to mark his guns (indicating). This does not have a manufacturer's stamp anywhere on it. You can look at it, you can turn it over, you can look wherever you want. It's not there. Remember the gun, the magnet? This gun is magnetic. Lloyd Hahn said the one he made was made with

stainless steel and it was covered with a black epoxy, a nonmagnetic stainless steel. We were all sitting in this courtroom when Lloyd Hahn sat on that witness stand, took his magnet and put it on here and it clicked. He pulled it off, he put it on the other side, it clicked. This is not the same gun that Lloyd Hahn manufactured. And finally, the location of where 1142 is scratched on this gun. Lloyd Hahn said he would not and he could not put the 1142, or could not put the serial number where the 1142 is listed.

And let's compare Lloyd Hahn's testimony to Michael Knapp's testimony, Michael Knapp, who is the ATF gun expert. What did Michael Knapp tell you? I think he even testified before Lloyd Hahn ever got on the stand. What did Michael Knapp tell you? He told you that serial numbers cannot be scratched in, and he said the reason they cannot be scratched in is because they have to be a certain depth. They have to be deep enough so that they cannot be removed or obliterated easily. Secondly, he said a manufacturer's stamp has to be affixed to it. This does not have a manufacturer's stamp. Lloyd Hahn told you he would have put the stamp on it. And the serial number has to be on the receiver. Yes, this is the receiver. We'll agree with that. However, it has to be visible on the receiver. And if you close this top, which you can do, if the safety strap wasn't on there, it would not be visible. It does not meet ATF regulations. If this was a gun that was legal straight across the board and was

the gun that was listed on the firearm transfer form, it would have all of those things properly done, and this is not it. The real serial number for this, ladies and gentlemen, is BM 0834, which is the number that's all over this gun, and this gun is not registered to him.

So why have an unregistered machine gun? It's easy. The defendant is obsessed. The testimony was that people who are obsessed with firearms can sometimes do things they shouldn't do, they can cross the line, which is exactly what happened in this case.

Let's look at the elements for Count 5. Number one, the defendant knew he had the firearm, the machine gun with serial number BM 0834. Once again, Government's Exhibit 111 has the defendant's tag on it, the red tag marked 174. That's the defendant's tag. That is not our tag. This gun was found in his safe with the rest of his weapons. Tony McCutcheon told you the first time he saw the weapons, they had tags on them. When you get to the jury room, you can look at Government Exhibit 185, and these are the other guns that were taken out of his house, and you can see that they have tags similar to those on Government's Exhibits 112 and 111. The defendant knew that he had possession of this firearm, and he even acknowledges the possession in the phone calls.

Number two, the defendant knew the firearm was a machine gun. Ladies and gentlemen, the defendant, when it comes to

machine guns, is an expert. He has approximately 100 automatic weapons. If anybody knows what a machine gun is, it's that man sitting right over there.

And number three, the firearm was capable of operating as designed. Michael Knapp came and told you that not only did he check Government's Exhibit 112 to see if it worked right, he also checked Government's Exhibit 111 and it functioned as a machine gun, as it was designed to function.

That brings us to element No. 4, was not registered in the NFRTR. Once again, Gary Schaibble checked the records thoroughly, and he told you that BM 0834 is not registered to the defendant in the National Firearms Registration and Transfer Record.

That brings us to Count 6. Same gun, different offense. This is just possession of a machine gun. We can run through these counts, these elements pretty quickly because they're very similar to what we just did.

Element No. 1, the defendant knew he had the firearm in his possession. Element No. 2, he knew the firearm was a machine gun. And element No. 3, the firearm was capable of operating as designed. We just talked about all that. The government has met its burden, each and every element of Counts 5 and 6.

That brings us to the definition of "possession," which the Court just read to you. The Judge told you that the law recognizes several different kinds of possession, both actual

and constructive. Actual possession, meaning the direct physical control over a thing at a given time. You're actually holding it in your hand, or it's actually sitting in front of you. There's also constructive possession. It means you're not in actual possession, but you have both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons.

And that leads us into Count 3, possession of 40-millimeter grenades, another count of possession of an unregistered firearm. In this instance, 98 40-millimeter high-explosive grenades.

I want to talk about the grenades for a little bit. I want to talk about Mark Rinke. Do you remember him, the city worker? He testified that he was in the Star Harbor area, where Star Harbor, Milky Way Lane, Galaxy Lane, this area out in London. He testified he was out there and he was checking water lines. That's what they do when they don't have a lot going on, ride around to make sure there's not any water in the ditches, make sure there's not any water leaking that they need to know about. He said while he was up there, he went by a house on Galaxy Lane because a friend of his just put a pool in. He wasn't there to check to see if the pool was leaking. He wasn't there to service the pool. His buddy just built it and he went out there to look at it. Even Lynn Blunier told you yesterday, Yeah, my pool was finished the end of February. This is March 3. He's

there to look at it. He goes up, he looks at the pool, sees what his buddy did, he goes back down to finish checking the lines, goes down to the end of the cul-de-sac -- and I think he turned red as a Razorback when he told you this -- he stopped to go to the bathroom. He gets out of his vehicle at the end of the cul-de-sac, he walks over about 60 feet in, and his foot scrapes across something. He sweeps it off, sweeps the dirt off the top, and it's a box covered in black plastic. He leaves. He goes and he tells his friend, Ryan Kimbell, the guy he works with, I found something out on Galaxy Lane. I'm not really sure what it is. Ryan says, We'll go out and check on it later. So they do. They check it out. And they get back out to Galaxy Lane, they pull the box out of the ground, they tear the plastic off of it, they tear the duct tape off of it, and it's 98 40-millimeter high-explosive grenades in an ammo can.

Let's talk about the area that it was located, the end of Galaxy Lane. We talked a lot about this area during trial. It's pretty isolated out in Pope County. There's one way in and there's one way out. And when you're up near Milky Way and Galaxy Lane, there's four houses, one of which belongs to the defendants. The closest house to the grenades was Lynn Blunier's, and she told you yesterday, I don't even own a gun. Those grenades aren't mine. The second closest house belongs to Randeep Mann. You saw the video where as you come down Galaxy Lane, what do you see when you get to the end of it? You see

the front of the Manns' residence. It's a perfect place to keep an eye on something that you've buried 875 feet from your house. It's a perfect way to see people coming and going and make sure that nobody gets your 98 grenades. Unfortunately for him, somebody had to go to the bathroom and they tripped over an ammo can.

Jason Smith arrived at the scene, took the grenades to Pope County Sheriff's Office. Stacie Rhoads with the Arkansas State Police got a search warrant the next day for Randeep Mann's residence. Do you remember why Agent Rhoads immediately thought Randeep Mann? Because on the day of the bombing, on February 4, 2009, Stacie Rhoads accompanied ATF Special Agent Tony McCutcheon to the Manns' residence to interview them regarding the bombing. At the end of that interview, Dr. Mann said, Would you like to see my gun collection? They go downstairs, and one of the things that Agent Rhoads saw was a grenade launcher, Government's Exhibit 109-N. This is what she saw in the gun safe. This is what she remembered. She had military experience. She knew that 40-millimeter high-explosive grenades would go in a grenade launcher, which was attached to the gun that she saw in the gun safe. So the search warrant was executed that night. And what was found? Five ammo cans similar in size and shape to the one that was buried, two 40-millimeter grenade launchers, and a box of practice rounds. There was also a manual, Government's Exhibit 107, on grenade

launchers, and there was a manual, Government's Exhibit 108-B, on "Grenades, Hand and Rifle."

What's the significance of all of that? First let's talk about the ammo cans. Of the five cans in the garage, 102-B and 102-C had the same lot number. 102-D and 102-E had the same lot number. 99-A, which is the grenade can that was found buried 875 feet from the residence, has the exact same lot number as Government's Exhibit 102-A, which was found in a storage room in the Manns' garage, lot No. LC07B606L250. Steven Scott told you about those ammo cans, Government's Exhibit 132 -- he's making me do a little bit of math, and I already told y'all I don't like to do that late in the day. I think I told you I don't like to do it at all. The net quantity was 792,000. He said I divide that by 1,500. And ladies and gentlemen, there were only 528 of those ammo cans manufactured in the world. And he told you that that ammo can would not have contained 40-millimeter high-explosive grenades. He also told you that ammo cans, once they're empty, sometimes end up in gun shows and they get sold to the general public. And that's exactly what happened in this case. Gerald Riley told you that in the fall of 2008, he went to a gun show with the defendant and he purchased a number of ammo cans, including seven cans similar in size and shape, or, actually, these same size and shape as 99-A, 102-A, 102-B, -C, -D, and -E. Gerald Riley told you Randeep Mann paid him for these ammo cans and that he took all seven ammo cans to the

defendant. Seven ammo cans. We only have six. That means one's missing. It's not the only thing that's missing. We'll talk about that in a little bit.

We'll talk about the grenade launchers. We know one of the grenade launchers, the one that was attached to the AR-15, Government's Exhibit 109-A, was purchased from Thao Le. You all remember him, the guy that likes to go fishing with grenades? He owned a gun shop in Tulsa, Oklahoma. And he looked at Government's Exhibit 115-O, and Government's Exhibit 115-O shows that the grenade launcher was purchased from him. He said he also threw in Government's Exhibit 107. If you buy a grenade launcher from him, you get a book for free. He said he also threw in a bore brush. A bore brush is what you need when you're going to clean your grenade launcher. He said he did not throw in Government's Exhibit 108-B. He didn't want people asking if he had the grenades. It's not something he would have thrown in. The defendant got it from somewhere. And the defense has been wanting to make a big deal that these were the only two manuals you seized. Number one, they're the only two manuals we seized under the search warrant. They also talked about the fact that he had a lot more magazines, books, things on the different variations of the guns that he owned, yet they have pictures of the manuals and the books. And there was testimony that people with guns have the manuals and books because they like to have books on what they own. Exactly. You

want a book on "Grenades, Hand and Rifle," because you own grenades, hand and rifle. The 40-millimeter grenades that were found 875 feet from the defendant's residence belonged to him. And how do we prove that? By the numbers that should have been on the grenades. Government's Exhibit 125. And remember something. All 98 grenades had the same serial number on them. And remember the testimony was that the cartridge themselves also had a lot number, because they all have the same lot number. They all had the same lot number and the cartridges had the same lot number, ACN 11-14, with the date of manufacture of 11-74. Lloyd Hahn told you that when he sold the 40 millimeters to Randeep Mann, not only did he wipe his fingerprints off of them, but he also wiped the date of manufacture off of them. He didn't want him to know the date they'd been made. After the United States learned that, they sent Ed Starr out to the bunker at Camp Robinson. Special Agent Starr looked at all 98 grenades, and he told you that the 74 was removed from each and every one of those grenades, just like Lloyd Hahn said. Now, it wasn't readily apparent to the naked eye. He had to look pretty closely. We also took some pictures with some high-powered cameras. It's very clear on here that there are numbers that are missing. Special Agent Starr told you the 74 is gone off of all of them. And in some instances, the 11-74 is gone. Sometimes he got a little sloppy and even wiped more numbers off. But there's no doubt that the date of manufacture, just

like Lloyd Hahn said, is gone from each and every one of those grenades. The 98 grenades that were located are the same grenades that Lloyd Hahn sold him. Defendant put them in an ammo can, buried them down the street. He wrapped them up tightly in black plastic and duct tape to protect them from the elements, and he did that because he intended to go back and get them at some point in time.

Let's look at the elements for Count 3. The first element, the defendant knew he had the 40-millimeter grenades. Lloyd Hahn sold them to him. He knew he had them. He put them in an ammo box and took them down the street. Number two, the defendant knew the firearm was a grenade. He has the book. He knows what he has. And number three, the firearm was not registered to the defendant in the NFRTR. The registration, when you get back to the jury room, you can look at it, it was not registered, Government's Exhibit 131.

And that brings us to the obstruction counts, Counts 7 through 9. In Counts 7 and 8, both of the defendants are charged, and in Count 9, Sue Mann is charged with making a false declaration before the grand jury. Conspiracy to obstruct an official proceeding as charged in Count 7, the Court just read it to you, and it has three elements. The first element being that on the dates alleged in the indictment, an official proceeding was either pending or was about to begin or was reasonably foreseeable. What is an official proceeding? A

proceeding before a judge or a court of the United States, a United States magistrate judge, or a federal grand jury. There was an official proceeding. Think about this. I'm not going to play every phone call for you. You'll have it in the jury room, you can listen to them. The defendant had just been arrested. He was going to court. Search warrants had just been executed, two of them, at the house. They're on the phone: You've got to go to the office. A search warrant's coming. Drake told me. The search warrant actually was executed in the United States District Court for the Eastern District of Arkansas. Actually knew where the search warrants were obtained in this case.

Ladies and gentlemen, when the United States arrests somebody, we don't usually just go away. They knew an official proceeding was coming.

Number two: That two or more persons corruptly entered into an agreement to obstruct, influence, or impede an official proceeding that the defendants specifically contemplated. What's the definition of "corruptly"? To act with consciousness of wrongdoing. Ladies and gentlemen, we had two people in this case that conspired with one another to do this, Randeep Mann and Sangeeta Mann. They acted with the consciousness of wrongdoing. If they hadn't, why would Sue take things to Gerald Riley? Why lie about it? They knew the United States was coming and they wanted to do stuff about it.

Let's also talk about Phil Barthelme and Rita Barthelme.

The husband has just been arrested, and the most important thing on your mind is spring cleaning. He had the Barthelmes come over -- Sue Mann had the Barthelmes come over, take items, some of which Phil burned, one of which we found, Sandip Mann. Sandip Mann, the same name that came up on the items that were removed from the office, Dr. Mann's brother who had been deported years earlier. They did this to keep it away from the United States, to keep it out of their official proceeding.

Let's talk about the other people that were involved in this case. Who all did he tell her to talk to? Talk to Phil and Rita, talk to Gerald, talk to Pete. All of those people could link him to various parts of these crimes. He did it corruptly. She did it corruptly.

And number three, the defendants knowingly and intentionally became a member of the conspiracy. You heard the calls, as I've stated. I won't play them again. Some people played minor roles, some people played major roles, and he told Sue what to go do, and she could go do his dirty work.

An agreement. That's one of the elements you have to talk about. We don't have to prove that there was a meeting. We have phone calls. We don't have to prove they met face to face, they wrote out a contract, and they decided exactly what to do and how to do it. It's sufficient to show mutual understanding, which is exactly what those telephone calls showed. And you can infer the conspiracy through the circumstances of the case and

the conduct of the parties. Ladies and gentlemen, I will submit to you that actions speak louder than words, especially in this case.

The telephone calls, the visit to Gerald Riley to hand over the documents that had just been taken from the clinic, the telephone calls to Gerald Riley, We'll get you a lawyer, you don't have to talk to them. Gerald Riley was their friend. Gerald Riley was a man that didn't want to get involved. They're the ones that got him involved.

She ultimately, through the issuance of a grand jury subpoena, gave us what we needed, gave us what we asked for, gave us what she tried to hide.

Count 8, corruptly concealing and attempting to conceal documents. These are the documents that were taken from the medical clinic between the time that the search warrant was executed at the house and the search warrant was executed at the medical clinic. Two search warrants had been executed by this time, ladies and gentlemen, and they're on the phone, and Drake says they'll probably be coming with a search warrant for the clinic. Do they run search warrants on weekends? Go. Go get this, go get that. Do what I tell you to do. Go to the clinic before they get there.

There are three elements to this charge. Number one, on or about the dates alleged in the indictment, an official proceeding was pending, was about to begin, or was reasonably

foreseeable. Like I said, ladies and gentlemen, he'd already been arrested, he was in court, and search warrants were going on.

Number two, the defendants corruptly concealed an object in order to make it unavailable for use in that same official proceeding. She hid them. She took them for the purpose of keeping them from the United States.

Number three, the defendants acted knowingly and intentionally. There's no doubt that they knew what they were doing.

And number four, the natural and probable effect of the defendants' conduct would be the interference with the due administration of justice. They knew what they were doing. But you need to remember what the Judge just told you: Aiding an abetting. Each person doesn't have to do each act. The crime of concealing an object for use in an official proceeding can be done by aiding and abetting. You have to know it's going to be committed and acted in some way for the purpose of causing, encouraging, or aiding in the commission of a crime. Randeep Mann didn't have to hide the documents if he knew that they were to be hidden. And he's the one who told her to go and do it. He told Sangeeta Mann, go, go get these things.

It can also be through an attempt. A person may be found guilty if he or she intended to corruptly conceal the documents and voluntarily and intentionally carried out such act which was

a substantial step toward that concealment. Ladies and gentlemen, the defendants did not have to succeed in their goal to be guilty of the offense. Sue Mann did it, Randeep Mann encouraged it. There's no doubt the records were taken from the clinic. There's no doubt they were taken to Gerald Riley. There's no doubt it was done to keep it from the United States.

That brings us to Count 9, making a false declaration before a grand jury. Sangeeta Mann is charged in this count alone. This count has four elements.

One, the defendant testified under oath or affirmation before a grand jury that the only reason that she removed the items from the clinic was because she thought they would be safer. You'll have the grand jury testimony to look at. It's Government's Exhibits 179-A and -B. And I encourage you to read her entire testimony. Such testimony was false in whole or in part. Ladies and gentlemen, the testimony wasn't true. She stated:

So you removed something because you thought it would be safer?

And she said, Yes.

Is that the only reason you removed them?

Yes. Yes.

It's not true. She removed them because she was told to remove them. Listen to Government's Exhibit 143 now.

(Audio played in open court.)

MS. WHATLEY: She never says, Oh, yeah, I was thinking it would be safer. They're talking in code, and he has to push her to tell her exactly what he's talking about. This was not her idea because it would be safer. She did it because her husband told her to do it, and then she lied to the grand jury about it.

Element No. 3: At the time she so testified, the defendant knew her testimony was false. Mr. Dudley's made a really big deal through this trial to say that you can't get into Sue Mann's mind. Ladies and gentlemen, I say you can, because intent or knowledge can be proven by one's actions. She didn't take them -- she took them from the clinic, but she didn't take them home to some secure spot. They have secure rooms there. They have gun safes there. She didn't take them home. She took them to Gerald Riley. And intent or knowledge may be proved like anything else. You can consider the statements made and the acts done by the defendant and all the facts and circumstances that are in evidence. That can help you determine what is in her mind. And ladies and gentlemen, I say to you, to keep them safe was not what was in her mind.

Element No. 4: The false testimony was material. "Material" meaning testimony tends to impede or hamper the course of the investigation of the grand jury. Ladies and gentlemen, at this time in the grand jury, the United States did not have the documents. It was a month later before we got them

from her through a grand jury subpoena. All we had were phone calls. If you'll go back and look at her grand jury testimony, we didn't even know for sure who the people were that she's talking about on the calls. I think at one point in time in the grand jury testimony, which you'll have it, says "Tim O'Riley." It doesn't say "Tim or Riley." At this point in time, we didn't know. But the grand jury was investigating not only the bombing, as is evident from the grand jury subpoenas that were shown to you that were issued in the month of February, by this point in time the grand jury is also investigating Randeep Mann for the 98 grenades, which is the whole reason Sangeeta Mann is before the grand jury that day. The grand jury then subsequently had to issue a grand jury subpoena to get the documents from her. It's just like we talked about the other day, she doesn't get to pick and choose where we get to look in our investigation. She doesn't get to pick and choose what the grand jury gets to look at. She doesn't get to pick and choose what the grand jury knows. It's her job when she walks in there, raises her hand, swears to tell the truth, is to tell the truth. Ladies and gentlemen, she did not do that. She made a false declaration to the grand jury and she is guilty of Count 9.

That brings us to Counts 1 and 2. These are the bombing counts. I want to take you back to the evening of February 3, 2009, Dr. and Mrs. Pierce both said that they left the office

that night, and they're planning on eating dinner at home. Dr. Pierce beat her there, which was unusual. He arrived first, and he pulls into the first spot of their circular driveway. She ended up parking behind him. The circular driveway is where they always parked on February 3, 2009. He told you that after dinner, he went in and he dictated his charts, and then he loaded his vehicle for the next day because he was coming to the medical board. He put Government's Exhibit 238 into the back of his Lexus so he could drive down the next day. Mrs. Pierce told you he is a whole lot more organized than she is. So he was ready to go. A Lexus which he purchased, the Lexus he drove to medical board meetings, the Lexus which he still drives to medical board meetings. He said he went to bed at 10:30 or so. Around that same period of time, Velma Gales drove by. You remember Ms. Gales? She worked for the Pierces for nearly 25 years. She was going to get something to eat. And she pulled up at the stop sign at Cooper and Avalon, in front of the Pierces' house. As she approached the stop sign, she saw a man standing there. It was cold that night, but he was wearing a pair of dark pants, jeans, a dark short-sleeved shirt, a baseball cap, said he had a long ponytail. When I asked her to describe the man, she said, He wasn't black and he wasn't white. I asked her to be more specific. She said, Maybe Iranian or like those people who come here who have dots on their foreheads. She said she motioned him across, and he shook his

head, but he wouldn't look at her. She said he was on this side of the stop sign. Wasn't even up near the road. He wouldn't cross in front of her. So she kept going. As she went through the intersection, she looked to her left. I'm sorry. That's my right. She looked to her right, she looked down Cooper, shown in Government's Exhibit 53-O, where the street sign is, the back of the Pierces' back driveway, she saw a pickup truck. She'd never seen it before. At that point in time, the Pierces did not have a back gate and that was open, and they didn't park back there. At that time, they also didn't have the front gate, which is shown in Government's Exhibit 53-Q. At that time, ladies and gentlemen, someone could park their vehicle on Cooper, walk through the Pierces' yard to their front driveway without ever being seen from the street. Someone carrying a spare tire with an MK3A2 hand grenade never had to be seen. They told you they didn't have lights up at the time. Ms. Gales told you when she came back 30 minutes later, she didn't see the car, she didn't see the person. She couldn't see up into the driveway. It was too dark. She did see up into the driveway the next morning, as did Dr. John Wah and Amanda Oakley, and all three of them told you they saw a spare tire in front of Dr. Pierce's vehicle placed in such a way that it would be very visible to anyone getting into the driver's side of that car. At approximately 7:50 on February 4, 2009, Dr. Pierce left his house, but he never made it past his driveway before, as his

wife said, there was the most god-awful explosion, the explosion that damaged his car and also injured him. Mrs. Pierce told you that when she got to him, his eyes were just bags of blood. Lyne Courtney, one of the first people on the scene, told you what she smelled; burnt skin, burnt hair. She knew Dr. Pierce and she said he was unrecognizable. Sue Rudd, who has worked for the Pierces for over 20 years, saw them at the hospital. She said he was charred from head to toe. Ladies and gentlemen, Dr. Pierce had severe injuries to his face, his arm, and his leg. And these are injuries that his doctors have told you about, injuries he's told you about, injuries, some of which will be with him for the rest of his life. Dr. Pierce was taken to Crittenden Regional Hospital that morning in the back of an ambulance, and Mark Gibson was the paramedic. Mark Gibson said to him, Dr. Pierce, what happened? Dr. Pierce responded, A tire blew up on me. They got him to Crittenden Regional Hospital, Dr. Hashmi looked at him and said, This was a bomb. Ladies and gentlemen, Dr. Hashmi was right.

Law enforcement agents collected a number of pieces of evidence at the scene of the bombing. Those are shown in Government's Exhibit 61, all the different pictures, plus they were introduced into evidence. The items that were collected at the scene, the items that were removed from Dr. Pierce's body, and the items that were removed from Dr. Pierce's clothes pointed to one thing and led Lloyd Erwin to determine that the

device used in the bombing was an MK3A2 hand grenade attached to a spare tire, a Nissan Altima spare tire, the spare tire that Mark Tanaka told you was manufactured in April of 2002 and would have been put on a Nissan Altima within two months. Remember Phil Barthelme, a friend of the Manns, no motive to lie to you, told you that he and Dr. Mann went to Pete Patel's house and Dr. Mann told him, We've got to get a spare tire. Pete Patel owned a 2002 Nissan Altima, which was manufactured within two months of this Nissan spare tire which was used in the bombing. Pete Patel, Dr. Mann's business partner, Dr. Mann's friend. An MK3A2 hand grenade. It's a hand grenade the defendant had access to. He had access to it because Lloyd Hahn sold it to him.

Let's talk about what Lloyd Hahn told you about the hand grenade he sold to him, the hand grenade he sold to Dr. Mann. He said it was a concussion grenade, the kind that the Navy SEALS use. It's black, in a black container. He said the body of the grenade was black fiber and it came in a cardboard cylinder. Ladies and gentlemen, cardboard cylinder (indicating), fiber body, Government's Exhibit 69. He said it was meant to push you off your feet. That's what Lloyd Hahn told you.

Remember Stephen Shelley, the one that kept getting in trouble because he talked too fast, the explosives expert? Remember what Stephen Shelley told you even before Lloyd Hahn

hit the stand? He knew it was an MK3A2 hand grenade that was used in the bombing that was attached to this spare tire. He told you it's a fiber body, usually black, designed to cause casualties through blast overpressure. He said, you know, when you're at a fireworks show, what that feels like. He also said they're very rare. He had trouble finding one to make it inert to bring to us. This is what he made for us. This is a real MK3A2 hand grenade that has had all the explosives taken out. Stephen Shelley, an EOD with contacts all over the country, had trouble finding one. But he also told you something else that's very important. He stated that the MK3A2 hand grenade is the only grenade in the world with a fiber body. Lloyd Hahn was very specific, what he sold Randeep Mann had a fiber body. Randeep Mann had the MK3A2 hand grenade, the same hand grenade that was used in the bombing.

Now, it's true when we searched Randeep Mann's house we didn't find any. But remember what's missing? An ammo can's missing. There's a roll of plastic missing. Within two days of the bombing, he bought two rolls of plastic at Lowe's. We only found one. We submit to you there's probably an ammo can wrapped in black plastic buried somewhere.

Remember Jeff Kimbrough? Jeff Kimbrough, the Manns are clients of his. He has no motive to lie. No reason. And he told you he saw 40-millimeter grenades and MK3A2s at Randeep Mann's house. He's not in the military, never has been in the

military, he doesn't know the name of them, but he said, That's what I saw.

Let's talk about the evening of the bombing. Stacie Rhoads and Tony McCutcheon interviewed Randeep Mann and Sangeeta Mann. As they were doing the interview, Randeep Mann said, I know why you're here. The agents were there because the medical board had given his name as one of the top five.

Ladies and gentlemen, Randeep Mann had motive. He had singled Trent Pierce out in correspondence with the medical board, Trent Pierce had been singled out for motions to recuse, Trent Pierce had been singled out in hearings. Trent Pierce was Randeep Mann's focus. In Randeep Mann's mind, Trent Pierce is why he didn't have his DEA. You've seen all the medical board evidence, and you'll have it in the jury room and you can read through it. You can read through exactly what the charges were, exactly what happened at the hearings.

Now, I expect the defense is going to argue that other doctors had disciplinary actions before the board. Do you remember what Peggy Cryer told you? None of those other doctors ever singled out Dr. Pierce. None of them ever asked him to recuse. It was only Randeep Mann that did that. And Randeep Mann kept a record of that. Remember the search warrant that was executed at his office? They found letters to and from the board. They found newspaper articles about the hearings. They found a transcript. They also found the medical board

newsletter from the spring of 2007. They ran across the picture from that newsletter again in an e-mail to Sandip Mann, Government's Exhibit 181, yet another time when Randeep Mann singled out Dr. Pierce. The e-mail was a picture, dated February 24, 2008, "Hope this picture is good. The guy on the left is Dr. Trent Pierce, the current chairman of the board, and the guy on the right is Dr. Ray Jouett, the old chairman." The attachment is the picture, the same picture from the newsletter dated spring of 2007. Special Agent David Oliver told you that that attachment is entitled "Pierce." Not "Pierce and Jouett," not "medical board." "Pierce."

I anticipate the defense is going to say it was a prayer for wisdom. Ladies and gentlemen, this is the only picture, it's the only name. I submit to you that it wasn't a prayer for wisdom. What precipitated this letter was Government's Exhibit 86-C where he was told, once again, you're not getting your DEA back.

So what caused him to do the bombing? What precipitated it besides all the animosity that had been going on since 2003 and 2006? Rita Barthelme. Rita Barthelme overdosed on drugs given to her by Randeep Mann in January of 2009, and her family had had enough. Jeanice Brown contacted the medical board. And you heard Ms. Cryer say that other family members had already contacted the board. This written order, which was issued in 2006, was very specific. "You're found to be in violation of

your DEA. We have no other choice but to revoke your license." The defendant found out that he was under investigation again.

Rita Barthelme, she's a friend. She got upset on the stand. She didn't want to be here. She didn't want to have to tell you what she told you. But she had been getting drugs from Randeep Mann for a number of years after he'd lost his DEA, morphine, Xanax, drugs that were found, some of which, similar to, were found in a gun safe, not a medicine cabinet, but a gun safe at the defendant's house. He didn't have a DEA permit. He couldn't give her the drugs. And he knew that.

I want to look at a timeline of what happened around the time of the bombing. On February 2, at 6:01 p.m., the defendant is at Lowe's buying black plastic. At 6:32, he's at his storage unit. On February 3, at 5:01, he's back at Lowe's buying black plastic. At 9:15, he's at the gym. On February 4, at 7:50 a.m., is the bombing of Dr. Pierce. By 5:20 p.m., ATF is there to interview Dr. Mann and his wife. They leave around 6:30. And on February 5, at 12:32 a.m., approximately six hours after the agents left the Manns' house, Dr. Mann is at the storage unit carrying in a suitcase. He went back one more time after that. Unfortunately, we don't have the video for that, and you heard why. Is there a reason he's hiding videotapes at 12:32 a.m.? I submit not. There are other dates that he went. Government's Exhibit 157-D shows you that in 2008, he only went to the storage unit one or two times. In 2009, he was already

there four times by the time we executed search warrants.

Let's look at the elements for Count 1. The first element, the defendant knowingly used or conspired to use a weapon of mass destruction without lawful authority. The testimony from Stephen Shelley was that an MK3A2 is a weapon of mass destruction, and ladies and gentlemen, the defendant did not have the authority to do so, and an MK3A2 is not some weapon you can use accidentally. Number two, the defendant knowingly did so against a person or property within the United States. Knowingly did so against Dr. Trent Pierce. Number three, the offense, or the results of the offense, affected interstate or foreign commerce. The Family Practice Clinic of West Memphis is an activity involving interstate commerce. At the end of the trial, Melissa Pierce and Sue Rudd testified about that. Sue Rudd has been the office manager for over 20 years, and she said they see a number of out-of-state patients and she buys office supplies from outside the state. Melissa Pierce pretty much does all of her business outside the state. All of her vendors, all those invoices that we went through, Government Exhibits 202 through 222, those are all vendors from out of state. She actually does very little business in the state of Arkansas. The clinic is involved in interstate commerce, and the bombing affected that interstate commerce. You heard Sue Rudd testify that they had to close some days because Trent Pierce was not there. Luckily, he had doctors volunteer to come run his

practice while he was gone or the practice would have closed. Number two, the number of patients that they saw decreased. While it's now picking back up, it takes two doctors to do what Dr. Pierce used to do by himself. You have sign-in sheets, Government's Exhibit 202-B, and monetarily the practice has suffered. Pam Falkner, the CPA for the clinic and for the Pierces, testified about the financial impact the bombing has had on the practice, and you can look at that again in Government Exhibits 204-A and -B.

Dr. Mann can be guilty of No. 1 if he was found to have conspired, if he reached an agreement or came to an understanding with another person or persons to use a weapon of mass destruction against a person or property. An MK3A2 grenade and spare tire is using a weapon of mass destruction.

Voluntarily and intentionally joined in the agreement or understanding. Let's talk about an agreement real quick. It makes no difference whether or not the person he agreed with is a defendant or even charged in the indictment, or even named in the indictment. It doesn't have to be express or formal. And a person can join into the agreement without knowing who all the others are. And a person may become a member of a conspiracy even if that person agrees to play only a minor role, as long as the person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins it. Providing the means for the bombing to occur is enough to join in the

conspiracy. You may also be found guilty of conspiring if at the time you joined in the agreement or understanding you know the purpose of the agreement or understanding. And there's no doubt what the purpose was in this case. The purpose was to harm Trent Pierce when it was put in front of his vehicle.

The Judge also told you that a person can be found guilty of Count 1 even if they do not do every act constituting the offense charged. It's called aiding and abetting. You have to know the weapon of mass destruction was being used or was going to be committed, and there's no doubt about that, and have acted in some way for causing or encouraging or aiding in the commission of the crime. Providing an MK3A2 for the crime to be conducted and asking to have it done is enough to make you guilty of aiding and abetting.

That takes us to Count 2, damaging or destroying a vehicle by means of an explosive. Element No. 1: Defendant damaged or destroyed a vehicle as described in the indictment by means of an explosive. That's the 2008 Lexus that we've already talked about. No. 2, the defendant did so maliciously. That means intentionally caused damage without just cause or reason. There was no reason in the world to harm Dr. Pierce. It was done maliciously. And No. 3, the vehicle that was damaged or destroyed by the defendant was used in interstate commerce or in an activity affecting interstate commerce. The vehicle, the 2008 Lexus, was used in an activity affecting interstate

commerce. It was used in travel for the Arkansas State Medical Board, and that use was paid for by the board. Remember the testimony of Peggy Cryer? The medical board receives no money from the State of Arkansas and it has to run off of its own income, income generated by various fees it receives, and the way it receives fees is shown in Government's Exhibit 75. The Arkansas State Medical Board licenses doctors from all over the world and collects fees from those doctors. In 2008, licensing statistics, Government's Exhibit 76, shows you exactly how many out-of-state doctors were licensed in Arkansas. They have contacts with various groups from outside Arkansas, including the Federation of State Medical Boards in Texas and the National Practitioner Databank, both of which they send information to when a doctor is disciplined, and based on that, the other states contact them and ask for information regarding that doctor. There's also a credentialing department at the Arkansas State Medical Board which receives fees related to out-of-state organizations for the credentialing of doctors, from which doctors here pay money to get credentialed and licensed out of state. The Arkansas State Medical Board is clearly involved in interstate commerce when a Lexus was used in that activity. Dr. Pierce drove, and still drives the vehicle to board meetings. In fact, it was loaded for the board meeting, Government's Exhibit 238, at the time of the bombing. Dr. Pierce was coming to Little Rock that day for his meeting.

And the Arkansas State Medical Board paid him for the use of that vehicle each and every time he used it for board purposes, Government's Exhibits 78-A through -B. Element No. 3 regarding Count 2 has been met.

It can also be done through aiding and abetting, which is the same instructions we talked about earlier. The defendant did not have to do each and every element to be guilty, as long as he knew it was going to be done, he caused, encouraged, or aided in the commission.

Ladies and gentlemen, Randeep Mann is guilty of Counts 1 and 2. He is guilty of the bombing that injured Trent Pierce. He had motive. He singled out Dr. Pierce. The animosity was directed toward Dr. Pierce. That is evident through Randeep Mann's history with the board, including the letters, transcripts, and the motion to recuse. No one else had an arsenal like Randeep Mann with access to weapons. The spare tire from the 2002 Nissan Altima, his friend's 2002 Nissan Altima's spare tire, is missing. Pete Patel and Priya Patel can't tell you where it is. Lloyd Hahn sold him an MK3A2 hand grenade. Those are very rare. Stephen Shelley even had trouble finding one. Randeep Mann said he wanted to see Trent Pierce dead. He told Gerald Riley, I want to see them dead. Wish I could kill them. They have made me suffer. I wish I could make them suffer the way they have made me suffer. And then after the bombing, Dr. Mann said to Gerald Riley, Did you ever think

that the bomb did exactly what it was supposed to do? It was supposed to make them suffer. Curlan McCray told you he wants to see him dead.

Gerald Riley is a friend of the Manns. He sat on that stand and he cried. He cried because they're friends, he cried because he felt betrayed, he cried because he didn't want to be here. He didn't want to be involved.

Some very quick compelling testimony came from Steven Briscoe, a man who's getting nothing for sitting in that chair and telling you what he told you, a man who only came to us because he wanted Dr. Pierce to be warned. He never thought he'd be in the grand jury. He never thought he would be in court. And he's getting nothing for his testimony. And he told you Dr. Pierce offered him 50,000 -- Dr. Mann offered him $50,000 to kill Dr. Pierce. $50,000, which the Manns had available to them, $50,000 deposited the day before the conversation. Told him that Dan would pay him the money, Dan would get him the gun. He also said that Dan didn't do a good enough job the first time. Steven Briscoe even today doesn't know who Dan is. There's been a lot of testimony about Dan in this trial. I think you will recall the Manns have a son named Dan. Steven Briscoe testified, even though he's scared for his mother, scared for his daughter, he testified, and he testified that Dr. Mann wanted him to finish the job. Ladies and gentlemen, it is a job that Randeep Mann started. He is guilty

of Counts 1 and 2. Trent Pierce told you that it's by the grace of God that he's here today, and that is true, because Randeep Mann wanted him dead, and he should be dead.

Ladies and gentlemen, the defendants are guilty of each and every crime of which they were charged, and the United States has met its burden, and we ask you to return the only verdicts that are possible in this case, verdicts of guilty.

Thank you.

THE COURT: We're going to take a break before the defendants begin their closing. We will take 15 minutes. We'll come back at 4:20. We'll be in recess until 4:20.

(Recess from 4:06 p.m. until 4:23 p.m.; jury not present.)

THE COURT: You can bring them in.

(Whereupon, the jury entered courtroom and proceedings continued in open court as follows:)

THE COURT: Mr. Hendrix.

MR. HENDRIX: Thank you, Judge.

Ladies and gentlemen, it's almost 4:25. It is my greatest desire to get this case to you all today so it can finally get in your hands for your determination. I will attempt to be very efficient in what I'm saying, and I hope to give you a few highlights in the jury instructions to help you be able to work through them. I know you were listening when the Judge was reading them. Rest assured, you will have them in writing, you will have them in written form. Let me go over some of the

highlights with you.

First let me say, it's odd for an attorney to say this, but what we attorneys have to say to you this afternoon is actually of little regard. You determine the facts. The Judge has and will instruct you on what is and what is not evidence. As he said, "Certain things are not evidence. I shall list those things again for you now. Statements, arguments, questions, and comments by the lawyers representing the parties are not evidence." I do, however, appreciate your consideration in listening to us in our overview of what we believe the facts to be. But, again, Instruction No. 2, "It is your duty to find from the evidence what the facts are. You will then apply the law, as the Judge has given it to you." Follow the Judge's instructions. "Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as the Judge gives it to you."

Let me go back to where we began in jury selection and go over a few of the basic fundamental principles of the criminal justice process that the Judge has instructed you on and that you will have in writing.

Remember this basic concept of the presumption of innocence that is at the heart of this criminal jury trial process. And what it means is simply, a physical part of that is, it shifts the burden of proof to the prosecution to prove guilt beyond a

reasonable doubt. It is, of course, the prosecution's sole burden of proof. The defendant, the accused does not have to prove his or her innocence. And, again, that burden is proof beyond a reasonable doubt.

Let me suggest to you what is actually sort of a simple mental image in how to deal with a criminal case. It's the simple mental image of a bucket. And here is the bucket. Facts go in that bucket. There is a line on that bucket. It's the reasonable doubt line. If the facts, as you determine them, fall below that line, it's the duty of the jury to vote not guilty. If the facts rise above that line, it is the duty of the jury to find the defendant guilty. The interesting issues are what goes in that bucket and where is that line? As we said, we know statements we're making to you now don't go in the bucket. Facts go in that bucket. It is for you to determine what the facts are. It is for you to determine how much weight to give a fact. So let me give you an example. You may have heard a witness who has testified to A, B, and C. You may believe A, B, and C, and dump those three facts into that bucket, or you may go, I do not believe A, B, and C, and none of those facts go into the bucket because you didn't believe them. The other side of the coin is, you may believe A, you may disbelieve B and C. Whichever fact it is that you determine to be a fact, it goes into the bucket, then you determine how much weight to give to it. The question is, where is the line on the

bucket, below which is not guilty, above which is guilty? And, again, it's the reasonable doubt line. It's where a reasonable person would have no reasonable doubt about the defendant's guilt. We talked about this with many of you in the jury selection. It's the concept that in our society, freedom is the thing that we cherish most. When you're in a process of which a fellow human being's liberty may be taken from them, the margin of error should be as low as possible. Simply, we don't want to get it wrong when we're dealing with such values. Okay? That's the reasonable doubt line. It is what a reasonable person feels is a reasonable doubt about whether the defendant is guilty or not guilty. That's the simple line.

Just a few housekeeping matters. The Judge instructed you what's going to happen after I'm done, after Mr. Dudley is done, and the government gets one more shot, one more bite at this apple. When we're all done talking, you guys will go back to the jury deliberation room, you'll then select a foreman, somebody that's going to lead you through -- I won't say lead you through, but kind of will help organize things and lead you through the process. And one of you will be that foreman. The second thing is you will then begin to deliberate. It is the duty of all fellow jurors to discuss your views with each other and to debate the topics, but it is then the individual persons who make a conscientious decision as to whether they believe the government has met its proof of beyond a reasonable doubt or

not. Not to be swayed once that conscientious decision and individual decision is made. It's not the job of another juror to talk you out of that. You stick with your own individual conscientious decision.

Now, Ms. Whatley has given you an overview of the charges, and I'll sort of track that. We're dealing here with nine separate counts. Now, you can kind of clump those into four groups of counts. You have the 40-millimeter count, you have the two gun counts, USAS-12 and RPD, and then you have the obstruction counts, and then you have the bombing counts. All in all, that's nine separate counts. Keep in mind as you deliberate, keep the evidence as to each count separate from the other counts. And the Judge has an instruction on that. And I don't know that I've got it in front of me. I can't remember which number it is. But it's keep the evidence separate on each count. So in other words, you guys have just sat through nine little trials, nine separate trials, or, as we clump them together, we can say you just sat through four trials, and that's what's taken a month to get through, to keep the evidence separate as to each count.

And so let's begin. And I'll begin where Ms. Whatley began with the gun counts, that's the USAS-12 and the RPD. She's gone through the elements, and I'll just cut right to the chase.

The issue on the USAS-12 is, simply, why was that weapon not registered in the NFRTR? That's the simple decision really

for you guys to make. Because we heard the evidence, and Dr. Mann has said it, that was his USAS-12. He bought it lawfully prior to 1994, he had it, it was found in the search of his home. It's his USAS-12. Possession is not an issue on that count. It's simply, why was that thing not registered?

Now, you heard this in the phone calls and in the phone recordings, and Dr. Mann said it several times, and I think you have probably four examples when you go back and listen to these phone calls, and he said it clearly: This was mine. I bought it lawfully. At some point, we now know in 1994, they changed -- ATF changed the rules on us. They said you have to get it registered. What he said was -- and listen to these phone calls -- he goes, So I called Atlanta ATF. I called ATF in Atlanta, and they said don't register it unless and until you sell it. And, again, you will see that more than just once in these phone calls, more than just once. So the question is, why was it not registered? Well, because he called ATF and ATF said you don't have to unless you sell it, and he never sold the thing. That is an instruction, ladies and gentlemen, called entrapment by estoppel. And that is Jury Instruction No. 21 that you will see, if you can see that (indicating). The USAS-12 count is Count 4. It is a defense to Count 4 of the indictment charging possession of an unregistered shotgun if an official assured Dr. Randeep Mann that possession was legal and Dr. Randeep Mann relied on that advice in continuing to possess

the shotgun. And that's simple, and it's established actually by the government's own case. Was he trying to hide the shotgun from anybody? The purpose, as you heard from the ATF agents, the purpose of registration of a weapon is so the government can keep track of it. The purpose of not registering it is to hide it. Right? Was Dr. Mann trying to hide it by not registering it? No. He admitted to possessing it. It was there. More importantly, remember the testimony, he even declared it on his insurance forms when he had the weapons insured. Dr. Mann was not trying to hide this thing. He was told by ATF you don't register it. That's why they didn't find that weapon in the national registry because ATF told him you don't have to unless you sell it. Was the notice -- remember how it changed in 1994, and there was this technical evidence about you get seven years, and I think they said four, then it was six, and it got confusing. And ATF said, Well, we sent notice out to everybody, we sent notice out to everybody with an FFL to say if you own one of these weapons that we've changed the rules on you on, you've got to register it, go register it. The government failed to present you any fact in any letter that got sent to Dr. Mann showing that he had actual knowledge that ATF actually sent him that notice. Now, did he know? For sure, you hear that on the tapes. But he caught that through the wind of being in that community and from people that are FFL holders. But did he ever receive any official notice of it and anything that said

get this thing registered in seven years? The government wholly failed to show you that notice. More importantly, he called ATF, they said don't do it unless you sell it. He didn't sell it.

The RPD, that's this Hahn weapon, and let's talk about that. It's interestingly charged. That single weapon is charged in two different counts. One, like the USAS-12, saying it was not registered, and then second, saying that it was an unlawful machine gun and you can't possess machine guns. Let me dispose of that count in the easiest fashion. "Lawful possession is a complete defense to the crime of possession of a machine gun, as charged in Count 7 of the indictment. A person is in lawful possession of a machine gun manufactured after 1986 if that person is a Class 3 dealer and the machine gun is properly registered in the National Firearms Registration and Transfer Record. If the 7.62 caliber machine gun bearing serial number BM 0834 was properly registered to Randeep Mann in the National Firearms Registration and Transfer Record, then he was in lawful possession of it, and you must find him not guilty of Count 7 of the indictment." Simply put, I don't think we need to go any further on that.

Go to then the registration count, the second allegation based on that RPD is that it was not registered. And here's what the evidence showed you. The transfer document from Hahn to Dr. Mann was introduced in evidence showing that RPD was

bought by Dr. Mann, sold by Hahn to him, with serial number 1442. You have that weapon somewhere in this cache of weapons. That's the RPD with the 1442 serial number on it. The government's case against Dr. Mann is based on the testimony of Lloyd Hahn. You remember what Lloyd Hahn did? Lloyd Hahn came here in front of you all, sat there, and he did that little display with the magnet, that little show with the magnet, put the magnet on that RPD and said, That's not even my weapon. It's not even my weapon. So clearly if it's not the one he sold, the one that Dr. Mann had was unregistered because of some fake. And he went through that whole little display with the magnet. If you remember, here's what happened. Lloyd Hahn was an interesting guy who we're going to talk quite a bit about. If you remember what happened on cross-examination -- this shows you the value of cross-examination. Lloyd Hahn admitted that, in front of the grand jury, he had told the grand jury that that was in fact the weapon that he had sold to Dr. Mann. And he looked at the documents and properly corroborated those. And if you remember the story he told, what he said was, when confronted, Today you're saying it's not even the weapon that you sold. When you testified in front of the grand jury, you said it was. What's your explanation for the inconsistencies in your testimony? Here's what he said. He said he had met with ATF agents several hours before his grand jury testimony and that they looked at the RPD. He said he recognized the

workmanship -- and you remember, the RPD is a reweld, so it's various parts of the receiver that he rewelds together. And he was very particular, he testified, about his own workmanship and how proud he was that you can barely see the weld line in the RPDs that he had manufactured. But he said, They showed me the weapon. I was able to see my fine workmanship, and that's why I testified in front of the grand jury that that was in fact my weapon. He also said, And I never saw the serial number when ATF showed this thing to me, four or five hours before his grand jury testimony. Remember what he said? He came up with that painting that picture of, Well, I think it -- he said specifically, It was a dismally lit room over at ATF. He said, I couldn't see the serial number because of the light and shadows. And he painted this picture that ATF had put the man in this room with one little light, and being elderly, he couldn't see. So that was his explanation for why he allegedly got this thing wrong in front of the grand jury.

The issue for you to decide is, is Lloyd Hahn's testimony plausible? The government relies on Lloyd Hahn not just for this count, but for a couple of other counts, and he's integral to their case. Your job is to determine how plausible his testimony is. What did Lloyd Hahn have to gain by his testimony? Here's what I submit to you. The man is, what, 72 years old, I think is what he said? He was in poor health. He was retired at this time. He had admitted to many, many federal

firearms violations. Remember the whole thing about transporting grenades in the back of pickup trucks and the number of illegal weapons that he had sold to his, quote, inner circle? The man had committed many, many federal firearms violations, most all of which carry a ten-year sentence under the statute. The guy's 72 years old. Did he have something to gain by testifying against Dr. Mann? Of course he did. He got convicted of one thing in this case, for one thing that he'd done, and he was going to spend the rest of his life in the pen, the rest of his life. And sometimes you can't blame people for what people do. The man knows if he did not cut this deal and get full immunity to not be prosecuted by the government, that he was going to die in jail. Is that a reason? Do you think that's a reason to curry favor with the ATF to testify consistently with the way they wanted him to testify, which is against Dr. Mann? I submit to you that it was.

But, listen, there were -- let me talk a little bit more about Lloyd Hahn. One of the things he testified to on direct examination is, Here's another reason that, although I testified differently in front of the grand jury, I know now that this is not my weapon, this was not the RPD that I sold Dr. Mann. And what he said is, Because I don't etch my serial numbers on there. And they showed you the stamp that Hahn had. It looks like it's professional. It's got "Hahn Machine Company," and all of that business, on it. Remember on cross-examination when

Mr. Lassiter said, Listen, Mr. Hahn -- and Hahn testified, That's the way I always did it. On cross-examination, Mr. Lassiter confronted him and said, Isn't it true that you got in trouble with ATF because you were etching serial numbers on your weapons, and you weren't putting "Hahn Machine Company," the name on there, and you were not doing it with a dye stamp? Remember that? And he had to admit it, Yeah, that's right. I used to etch -- I used to etch, just like 1442 is etched, I used to etch these things in there. And ATF came down on him later and that's why he got the stamp. But he started this business doing the etchings just like 1442 on that RPD.

John Norrell testified for us. And I think the government treated this as some sort of scratch mark on these serial numbers. John Norrell testified, and he looked at that, and he said that meets all ATF regulations for depth of how you can etch a serial number into a weapon.

Our position, ladies and gentlemen, Lloyd Hahn is simply currying favor with ATF so he doesn't spend the rest of his life in jail, and he's made up a new story in front of you during this trial, trying to get himself out of trouble, and the only way he can do it is by saying, That wasn't even my RPD and I never sold that one to him. The truth of the matter is, every single document and every single piece of evidence disputes what Lloyd Hahn said. The paperwork will be there in front of you, it's been introduced. You see the transfer record, you see the

serial number.

Now, if it's subject to debate, there was an easy solution to this problem, and we tried to solve it, but it was out of our hands. What I wanted to see was -- remember Hahn also said that he sold an RPD prior to one that he sold Dr. Mann, and its serial number was 1441, and he sold that RPD to a guy in Michigan. Did you see that? I wanted to see that to see if the 1441 RPD that Hahn admittedly sold to the guy in Michigan had the same sort of etching as the 1442. Guess what? ATF's got that weapon. We didn't get it. We couldn't get it here in front of you to make that determination for you.

Another interesting way to have gone about this that we also tried. Remember this? Hahn said, I took them my FFL business in 2002, and at that time I turned over all of my firearms records to ATF. And guess what we did? So we then subpoenaed ATF, and ATF came back and said, Well, we don't have Hahn's records. So Hahn's saying he doesn't have them. He's saying ATF's got them. ATF's saying, We don't have them. Somebody is hiding the ball. Somebody's hiding the ball to you on this, and whether it's ATF or whether it's Lloyd Hahn just being an absolute liar and currying favor with ATF so he doesn't die in jail is for you to decide. But that evidence was not able to be presented to you.

You know, the stainless steel story. He said, I know this isn't my RPD because I use stainless steel, nonmetallic

stainless steel. But here's the truth Mr. Lassiter got out of Mr. Hahn on cross-examination too. For years, Mr. Hahn manufactured weapons called M-14s. I think he said, I manufactured hundreds or thousands of them. Every single one of them was manufactured with carbon steel. Every single one of them. So why all of a sudden is he saying, On RPDs, I used stainless steel? There's no difference between an RPD and an M-14. There's no reason not to use the same manufacturing material. I suggest to you he made that up.

Ladies and gentlemen, look at those records. I think they will prove to you that Dr. Mann was lawfully sold that RPD, it was lawfully registered to him, that serial number 1442. I think the government is trying to infer -- well, I think the government's theory sort of shifted on you. Until Hahn took the witness stand, I went, oops, not even my weapon [sic] came up with that story. When he testified in front of the grand jury that it was his, I think the theory was, well, there was another Hahn weapon and Dr. Mann did the etching on this. You heard about all the searches. Every conceivable place Dr. Mann was, his house was searched numerous times; his office, the storage unit space. Every conceivable place has been scrutinized by the government. What's the one thing they didn't find? Etching utensils, something that would etch a 1442 into that RPD. The conclusion, I submit to you, is the government has not proved that that weapon was not properly registered beyond a reasonable

doubt.

Now, the 40-millimeter grenade count. The issue in that to me is whether or not he possessed it. Were they not registered in the NFRTR? No. Got that. You can check that element off. The issue on the 40-millimeter grenades is whether he possessed them or not. And here's what I gather is the prosecution's theory on that.

On February 4, the evening of the day that Dr. Pierce was bombed, an ATF agent and a State Police officer came and visited Dr. Mann and his wife's home. I believe the government's theory is that spooked Dr. Mann and he must have had these 40-millimeter grenades illegally possessed, so he went and hid them. He went down Galaxy Lane, the cul-de-sac down there, and buried them in this hole. Their theory is that they're in the same lot number as the canisters that were found in the storage unit. I submit to you that theory and evidence raises more questions than it answers.

I heard the evidence, and there was much debate about this, in a way, and none of us were able to get a hole expert here in front of you to talk about this, about when were these things buried. Right? But I do know that everyone that testified for the government went within the past couple of days, one day, two days, freshly buried. All right? Here's my question and why I think it raises more questions than answers. If ATF visits Dr. Mann on February 4 and tells him, quote, He's a person of

interest, and if he is in possession of illegal 40-millimeter grenades, why is this man going to wait a month, over a month to try to get rid of these 40-millimeter grenades? The government's suggestion is that they would just have continued to sit wherever they thought they sit and he just didn't try to hide them for a month. Again, that's an implausible story. Second of all, why bury those so poorly? I mean, they said it was some sort of shallow hole that it was sticking up that the man tripped over it. If, as we get to later, the government's allegation is he is some grand mastermind of the car bombing in West Memphis in February, this man is going to dig such a poor hole and did such a poor job of hiding these 40-millimeter grenades that a guy is going to trip over them when he's walking through the woods? And interestingly enough, they weren't in the woods, they were in a clearing. And why would you bury something in a clearing if you wanted to hide it? The story is simply implausible.

I guess it begs the question of this. Whoever buried those 40-millimeter grenades, I suggest to you that they wanted them to be found. It was such a poor job, they wanted those 40-millimeter grenades to be found.

So where, if Dr. Mann had them, according to the government, where did he have them? Where had he, before they went into the ground sometime in early March of 2009, where was Dr. Mann allegedly supposed to have these things? Well, here

are the places that we know. Right? At home, one, that storage unit. So let's dispose of the issue about the storage unit that Ms. Whatley brought up. They showed you these videos. We know that Space World has videos and they videotape people coming in and out, and if my recollection is right, there were actually four cameras going all around the place. Right? And what the video showed you was Dr. Mann going into the storage unit, taking the suitcase, taking it into the storage unit, and leaving without a suitcase. Okay? Of course, March 4, or whatever it is, they searched Space World and they find that exact suitcase and it's got videos in it. Space World would have the videos to show, if Dr. Mann had the 40-millimeter grenades in the storage unit, there would have been a video of him coming out holding something in his hand that would have been able to contain 98 40-millimeter canisters, and that evidence is totally lacking for you. And the reason simply is because, one, Dr. Mann never possessed the 40 millimeters and they certainly were never in that storage unit.

So with that lack of evidence, the government puts on Jeff Kimbrough. Remember, Kimbrough is the alarm system guy, and he's the one that in a way -- let's look closely at Kimbrough's testimony. He said, You know, I saw something like that in Dr. Mann's home when I was putting in that alarm system. And I wrote all this down, and it was important, and I know that you guys were taking really good notes. Here's what I wrote down

that Kimbrough said. He looked at these -- he was shown these 40-millimeter grenades, and he said, Well, looked similar to something like that. I think he said at one point, It could be something like that, similar to it. Not once was Jeff Kimbrough ever to be certain in saying, That is what I saw in Dr. Mann's house. Not once could he say that with certainty. More importantly, on cross-examination, he finally got around to saying, Well, look, what I saw was blue and orange. What I saw was blue and orange. What was blue and orange? The lawfully possessed 40-millimeter practice grenades that were in Dr. Mann's storage unit, lawfully possessed. I submit to you, ladies and gentlemen, that the value of Jeff Kimbrough's testimony was simply, What I saw were the lawfully possessed grenades. I don't know if I saw anything like that or not. I suggest to you that when a witness, the best that they can say is something similar to it, that's not evidence we can rely on when we make important decisions about our lives and someone else's life.

Kimbrough said that when he was out there working on the alarm system, I wrote it down as five to eight workers were with him. There was not one of those five to eight workers that were able to get on that witness stand and corroborate what Jeff Kimbrough is trying to tell you guys. Not one of his workers was here to say, That's right, Jeff Kimbrough said don't touch those things. Remember he kept saying, Don't touch stuff, and

not one was able to come in and say, I saw that in Dr. Mann's house.

If these offending 40-millimeter grenades were ever in Dr. Mann's house, who would have seen them? Who was the plausible person to see them? That's why we put on Wayne Henry, the construction guy. Remember, he was the guy who was actually doing the actual construction on the home. Kimbrough and his crew were there just installing the alarm system once that new construction got made. So Wayne Henry and his crewmen were in and out through that house actually doing the construction. When that was shown to him, Wayne Henry went, Never saw anything like that. We'll get to it later when he was shown the MK3A2, Wayne Henry was certain, I never saw that. Jeff Kimbrough, uncertain. Wayne Henry, certain. That's the differences in their testimony and what you can rely on.

Who else would have been in a position that if those 40-millimeter grenades were ever in Dr. Mann's house in his possession, who would have been the likely candidate to see it? I suggest to you it was Gerald Riley, his friend, a guy he's known for 15 years, been over to his house innumerable times for barbecues, socializing, a similar gun enthusiast. They went to gun shows together. They played with Dr. Mann's guns. They enjoyed that together. Gerald Riley, he was shown that, Never saw that at Dr. Mann's house. He was shown that, the MK3A2, Never saw anything like that in Dr. Mann's house.

So it's only Jeff Kimbrough, valued government's evidence, comes down to this about putting Dr. Mann in possession of the 40-millimeter grenades. It comes down to a guy that went, What I saw sort of looked something like that. Again, I suggest to you, that's not the type of evidence we rely on when we make important decisions.

We go back to Lloyd Hahn, the second part of that equation for the government was, all right, Lloyd Hahn, put Lloyd Hahn on the stand, and Lloyd Hahn said, Well, I sold him 40-millimeter grenades. I'm not going to rehash the Lloyd Hahn story, about is he in a position to need to get a favor from ATF and testify consistently with them? Of course he is. We won't go through that again. But here's what was interesting about that testimony. He said -- and I believe Mr. Dudley did this. On his direct examination, he was shown that picture of the ammo pin and the 40 millimeter sitting there, and he says that's the same bandoliers. On cross-examination, Mr. Dudley went in the room and brought the actual bandoliers that the 40 millimeters were found in. Guess what? He went, Oh, not the same bandoliers. Not the same bandoliers. Again, I suggest to you, ladies and gentlemen, Lloyd Hahn's testimony is not to be relied on.

Let's look at the actual ammo can itself. The government's theory is it must have been Dr. Mann's, because the ammo can at the end of Galaxy Lane had the same lot number as one of the

ammo tins that was in his shed, or not shed, but storage unit. The testimony revealed to you that there are not lot numbers individual to each individual can. They manufacture these lot numbers and put them -- pardon me. They manufacture these ammo tins and put a lot number on a bunch of them, and in this case there was 528. So we know, number one, because he had two of the same lot number in the storage unit, but there were 526 other exact same ammo cans that other people had access to, that Gerald Riley said they bought these things at Little Rock at a gun show. There are 526 exact same replicas of that floating around Central Arkansas at the time.

Dr. Mann had three -- of the six that were in there, there were three lot numbers. You can do the math. If one lot number has 528, there's another lot number that's in another 528, and a third lot number, that's another 528. You've got 1,500 similar cans floating around out there. That gives someone 1,500 shots at picking a similar can as the one that was found in Dr. Mann's to take down to Galaxy Lane and plant down there. It simply doesn't make sense that Dr. Mann would have gone down to Galaxy Lane and done such a poor job of burying these things. He had the entire Lake Dardanelle right behind his house. Isn't it more plausible to think that if Dr. Mann actually had these things and wanted to hide them, he would have just walked down the little hill to Lake Dardanelle and dumped them?

I suggest to you, ladies and gentlemen, this ammo can,

40-millimeter-issued, raises more questions than were ever answered for you. But these things were answered for you: Not one bit of physical forensic evidence connected Dr. Mann to that ammo tin or those 40-millimeter grenades. And everything was tried. Fingerprints were tried. It was wrapped in black plastic. They found black plastic in Dr. Mann's home. There was no match. Duct tape around there. There was duct tape, like in everybody's house, in Dr. Mann's house. It forensically did not match. There was absolutely nothing to connect Dr. Mann to this thing.

What I also found important about this, and I asked David Oliver this, and Ms. Whatley mentioned something about that on this grenade launcher, of which 40 millimeters could be fired from, of course, he had 40-millimeter practice rounds. You know, the 40 millimeters, there was testimony that from Thao Le's business in Tulsa, he bought a cleaning brush, suggesting that they might have been fired from there. Why didn't ATF test the grenade launcher to see if a live 40-millimeter round had ever been fired out of the thing? You can tell the difference doing a simple forensic chemical test on the bore of any weapon to determine what was fired from it, whether it was live or practice, whether it had an explosive or did not have an explosive. Why wasn't that test done? I suggest to you, ladies and gentlemen of the jury, that as to the 40-millimeter count, more questions are raised than answers and the government's

proof has not risen to the level of proof beyond a reasonable doubt.

The obstruction counts. Mr. Dudley is involved with Sue on those counts, and I will leave it to him instead of me boring you with the exact same thing that Mr. Dudley would say, but I do want to hit these highlights. The essence of both the obstruction counts is the word "corrupt," corruptly influencing or corruptly concealing. What was corrupt about what Sue did? She simply went to a friend, Gerald Riley, and Gerald, you don't have to talk to the ATF if you don't want to, and if you want a lawyer to go through this process with you, we'll hire you one. As Ms. Whatley said, that's consciousness of wrongdoing. There's not one thing wrong with that. That's what we do. You don't have to talk to ATF. If a police officer comes up to you on the street tomorrow, you can say, I don't want to talk to you, and walk away. The only thing that they can compel you to do, and this is by way of a federal grand jury subpoena, and then you are compelled, and then you should have -- I realize I'm a lawyer and this is self-serving -- but then you really need a lawyer to go through the grand jury process with you. There was no corruption in what Sue did in advising Gerald.

Simple part on these documents. Again, what was the corrupt part of that and what was the concealment? The government subpoenaed Sue, and she and her attorney gave those documents to the government, the documents that they are

complaining about were concealed from the grand jury.

And then you've got the Rita and Phil Barthelme business. Look, when ATF searches your house, it's going to be a wreck. Your husband's in jail. Now there's a lot of clutter. Now is a good time to get rid of a bunch of stuff, a bunch of junk. What did Rita and Phil say? Said to come on over and pile this stuff up and take it down to what is essentially the Goodwill there in Russellville. How is that concealing anything? They're not hiding it. They're giving it away. That story makes absolutely no sense to me.

Now, it's 5 o'clock. Let's talk about the bombing. Here's my view of this whole bombing. Let's begin that day, February 4, 2009. They go to the scene of the bombing of Dr. Pierce. Here's what ATF finds. They find a spare tire to a Nissan Altima. They find duct tape. They find portions of a hand grenade. They find TNT residue. And they find white string. The hunt is on. We've got evidence, and let's go connect it up to somebody so we can charge somebody. The focus of the investigation immediately got very, very narrow. And if you remember the testimony, I believe it was the next day, maybe the same day, a call was made to the medical board, Give me the names of five doctors. That's all we want, five doctors. Give us the names of five doctors. Based on that evidence that they got from there, the first reaction was to focus in the investigation very, very narrowly. So they start looking at Dr.

Mann. Did Dr. Mann have a Nissan spare tire on him? No. Did he have matching duct tape? No. Did he have a hand grenade on him? Did they find that when they searched his house? No. Did he have TNT anywhere? They sent a canine out to his house to see if it could scent any TNT. Did he have any matching white string? No. Instead of following those leads, ladies and gentlemen, and broadening the investigation at that point, the investigation narrowed even further and it solely centered on Dr. Mann and how to get Dr. Mann.

The spare tire. Well, Dr. Mann doesn't have a Nissan Altima that would have a spare tire to it, so they start looking around and find a friend in Memphis, a business partner in Memphis who does have a 2002 Altima. Right? And that's Pete Patel. And here's what the government's evidence on this thing was. We found out that somebody that Dr. Mann knows owned a 2002 Altima, and that the spare tire at the scene belonged to some 2002 Altima, not necessarily this one. How many 2002 Altimas were manufactured in 2002?

And then there comes Phil Barthelme, the handyman. The essence of the government's case on the spare tire rests on Phil. Let's look closely at Phil's testimony. I don't mean this unkindly. I genuinely do not mean this unkindly. But you will get a jury instruction on how to determine the credibility of witnesses, and that jury instruction tells you to look at all facets of the person, look at their intelligence, their ability

to remember. "In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that the witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which it is consistent with other evidence that you believe in the case." Let's look closely at Phil's testimony. Phil said, I took two trips with Dr. Mann over to Memphis. One was to go to Pete Patel's house because he was constructing -- he was doing reconstruction in the attic of his house. And it was sometime during that time, Phil said, that there was some talk with Dr. Mann about a spare tire. If you remember Phil's testimony, Phil admitted to these things. Look, when ATF interviewed me about these things -- this is the cuffed and stuffed story -- I was intimidated. I felt I was getting in trouble. He said he felt intimidated. He also, if you remember, clearly said -- and I think it was to Mr. Lassiter -- I don't have good memory. I don't have a good memory. Look at this jury instruction, the witness's intelligence and memory are factors for you to consider in determining the plausibility of that testimony.

Phil said, when he described this scene in Pete's house in Memphis, he said, one, he went to the restroom while Dr. Mann and Pete went outside, presumably for a short period of time,

because when Phil got out of the restroom, Dr. Mann and Pete were sitting on the couch talking. The notable thing that Phil said was that they were speaking in Hindu. Pete Patel testified. The first and most notable thing about Pete Patel is, he was born and raised in Zimbabwe. He lived there until he was 20, until he moved to the states in 1976, I believe. Pete Patel doesn't even speak Hindu. He testified the only way for he and Dr. Mann to communicate was in English. So what Phil was hearing was not what Phil was testifying about.

In addition, we found out, because Phil's testimony was so incoherent at times, he led you to believe that this trip to Memphis happened sometime just shortly before the bombing. Remember, he went over there when Pete was doing reconstruction on the attic on his home. That was in 2005 or 2006. The second trip that Phil made to Memphis with Dr. Mann was for Phil to go get the job working at the Days Inn. That was 2006. Phil is trying to relate events to you that were three to four years old from a man admittedly with a bad memory.

I guess most important, however, about Phil's testimony was on this he was clear: I never saw Dr. Mann with a spare tire. I never saw him get it. I never saw him take it out. And what I also found notable is, he sure didn't say when Dr. Mann and Pete came in, when he'd gone to the bathroom, that they came in with dirty hands like they'd been handling a tire.

Phil's testimony, ladies and gentlemen, I submit to you, is

illogical, it's incoherent, and, again, it's not the type of evidence that we should rely on in making important decisions. Pete's testimony, however, contradicted, flatly contradicted this, Pete said specifically, clearly, I never gave Dr. Mann a spare tire. Now, should you believe Pete or not? Here's why I suggest that you should. His account of all that was coherent. It did make sense. It did have detail to it. It put these events in context. More importantly, it was corroborated. His daughter took the witness stand and relayed and corroborated the tire series of events. She was going from Memphis to St. Louis. She had a flat tire on the way up there. The state trooper helped her put the spare tire on. She said he said, You ought to go back home, you don't want to be without a spare tire. She got home. Pete bought her a full-size spare tire so she wouldn't have to go through that. Pete did say this: I'm not sure what happened to the spare tire. I think it stayed with the dealership when we went and got that. And I found that notable because I found it so credible. This is in 2003. That minor detail of a lie -- if somebody had taken the witness stand and said something with assuredness about a minor detail in life like that, I would not have believed them. That made Pete entirely credible and believable to me.

So the issue for you to decide on this score is, who is more credible, Phil or Pete? And that is, again, for you to decide.

You know, the Velma Gales thing, I want to touch on it briefly, because we're talking about plausibility, what are you going to believe, what witnesses do you believe, and she seemed a sweet and sincere and genuine and kind person who worked for the Pierces for, I think she said, 25 years. And she came up with the story about she seeing a man with -- the type of man with the red dot on his head that she said, you know, the type that work in liquor stores. And I gather the government's trying to say that that is Dr. Mann's accomplice. It's still fuzzy and murky. Two problems with that. One is, it just raised ethnicity, and that's, frankly, offensive. And two, she didn't say that for six months. Why would you bring that information forward? Why would you sit on that for six months? She said she's back working at the Pierces' house. There was nothing to be scared of. Was she trying to curry favor with the Pierces because she felt bad? I have no doubt about it. But that is simply implausible.

The other thing the government's using to try to connect Dr. Mann to this bombing are these manuals. And they made a big thing about, Look, we found a grenade launcher manual, and we found a grenade manual, and in that grenade manual it talks about MK3A2s. Well, you've got it, take it back there. It talks about every type of grenade that there is. Any person who is going to buy the grenade launcher is going to get a manual for it. I would not buy the thing without it. And you want the

manual for the grenades, because the practice rounds in the grenades, which Dr. Mann lawfully owned, fit the description in the instruction booklet for how to do the regular grenades. And the government would want you to believe that this manual only talks about MK3A2s. It doesn't. It talks about both hand grenades and rocket-propelled grenades, like you would have if you owned a 40-millimeter grenade launcher. More importantly, and this seems to be a developing theme in the case, it narrowly focused in to the exclusion of all the other evidence. We had to come and bring to you -- those aren't the only two manuals Dr. Mann had. He had manuals for almost all of his weapons. You get the manuals with them. And we had to go through that show of finally getting him to admit, Well, you're right, there were all sorts of weapon manuals. We just happened to select those two. It continually narrowly focused these events in a way to the exclusion of anything else, and that's troublesome, and a troublesome aspect of this case to me.

Let's talk about the e-mail, which is another principal part of the government's case. February of '08, an e-mail was sent from Sue's account, and it was signed by Sue, that went to Sandip in India, and it had the picture of Drs. Jouett and Pierce on it. Agent Oliver testified, I found that suspicious, and maybe it meant one of the two were being targeted. The notable aspect of that is Agent Oliver's use of the word "suspicious," and that's all it was. It created a suspicion in

his mind. We do not deal with suspicions in the criminal trial process. We deal with facts, facts that are proved beyond a reasonable doubt. Why, to play Agent Oliver's suspicions, why then would the e-mail be sent to India if the goal is to hurt someone in America? Again, it's implausible and simply makes no sense.

Well, what did the reliable evidence show you? Their precious daughter Sarina took the witness stand and explained it to you, and she explained Hindu culture and Hindu religious tradition to you. And what did she tell you? It is part of the Hindu religion and tradition, upon violence, that you pray for the people that may have some influence over your life. And you heard the testimony. All of us that are involved in this process have been prayed for. Dr. Jouett and Dr. Pierce were the former and current chairmen of the board, of the medical board. They were people that have some influence in Dr. Mann's life. A prayer was sent to India. That's what it was. To be able to build a case around, to take something as violent and awful, when its intent was so peaceful, is very, very disturbing. And I think you heard what Sarina testified to. Why Sandip? Well, Dr. Mann's parents are the spiritual leaders of the family. They're in, I think she said, their mid to upper eighties, living in India. They don't do e-mail. They communicate through e-mail, which goes to Sandip, who then shares that information. And she noted the prayer tradition of

the photographs, having the photographs of the people that you're praying for. That's all the e-mail was about.

Now, the other thing they're trying to connect Dr. Mann to the bombing is with this MK3A2. Lloyd Hahn said he sold him one, Jeff Kimbrough said he saw it at the house. We've already been through this routine on the 40 millimeters. It's exactly the same thing. Hahn's reliability is useless. Kimbrough: Sort of, maybe, could have been, not really sure.

Back to Hahn. How did he describe the MK3A2? He specifically said, What I sold Dr. Mann was the type of grenade that was designed not to kill people. It's designed to push you in the chest. He admitted it's used by police when entering a place. And if you remember this nice moment when Mr. Lassiter, on cross-examination, then showed him a picture of a nonlethal flash-bang grenade, and Mr. Hahn went, Huh, amazing, it does look exactly the same. What Lloyd Hahn was describing was not an MK3A2. He was describing a flash-bang grenade. It's as simple as that.

The MK3A2's explosive filler is TNT, and we've already talked about that. So they sent a canine unit out to Dr. Mann's house looking for TNT, a dog trying to sniff for it, and the dog does not alert onto any TNT in Dr. Mann's house.

We've already been through does anybody back Kimbrough up, and they do not.

Now, I want to clear a few final things up. On the black

plastic, here's what the evidence was. Check your notes on this black plastic, because Ms. Whatley said something about, We found black plastic in his house, compared it, it was no match. But there was a missing roll of black plastic. I heard the guy from Lowe's get on the stand and testify to two rolls, that they were exactly the same rolls that the Manns bought. They were both called 3 mill. I think you'll see the pictures in there, 3 mill, that's how wide the plastic is. You see the forensic analysis, what was at the scene of the bomb, or, pardon me, what was around these ammo tins was 4 mill. So there's no missing black plastic. Whatever black plastic there was simply does not match ever what was in Dr. Mann's house.

Motive has been a big thing in this case. And I'm not going to harp on this because Ms. Cryer was extremely helpful in shedding some light on this whole deal. Not only five doctors that were originally asked for, but we've got the records and showed these fellows. There were doctors with worse problems, many more appearances than Dr. Mann in front of the board, doctors who had sued the medical board, doctors who had asked that its members recuse from hearings, and yet Dr. Mann is the one that it said that he had the motive to do it. Peggy Cryer had it all down, all the hearings that Dr. Mann was at, the two hearings were done all in a professional tone and in a professional manner. There was never any animosity shown either between Dr. Pierce and Dr. Mann or vice versa. There were

doctors, however, that it might not have been so. And remember we started with a Dr. Richard Clark? The government made a point that Dr. Mann is the only one that singled Dr. Pierce out. Well, that's simply not true. Dr. Richard Clark wanted to meet privately with Dr. Pierce, and it concerned Dr. Pierce so much that he had his grown son go with him, and told Peggy Cryer, I'm concerned about this. If something happens, you know where I am. I won't go through that list of doctors who had equal or greater motive, but I will note the one, Lonnie Harrison, and that's the one that in October of '08, right before the hearing, however many months it was before the bombing, that Dr. Pierce was the one who had to cast the deciding vote in taking his DEA -- well, revoking his medical license. So to say that Dr. Mann had the unique motive is simply, simply not true.

And so knowing the weakness in their case, and then they come up and go, Well, there was a new 2009 investigation. He must have known he was being investigated, and that was the motive. Well, first of all, there was no evidence ever presented to you that he even knew about that investigation. Ms. Cryer was clear, We never notified him about that investigation. And when he got notice was February 18, two weeks after the bombing.

More importantly, when we went through all these doctors, the ones who had significant problems, arrested, convicted for buying $5,000 worth of methamphetamine and trying to buy machine

guns, the other one who pointed the gun at the meter reader's head, the one who said, If these doctors suspend me, their, quote, "blood will flow." Oddly, they all still have their medical license. So when the government makes this big deal about Dr. Mann knew his medical license was going to be revoked because he was prescribing when he wasn't supposed to and his DEA permit was suspended, that's baloney. A guy with a methamphetamine conviction still has his medical license. They're going to tell you they'll revoke Dr. Mann for that? That's an implausible story. And even so, even if, so what? This is not like, if Dr. Mann lost his medical license, he's not going to make any income. He has a substantial interest in hotels in Memphis. One of the things we tried to get you there was the stipulation at the end to show you that he gets $18,000 a month in disability. 18,000 a month is like 240,000 a year. If he lost his medical license, so what? He's still going to make a living. Does that create motive? No. And no more, and certainly a lot less than a lot of the other doctors. And that's just the doctors, ladies and gentlemen. We don't know what motives other people had.

So, the government centers itself on, for instance, the statements to Gerald Riley of bad words, wish-they-were-dead stuff. Gerald Riley sat there and told you that's the heat of the moment, the man didn't mean it. This was not a statement of intention. This was a man blowing off steam. And

understandably blowing off steam. And he admitted, he said, It was never about Dr. Pierce.

So let's try to sum this thing up. The lack of evidence in this case is astounding to me. But one of the signs of that is, Dr. Mann, in this bombing, is charged in a conspiracy and/or aiding and abetting, and I guess for the first time the government's tried to say it's Dan, his son. That's what I gathered from the government's closing argument is the aider and abettor. Is he even charged? No. They don't know. They don't know because they can't prove -- if you can't show the person who actually did it, why are they accusing Dr. Mann of being the person who's aiding this fictitious person?

Let me sum up and try to get this to you guys. I'm going to tell you a quick story about a man named Robert Jackson. I think this fits our case. Robert Jackson was a Chief Justice of the United States Supreme Court. He had been Attorney General of the United States, and before that he was the chief American prosecutor during the Nuremberg trials following World War II. And he said these things. He said prosecution, law enforcement is about the most powerful organization in our country. It has the power to pick and choose who among us suffer an accusation. And it's their power to do that. That power can easily be abused, however. He said that with as many laws on the books as we have -- and this was 50 years ago -- he said prosecution and law enforcement can get at least a technical violation on anyone

in this country. This is the Chief Justice of the United States Supreme Court. He said to use that immense power wisely, the offense must be investigated, not the person. The abuse is picking the person and then looking for a crime. And I suggest to you, ladies and gentlemen, that's what happened in this case. I have no doubt Dr. Mann is unpopular in some circles. I know he's Indian. I know he's well-educated. I know he's lived in big cities. And he retired to Russellville, Arkansas, and with his fancy cars and with his guns that everybody knew about, I have no doubt that he was unpopular. But the only connection is simply that. They picked the Indian guy with the guns. Otherwise, the proof simply lacks in this case. The proof does not rise above that line of reasonable doubt that's allowable to vote guilty.

I suggest to you, ladies and gentlemen, that it is at best a circumstantial case based upon inference, upon inference, based upon inference, and it's simply a proverbial house of cards that cannot stand.

Thank you, ladies and gentlemen, for your time and attention. It's been a long trial. I know we are exhausted. I know your business is just simply about to begin. And thank you very much, and we appreciate your consideration.

THE COURT: All right. Before we hear from defendant Sangeeta Mann, we'll take a quick break. Let's take ten minutes, and come back at 5:40. We'll be in recess for ten

minutes.

(Recess from 5:29 p.m. until 5:41 p.m.; jury present.)

THE COURT: Mr. Dudley.

MR. DUDLEY: Thank you, Your Honor. May it please the Court.

Members of the jury, the United States of America versus Sue Mann, the name of this case. The richest, most powerful country in the world versus one little lady from Russellville, Arkansas. All of the resources of the ATF and the FBI and the Justice Department, the Treasury Department, aimed at one lady from Russellville, Arkansas. Doesn't seem like a fair fight, does it? All she's got is me and Danny standing between her and the might and power of the United States Government. That's not the whole story, because that's why you're here. You're here to see that the government uses the power and resources that it has wisely. You're here to make sure the government doesn't abuse that power and that resource when they aim it at a citizen of the United States. And we have the right, as members of the government, as members of the United States of America, to expect the government to use that power fairly and not abuse it. Let me tell you why. That ain't happened in this case. What the government had done in this case is not use that power wisely. What the government has done in this case is abused that power in their zeal to convict somebody, and I'm going to tell you how.

Before I do that, though, I've got to do this. I don't represent Dr. Mann. I didn't even intend to talk about Dr. Mann or the case against Dr. Mann when I got up here today, but after listening to what the government said, I can't stand by and watch an injustice being done without saying something about it, so I'm going to talk about Dr. Mann for a minute.

You know, this bombing deal, that's such an easy case for you to decide, because if you look at those jury instructions on Counts 1 and 2, the bombing counts, whatever they are, the first thing, the first thing the Judge told you they had to prove is that Dr. Mann did the bombing, or agreed with somebody else to do it, or he helped somebody who did it. Now, did they prove that? Did they prove Dr. Mann was in West Memphis and set that bomb? No. They don't even claim to prove that. The proof shows Dr. Mann was in a gym in Russellville until late at night the night before the bombing and was home in bed at 8 something when his wife called him the morning of the bombing. No way he was there and did it. Okay, says the government, We don't have to prove that. And they're right. We can prove that he agreed with somebody else and they did the bombing. Okay. They can do that. But did they? Did they prove he agreed with somebody to bomb that car in West Memphis, and if so, who? What shred of proof, what one witness, what one document, just one, proved that Dr. Mann agreed with somebody and the person he agreed with went and did the bombing? Is there just one witness who said

that, Mr. Prosecutor? They're going to get back up here. Let them tell you. What witness said that he agreed with somebody who did the bombing? What document says he agreed with somebody who did the bombing? There's not a single witness, a single document.

Okay. Well, there's one other thing they can prove to find him guilty. They can find he helped somebody else and that somebody else did the bombing. Did they do that? What witness? What witness said that Dr. Mann helped somebody do the bombing? If he did, who was he? What document said Dr. Mann helped somebody who did that bombing? There's not a single one. And you know, they can talk all they want to about he had motive and grenades and he bought black plastic and he went to his storage place four times a year before, or right before this bombing. None of that proves he was there, he agreed with somebody who did it, or he helped somebody do it. If they had the proof that any of that was true, don't you think the person he agreed with would be on trial? Don't you think the person he helped do it would be on trial?

Let me tell you another way they ain't been fair. They put on this evidence from the housekeeper that there's this jogger in front of Dr. Pierce's house the night before the bombing. Okay. And she gets up there and she says, I think this guy was Iranian. First she says, I couldn't see his face. Then she says, I think this guy's Iranian. And then after the prosecutor

kept pressing her and pressing her and pressing her, she finally said, Well, he kind of looked like one of those guys with the dot on their forehead that works in the grocery store, or gas station, or whatever she said. Now, number one, what has that got to do with this case? Did the jogger do the bombing? We don't know that. Was the jogger connected to Dr. Mann? Ain't no evidence of that. Well, why the heck did we hear that story? I'll tell you why we heard that story. Because they want you to think that this guy was Indian, Dr. Mann's Indian, bam, there must be some connection between them. Why is that not fair? If the jogger was white and Dr. Mann was white, do you think they would expect you to say, oh, there's a connection here because they're both white? If the jogger was black and Dr. Mann was black, do you think the prosecutor would expect you to say, oh, there's some connection here because they're both black? No. But they want you to infer some connection because they got her to say he looked Indian. And that's just wrong. That's not fair. That's not using the power the government has fairly. Trying to convict somebody because they went and bought black plastic two nights in a row that doesn't match any other black plastic found at the scene of any bombing is not fair. Trying to convict a man because he went to his storage unit four times, and they ain't proven there's anything in that storage unit that had anything to do with the bombing or grenades or anything else, but they want you to say because he went to the storage

unit four times before the bombing, whoa, he must have done it. My God, how many people go to their storage units?

What they're trying to get you to do in this case is convict on evidence that really has nothing to do with what Dr. Mann's been charged with, and that's not fair. That's an abuse of the government's power.

Let me tell you more abuses and the ones that disturb me more than that. They put on a perjurer to testify in this case. And I say that, and I stand on it flat-footed, and his name is Lloyd Hahn. You cannot get under oath in front of the grand jury and say, That is my gun, I manufactured that gun, and then come to trial and get under oath and tell you, That's not my gun, I didn't manufacture that gun. That is perjury. One time or the other, he lied. Both of those things can't be true. And they're both said under oath. And you know what? He had immunity, but he doesn't have immunity from perjury. You want to make a bet with me on whether these prosecutors here will charge him with perjury? It ain't going to happen. I'll tell you why. Because he did what the government wanted him to do.

And another thing that just irks me. They're trying to get you to convict him on this gun right here on something the grand jury didn't charge him with. Really? Yeah. Because the grand jury had his testimony, This is my gun, I manufactured this gun, and he's charged with not having paperwork done on the gun that Hahn manufactured. His paperwork is not right, so he's charged

with not registering it or not doing whatever he's supposed to do to get proper ownership. And then after the grand jury charges him, they figure out, oh, wait a minute, he does have the right paperwork, it is properly registered. We can't win this case that way. Well, how can we win the case? Well, we get Hahn to change his testimony to say that's not the gun he manufactured, and if that's not the gun he manufactured, then it's not properly registered. Well, that ain't right. It ain't right to just change the evidence or change the testimony because it don't fit what you want. And this story about why he changed, why he misidentified the gun before the grand jury. Oh, there wasn't enough light in the room the ATF put me in, I couldn't see, and I didn't have a magnet so I could check it. What? The ATF can't find a magnet? The ATF can't send one of their flunkies down to Walmart to buy a magnet when you're talking about charging somebody with a crime and sending him to prison? It's no more important to them than that? The ATF can't put him in a room that's got a light? The ATF can't let him take it outside in the sunlight to let him see it? That's a cock and bull story about why he changed his testimony. He changed his testimony so it would fit what the government needed to get a conviction, and it completely changed the way they charged the case in front of the grand jury, and that's not being fair with the power the government has.

Not only did Lloyd Hahn say all that, you know, he's

crucial to their case on the grenades, and somewhat on the bombing because he says he sold them the MK3A2 grenades. And what about the grenades? He just completely changed his testimony from the grand jury because it didn't fit what the prosecutor needed to get a conviction on the grenades. He told the grand jury, I sold him 90 to 92 grenades. Well, that won't work because they found 98. So if he sold him 90 to 92, they're going to show where the other six to eight grenades came from. Well, they can't do that. So what happens? He changes his testimony. And he just admitted it. When I confronted him with the fact that he told the grand jury it was 90 to 92, he said, Yeah, I did. And I said, At that time you didn't know they found 98, did you? He said, No. I said, So you find out they found 98, you've got to come in here and say 98 grenades, right? He said, Yeah. And that's why you said a hundred, right? Yeah. He just flat-out admitted it. You're talking about proving something beyond a reasonable doubt. And the Judge told you, beyond a reasonable doubt means it's the kind of evidence you would rely upon in the more important decisions you make in your life. Let me ask you this. If Lloyd Hahn called you and said, I have a top-grade, clear, clarity 2-carat diamond that I'll sell you at a bargain for $10,000, you just write me a check, put it in the mail, and I'll send the diamond right to you, how many of you would write the check? And if you wouldn't risk $10,000 on his word, why in the world would you use that to

convict a man and send him to prison? And that's exactly what the government's asking you to do in this case, take the word of a perjurer who changed his testimony to fit the case and send a man to prison over it. That ain't right. That ain't be being fair with the power the government has and the resources the government has in this case.

Before I leave this, I want to ask you to do something else, because I've got just a little different take on this than Mr. Hendrix does. I think the evidence shows those grenades weren't ever buried in that hole out there. Let me tell you why. If you look at that picture, see how big that hole is (indicating)? See those leaves in the hole? The testimony was that hole had been dug that day, they'd dug that can out of that hole just a couple of hours, a few hours before this picture was taken. Now, you've also seen the cans. Right? Look how big the cans are, and look at the bottom of that can and the bottom of that hole. If that can was in that hole, there would be sharp edges at the bottom of the hole, because the sharp edges of that can would have to be all the way down in that hole, and when you pull the can out, it's going to leave sharp edges, with an oblong look, just like that can. That hole is nothing like that.

Secondly, do this for me, please, when you get back in the jury room. Take this picture, or any other picture you can find in there that's better than this one that shows both the can and

the hole -- and I'll admit that one doesn't show all the hole. There's not one in there that's really good. But do this. Take something, like a piece of paper, and just measure the length of that can, and then see if that can could possibly fit in that hole. I think you'll find there ain't no way. The hole ain't big enough. And if the can wasn't in the hole, then the story of this utility worker, water guy, water works guy, who said he stumbled over an edge of it sticking out of the ground, can't be right. If the can wasn't in the hole, surely the government doesn't contend Dr. Mann just took a can full of grenades out there and set them on the ground, not in the hole. So what happened? Well, you heard testimony that law enforcement officers in Russellville had offered women, patients of Dr. Mann $500 to lie and say Dr. Mann had sex with them. That's in the transcript of the medical board hearing, and you can read it. If somebody's willing to set Dr. Mann up, maybe they did it with these grenades. Because the only real evidence you've got that Dr. Mann had any contact with those grenades is the testimony of Lloyd Hahn, and that testimony ain't believable.

I'll tell you what else the government said in this case. They have put on testimony that's bought and paid for. And you know what I'm talking about. I'm talking about Cecil Norwood, Curlan McCray, whatever the other fellow's name was. I want you to think about this. Those guys get a break on their sentencing with one condition and one condition only. The only way they

get a break on their sentencing is if these prosecutors file a motion with the court asking the judge to reduce the sentence. And the agreement they have with the defendant is -- well, it's called a motion -- it's a motion to reduce the sentence because they rendered substantial assistance to the government. And the agreement they have with the government is this: We'll cooperate, we'll testify, and the government says, if we like what you say, if we agree with you, or if we believe you've rendered substantial assistance, then we'll file the motion with the judge and ask the judge to reduce your sentence. Now, you think that gives those folks who want out of prison an incentive to say whatever the government wants them to say? And you're talking about power over folks. Flip that around. What if I went to a witness and said, look, I want you to testify for me, and I'll tell you what, if you testify, and I like what you say, then when your testimony is over with, I'll give you $10,000? It's basically the same thing, except these folks want out of prison a whole lot more than they want $10,000. If I did that, I'd be sitting over there as a defendant for obstructing justice. But the government can do it, and they did it in this case. The fact that they can do it doesn't mean that they ought to do it when they have every reason in the world to believe that these folks they're putting up here are not telling the truth, and they did have every reason in the world to believe that if they did any vetting of these fellows at all. I mean,

come on. I noticed Ms. Whatley never even mentioned Cecil Norwood's name in her closing argument. Wonder why? Because he was so incredible that I can't imagine anybody in the world believing that testimony. Come on. He's in a holding cell with eight or ten other folks, he sees Dr. Mann for ten, 15 minutes, and Dr. Mann just confesses to him. Ten to 15 minutes with eight to ten other folks who could overhear the conversation that Dr. Mann just confessed. And not only that, this guy was so trustworthy, he had 11 other folks just come up to him and confess, and he was willing to help the government and testify in those cases too.

You know what? Using that testimony is not effective because those folks weren't credible. That doesn't mean that that's fair for the government to do that. It's another instance where the government is using that power unfairly in an attempt to get a conviction. And, you know, the government's job, the prosecutor's job is not just to get a conviction. My job is to defend my client and do everything I can to hold the government to the burden of proof and try to get her acquitted. That's my job. But the government's job is not just to get a conviction. The prosecutor's job is to do justice, to see that justice is done because they represent all of us. And all of us have an interest in doing justice. And so when I talk about them not being fair in the way they handle this case, they're not seeking justice, they're seeking a conviction, and there's a

difference between the two. Not always. Not always. Sometimes when you've got the proof on a person, certainly seeking a conviction is seeking justice. And I'll tell you this. Justice ought to be done in this case because the bombing of Dr. Pierce was a terrible, horrible, wrong act, and when they find who did it, he ought to be prosecuted to the fullest, and he ought to serve all the time the law allows. But two wrongs don't make a right. The fact that Dr. Pierce was done horribly wrong doesn't make it right to prosecute somebody that you don't have the evidence he did it, because of all the hysteria and ATF needs to clear this case and arrest somebody, that doesn't make it right. And it ain't right. It just ain't right what they've done in this case and the way they've misused the power of the government in this case.

The other thing they've done, and I touched on this a little bit already, but they put on evidence because it looks funny, or it sounds funny. You know, I've already talked about the jogger in front of the house, kind of looks funny, kind of sounds funny. No proof he had anything to do with the bombing. There ain't no proof he had anything to do with Dr. Mann. But it looks funny and it sounds funny, so they put it on hoping that, because it looks funny or sounds funny, you're going to convict somebody.

Asking Phil and Rita to haul off junk. You know, I don't even know that that looks funny, I don't know that that sounds

funny. They told you what was in the stuff that was hauled off, and Ms. Whatley gets up there and says that's part of a cover-up. A cover-up of what? They're hauling off old videos and magazines and computer parts. A cover-up of what? And see, that's not being fair with the evidence when they say, Oh, this was right after he got arrested and they asked him to haul this junk off and they had to be covering up. Covering up what? What's the evidence, instead of, oh, it looks funny, the evidence that they hauled off what to cover up what? Nothing. Nothing. You heard what was in there. That's just not being fair with the evidence. He had a tire in his shower. Oh, my God. He had a tire in his shower. Can you imagine that? He's got to be guilty of the bombing if he had a tire in his shower. Right? That's what they want you to believe. It's so -- it's so unfair with the evidence, it's so unfair to you to expect you to convict a man of a bombing because he had a tire in his shower. Man, they spent a lot of time talking about the tire in the shower. I'll tell you what. I think if somebody had been using that tire to practice a bombing, they'd do it outside. I don't think you'd bring that tire in your house to practice a bombing, and when you got through with it, you just put it in your shower and leave it. They got fixated on tires in this case. They find a tire in a shower that he had cleaned some stuff off of, and all of a sudden he's guilty of a bombing. That ain't being fair with the evidence and that ain't being

fair with you.

You saw a photograph or a videotape, I can't remember which now, of Sue Mann depositing $50,000 in the bank. Now, what does that have to do with any charge in this case? You know, if she was going to hide the $50,000, you wouldn't deposit $50,000 because the bank has to report that to the government if you deposit more than $10,000 in cash. So she's not trying to hide it. Ms. Whatley's suggestion to that, Oh, man, they had access to $50,000. Well, yeah, they did. They have money. Nobody's disputing they have access to $50,000. They didn't need to put on a videotape and all that to prove that. But she says, Oh, and by the way, she deposited that $50,000 a day before Dr. Mann told Steven Briscoe he'd give him $50,000 cash to finish the job on Dr. Pierce. Now, wait a minute. Think about this. Dr. Mann is going to pay Steven Briscoe $50,000 cash, Sue has $50,000 cash, and she puts it in the bank? I think if I was going to pay Steven Briscoe $50,000 cash and I had it in my hands, I'd use that $50,000 cash I had. I wouldn't go put it in the bank. So I think the $50,000, clearly, I think, was intended to tie into Mr. Briscoe's testimony that Dr. Mann told him he would give him $50,000 to finish the job. Now, Mr. Briscoe has lots of problems of his own, credibility wise. I mean, he got up there and said, I wasn't promised anything and I don't want anything. Well, he wasn't promised anything, that's true. But did he want something? Oh, yeah, he wanted something. He wrote

letter after letter saying, Give me that year of credit for the year I spent in the Crittenden County Jail. In fact, he wrote more than one letter and said, I ain't helping you anymore unless you help me too. Even after he testified to the grand jury, he writes Ms. Whatley a letter shortly before trial, I ain't going to testify unless you promise me you'll keep me in your memory, or remember me fondly. I don't remember exactly what he said. But he's saying, I ain't going to testify at trial unless you help me out when it's over with. Sure he wanted something. He wanted a bunch. And the other thing about it was, he ain't even getting out of prison until, I've forgotten when, sometime in the future from now. Why in the world would Mr. Mann offer $50,000 to a man in prison if he wasn't going to be out of prison before his trial? That doesn't make any sense either. That's not being fair with the evidence either.

You know, in my opening statement, I told you when this case was over you'd be scratching your heads and asking yourself, why is Sue Mann in this courtroom? Actually, I think we've seen the answer to that question in this trial, and it's further evidence of misuse of the powers of the government in this case. Let me tell you what that evidence was.

Remember when Agent Oliver was testifying about in August of last year when he went back to the Mann residence and he executed a search warrant -- and there's been so many, I can't

keep them separate. But he may have gone back to get the tire. I don't remember. He went back to get black plastic from the flower beds, the search warrant documents, and at the same time, he arrested Sue. And during that search, he handcuffed those children. Now, do you really think handcuffing those kids was necessary? He said, Oh, I handcuffed them for my own safety because there were guns all over that house. Well, you know what? He could have told the kids to go outside and stay outside until the search was over with. He handcuffed those kids for one reason, to put pressure on Sue and to scare Sue. And then he arrested her, and he drives her from Russellville back to Little Rock. And on the way back -- and he admits this -- he told her something to the effect of, You can be going to prison, or you can go to prison for a long time, or you can go to prison for 20 years, trying to scare her, again. And then he told her -- and he admits this too -- But if you cooperate, things will go easier. If you cooperate -- and I don't remember exactly what his words were. But if you cooperate, we can work this out. If you help us with the case against your husband, we can make this go away. And that's why Sue Mann is sitting in this courtroom, because she wouldn't cooperate, she wouldn't tell a lie, she wouldn't do something that she knows would be morally wrong. That's the only reason she is sitting in this courtroom today.

Let me talk to you quickly about Counts 7 and 8. They're

kind of together, so I'm going to talk about them together.

Count 7 is the conspiracy count. And to prove that count, the government has to prove that Sue and Dr. Mann entered into an agreement to corruptly obstruct, influence, or impede an official proceeding. Two things. Now, Ms. Whatley says -- and you remember in opening statement, I told you, I said, I'll stand here flat-footed and tell you there will be no evidence in this case of an agreement between them to obstruct justice. Let me tell you, there ain't been. Ms. Whatley says, Well, we've got that tape, and Dr. Mann told her to take those Sunny Mann records out of the desk. Okay. All right. Is that an agreement? Maybe so. But, you know, I can have an agreement with Danny that we're going to meet tomorrow at TJI Friday's for lunch at noon. That's an agreement. Is that a conspiracy? No. Why? Because the agreement has to be to do something unlawful that you know is unlawful. Not just an agreement to do anything. A conspiracy is an agreement to commit an illegal act. So to convict on this count, they have to show there was an agreement or understanding between Sue and Dr. Mann to commit the crime of obstructing an official proceeding. Now, where is the evidence of that? Did you hear anything on those tapes where Dr. Mann and Sue said, Oh, by the way, get those records so the grand jury can't have them? I didn't hear anything like that. Did you hear any evidence on those tapes where Sue and Dr. Mann even said, Oh, we know this ain't right, but go get

those Sunny Mann records and do something with them? No. The only thing you heard on that tape was Dr. Mann saying, Get the Sunny stuff and take it to Tim or Gerald. Was there something illegal about that? No. There's not a thing illegal about that. So there is no evidence of any agreement that constitutes a conspiracy under the law because the agreement has to be that we will commit the crime of interfering with an official proceeding. There's just no evidence in this case of that. That's actually the second element. I think I said it was the first. It's the second element. The first element is that an official proceeding was pending or was about to begin or was reasonably foreseeable. You know, I listened real closely to Ms. Whatley to see what she was going to play that official proceeding was. She never did tell you. She put up a search warrant and said, Oh, look, there was a search warrant issued in this case. Yeah, there was. The search warrant was issued before all this happened, so it couldn't have been that. And if it wasn't the search warrant proceedings, then what was it? What was the official proceeding that was pending, about to begin, or was reasonably foreseeable? And, you know, it's not what Ms. Whatley or what Mr. Gordon says it was. It's what evidence is there. What's the evidence in the case of what that official proceeding was? And I'll tell you what the evidence is. Zero. Not a single witness got up there and said there was a grand jury proceeding pending, there was a grand jury

proceeding that was going to happen sometime in June. There's no evidence of that. So they haven't proved there was an official proceeding, they haven't proved there was an agreement to violate the law.

Count 8 is concealing the documents from use in an official proceeding. This is what they're saying. Count 7 says you agreed to commit the charge in Count 8. Okay? That's how these two fit together.

The first element on Count 8, the official proceeding was pending or was about to begin or was reasonably foreseeable. I've talked about that.

Two, the second element on Count 8, that the defendant, Sue Mann, corruptly concealed, or attempted to corruptly conceal the documents -- and Ms. Mann, a special power of attorney, presigned blank checks, and other financial documents. Let me just stop right there. Conceal. The defendant corruptly -- that "corruptly" means with consciousness of wrongdoing, she knew what she was doing was wrong -- corruptly concealed these documents. Who did she conceal the documents from? Now, she takes the financial documents out of the desk, and then she's called before the grand jury, I think, and then a couple of weeks, three weeks -- I'm terrible with dates. But she's called before the grand jury to testify shortly after that. And she tells the grand jury, Yeah, I took those documents out of the desk, and here's what they were, and she tells the grand jury

what they were. Now, common sense, if you took those documents to conceal them from the grand jury, you wouldn't go in there and say, Oh, yeah, I took them, and here's what they are. You know, the grand jury did not have a clue, the government agents did not have a clue what those documents were. They had no way of knowing. Gerald Riley testified he got the envelope and it was sealed, and it was sealed when he gave it back to her. He didn't know what was in there. No one knew what was in that envelope, except Sue Mann. And if she wanted to conceal those documents from the grand jury, the last thing she would do is go in there and say, Yeah, I took them, and here's what they were. That doesn't sound like attempting to conceal, to me. Corruptly? Did she act corruptly with consciousness of wrongdoing? In other words, what proof -- and I'm going to keep coming back to this. Because I don't care what they argue, and you shouldn't care what they argue, unless it's based on the proof. What proof is there in this case that she acted with consciousness of wrongdoing, that she acted corruptly when she took those Sunny Mann documents out of that desk? I'll let them try to tell you, but I can't think of any. And I don't think there is any. All right.

Three, the defendant acted knowingly and intentionally -- I think that kind of relates back, but I'm going to skip over that just a minute.

And four -- and this is one I was a little bit surprised

because Ms. Whatley skipped completely over it. She never even mentioned it, and there's a good reason she never did mention it. Four, the natural and probable effect of defendant's conduct would be the interference with the due administration of justice. Now, that's a causation requirement. That says if she took these documents with the intent to conceal them, if we assume that all that was true, the natural effect of her doing that would be to interfere with the due administration of justice. Now, let's go back to the proof. What proof have you heard to establish that offense? Mr. Gordon's going to get back up here when I'm through, and I'm going to challenge him when he gets back up here, tell us the name of the witness who testified to the fourth element of that charge. Identify the exhibit number of the exhibit that shows the natural and probable effect would be the interference with the due administration of justice. And if he does take up my challenge and gives you a name of a witness, check him out. Because I don't believe there's a single witness who testified about that. I don't believe there's a single document of evidence to show that. And you remember when we did voir dire, I asked each and every one of you, will you promise me you'll make the government prove every element of the list the Judge said, and every one of you promised me you would. They ain't even come close to proving that. They ain't even presented any evidence to prove that.

The last count against Sue, the perjury count, Count 9,

elements of it: One, she testified under oath or affirmation that the only reason she removed items from the clinic was because she thought they would be safer. That's true. She did testify to that. Two, such testimony was false in whole or in part. Here's where the government can't touch hide nor hair on her. You know what? Ms. Whatley says, Well, we know that's false because her husband told her to remove the documents. Okay. Well, we may know that her husband told her to remove the documents. Does that tell us what she was thinking when she did remove the documents? You know, I go back to when I was questioning Agent Oliver. If I'm in my car and my wife says turn right at the next corner, and I turn right at the next corner, and the next day somebody asks me why did you turn right, and I said because I thought that's the shortest route to my destination, did I lie because somebody could prove my wife told me to turn right? No. Ain't no way in the world anybody could say I didn't believe that the shortest route to my destination was turn right at the next corner. And this is the same thing. They cannot prove to you, and have not proved to you, what she was thinking when she removed those documents. And the only way you can convict her in this case is for them to prove what she was thinking when she removed the documents, and they haven't done it.

Four -- I'm going to go to the fourth element. The false testimony was material. What does "material" mean? It's

important. And we'll talk about the definition of "material." But "material" basically means it had some importance, it was important in some respect. Why did we do this? Well, we don't convict folks of perjury for getting things wrong that don't matter. For instance, if there was a witness in this trial who was asked, on March the 7th, what color dress were you wearing, and she says red, and it turns out she was really wearing a white dress, we don't prosecute that for perjury unless the color of her dress was important to the issues in the case. So materiality is governed by what's important at the time the witness testified. The Judge told you, false testimony is material if it tends to impede or hamper the course of the investigation of the grand jury. How would you know that? The only way you're going to know whether it's material or not is to know what the grand jury was investigating. The only way you can determine whether something's material is to know what they were looking at. Who told you that? Nobody. You didn't hear it from the foreman of the grand jury telling us what the grand jury was investigating at the time Sue Mann testified. You didn't hear from any other member of the grand jury telling us what the grand jury was investigating when Sue Mann testified. Agent Oliver testified about what he investigated, but he couldn't testify about what the grand jury was investigating, and didn't. So there is no evidence of what the grand jury was investigating. Without evidence of what the grand jury was

investigating, you can't determine whether it's material or not. The government can't prove whether it's material or not.

The other thing about that, though, you know how they tried to prove materiality? They had Agent Oliver say, You follow the money. You know, this was material to our investigation because we always follow the money. So it was important to me to get those records from Sandip Mann so I can follow the money trail, and I did investigate Sandip Mann, that's why it was material. Well, one of the problems with that, he admitted none of his reports of investigation had anything to do with Sandip Mann, and he admitted he never testified to the grand jury about anything regarding Sandip Mann. So even if it was important to him, it wasn't important to the grand jury.

The second thing, and maybe more importantly, it goes back to fairness, that ain't what the government charged. The government didn't charge this was material because they were investigating the finances of Sandip Mann. The government charged -- and I want to read it to you. "At the time of the grand jury proceedings, Randeep Mann had been incarcerated for a period of time, and the actions and directives of Randeep Mann during his incarceration were material to a proper matter of inquiry for the grand jury." So their charge was it was material because they were investigating Randeep -- the grand jury now, the grand jury was investigating Randeep Mann's actions during his incarceration. Who testified to that? Who

testified that the grand jury ever investigated Dr. Mann's actions while he was incarcerated? Nobody. What document says that? There ain't one. Well, then how do they prove materiality? They ain't. They ain't touched hide nor hair of proving materiality. And if they're honest with you, they'll get up here and tell you that.

You know, I know that none of us will ever fully understand or appreciate what Dr. Pierce and his wife have been through. And I say that in all sincerity. They have lived a nightmare. But I've said it before and I'll say it again, two wrongs don't make a right. And Sue Mann's had a pretty nightmarish life for the last year. It's horrible living under the cloud of an indictment that she has had to live under for over the last year. You can't do anything about Dr. Pierce and Melissa Pierce's nightmare. You can do something about Sue Mann's. And it's time for that to end. It's time to tell these folks, with all the power and resources of the federal government, we expect you to play fair. That ain't happened in this case. You haven't proved Sue Mann committed any crime in this case. And I ask you to do what's right under the evidence you've heard in this case.

Thank you.

THE COURT: Mr. Gordon, rebuttal.

MR. GORDON: Ladies and gentlemen, there is one victim in this case, he's seated right here in the front row, Dr. Trent

Pierce. He is the only victim in this case. These two sitting over here, they're not the victims of any conspiracy among the government. They're not the victims of any abuse of power. They're here of their own doing. What the defense wants you to do is to compartmentalize every single charge in this case, look at it separately, and then they'll offer you some excuse for why you shouldn't find the defendants guilty on this. They want you to isolate every single little fact by itself and attack every fact independently of the rest of the evidence in this case. Well, what we, Karen and I, want you to do is to step back, look at the entire case, because when you look at the entire case, you see how it fits together. Karen and I want you to use your common sense, to use your life experiences, to use your knowledge of human nature, and figure out what makes sense in this case.

Is it so hard to believe that a man who had over a hundred machine guns -- there's pictures of them, there's some in evidence; a man who had over a hundred machine guns, countless other guns, tons of ammunition; a man, who, in his own words, was obsessed with this stuff, this is how he chose to spend his money, this is what he decided to surround himself with, these are his toys; a man who would take machine guns and grenade launchers and stand on his back porch and shoot stuff into Lake Dardanelle; a man who owns his own gun range; a man for whom money is no object. Is it so hard to imagine that someone like

that would cross the line and get his hands on something that he shouldn't have? Is that so hard to believe? He's a gun collector. Okay, sure. What that means is, he has access to this stuff. Thao Le was a gun collector. He crossed the line. Lloyd Hahn was a gun collector. He crossed the line. Even their expert, Mr. Norrell, even he said that people in this business can cross the line. And that's exactly what happened in this case.

Dr. Mann has been buying these things, surrounding himself with these toys since the early 1990s. In the mid to late '90s, he started dealing with the big boys, Thao Le, Lloyd Hahn, Daniel Robinson. He started going to Knob Creek with his dad and his brother. Remember them telling you about Knob Creek, where anything goes? They shoot machine guns, they blow stuff up, there's flamethrowers. You can buy and sell whatever you want there. And that's where he was, with his brother and his dad, with a whole bunch of cash. In 1996, October of 1996, Thao Le told you it might have been in Knob Creek that Dr. Mann bought this grenade launcher. It wasn't attached to this rifle at the time. It was just the grenade launcher. When he bought it, he got the bore brush, he got the practice grenades. What does that tell you? He wants to play with it. The only reason it's mounted on an M-16 is to play with it. And this is when Dr. Mann starts to cross the line. This is the beginning of it, right here.

After this -- and you can track all this through the paperwork, all the NFA records, documents seized from Dr. Mann's house, Exhibits 114 and 115. Look at that information. What you'll see is, right after he buys this from Thao Le, that's when his relationship with Lloyd Hahn blossoms. I hope you all remember this. And you may, because it probably bored you to death. But there was a point when Lloyd Hahn was up here, I went through multiple letters between Dr. Mann and Lloyd Hahn. The point of that was to show you the type of relationship that they had, how much money they were passing back and forth, the type of weapons that were going back and forth. Hahn told you that he was a good customer. And he was such a good customer, Hahn tried to sell him one of these (indicating). Remember that?

These pictures, by themselves, tell you a whole heck of a lot about what was going on between Dr. Mann and Lloyd Hahn. And if this isn't enough, Lloyd Hahn told you, Yeah, I crossed the line with him. You know what? You don't have to take Lloyd Hahn's word for it, but another document that was found in Dr. Mann's house, "To: Dr. Mann. From: Lloyd Hahn." Read the top line. "Much dissent here. Don't know who anyone is anymore. Can't do anything like I used to." He told you what that meant, that there were a lot of new players in their world and they couldn't trust the people that they were dealing with anymore.

Lloyd Hahn told you he sold Dr. Mann both grenades in this case. The defense wants you to think that Lloyd Hahn is lying to you under a grant of immunity. And you really need to think about this, folks, because this is important. You have to understand how the grant of immunity came up to understand its importance in this case and whether or not it affected his testimony. If you remember, Lloyd Hahn told you ATF sent an agent to his house to talk to him about Dr. Mann. And he didn't tell him everything. He told him a little bit and sent him away. He wouldn't even let him in his house. But with all the information here, it was like, No. You go give him a grand jury subpoena. He's coming down to talk to us. And that's when I got the phone call from his attorney, Mike, he's not going to tell you anything. He's going to stand on his Fifth Amendment wright and not say a word, unless you give him immunity. And that's what I did. We had no idea what he was going to say. None. They want to talk about he didn't want to go to prison and die in prison. We didn't know what he was going to say, period. How could we prosecute him for something we had no idea what was going on? We had no idea that he had sold him these two things. None. We gave him the grant of immunity, Whatever you tell us, we won't use it against you, and he told us, and then he came and told you. Without that letter of immunity, without that agreement, we never would have known. We never would have known. Dr. Pierce would still be sitting around

wondering, Who in the world tried to kill me, who blew me up? But that is what freed the information from Lloyd Hahn. It has no bearing on his testimony. The only thing it did was get him to talk to us and talk to you. Recognize that for what it is.

You know this MK3A2 was the device used in the bombing. All the parts and pieces that were collected from the bomb scene, you heard from Lloyd Erwin who came in here and told you specifically how and what was recovered, he knew what it was. I know you all remember that. Agent Shelley then came in here and told you that this is the only grenade in the world, in the world, that came in a fiber body filled with TNT. It's no coincidence that Lloyd Hahn sold those to Dr. Mann and those were used in the bombing. It's no coincidence that Mr. Kimbrough told you that he saw those in Dr. Mann's house. The defense wants to talk about pictures that they showed Lloyd Hahn. And I really hope you remember how this happened. What they did is, they took him a picture, and they showed it to him and they said, It looked like this, and then it looked like this, didn't it? And then Ms. Couch backed off and said, Well, disregard the writing on it. If it didn't have the writing on it, it would look like this. Well, the writing was all over it, and it made it look nothing like this. So, yeah, disregard the writing, we don't really know what size it was, but other than that, sure. When you know that Lloyd Hahn gave him that, you know that's what Kimbrough saw. And you also have to

understand, Kimbrough saw a lot of stuff in that house. He described a lot of things to you. He did say that he saw these. He did say -- because he remembered the tall black cylinder and the spoon. He did say -- I showed him the pictures of the grenades that were buried in the ammo can. He specifically said, I remember those. And not only do I remember the suit laying on top, I remembered those bundled things that they're sitting on.

And they want to put Mr. Kimbrough, Jeff Kimbrough, the security guy, they want to put his word up against Wayne Henry's word; Wayne Henry, the guy that built the addition on the house, who said the gun safes weren't even in there; that the only machine gun he saw in the house was the .50-caliber machine gun that was set up on the floor of the living room. You can't go on his word because none of the stuff was there. They were building on the house. Dr. Mann had moved the stuff. That's why Mr. Henry didn't see it. It's not real complicated or real hard to figure out.

The thing you need to realize about the bombing in this case is that it was personal. And the defense wants you to speculate about all these other doctors that might have wanted to do it. And I'll tell you, yeah, sure, there are probably several doctors, many doctors out there that are unhappy with the state medical board, because look at what the board does. They discipline doctors who aren't practicing medicine like they

should be. Okay? So, yes, there are doctors. But you've got to ask yourself, how many of the doctors -- how many of the doctors have this in their life? How many of the doctors have their own private arsenal downstairs in their basement? How many of the doctors have access to this grenade? Again, a grenade that Stephen Shelley, who is in law enforcement, he's a bomb tech, it's his job to deal with explosives, he had a hard time finding one of these. And, again, like Karen told you, how many of those doctors -- and none of them singled out Dr. Pierce in communications with the board, in the e-mail that was sent to India, in the motion to recuse. Dr. Mann didn't send anybody else's picture over to India. It was only Dr. Pierce's. He didn't file a motion to recuse on anybody else for being unfair and prejudiced against him. It was only against Dr. Pierce. Dr. Pierce was the only person singled out in that man's letters. So don't talk to me about maybe all these other doctors. This is the only doctor that was fixated on Dr. Pierce. And I know you felt the tension when Dr. Pierce sat up there on the witness stand and told you, he told you what he thought of the way that Dr. Mann practiced medicine. He told you that he didn't think that Dr. Mann should ever get his DEA permit back, ever. I know you felt the tension.

And you've got to go one level deeper than that, because for Dr. Mann, this was about more than just his DEA permit. What you need to do is, you need to remember what Gerald Riley

told you, his friend, Gerald Riley, the fitness trainer, who told you that Mann had told him that he wanted to kill those motherfuckers -- excuse my language, but those were his words -- when referring to the board. And it wasn't just one time. We asked Gerald about that. He said it was several times. So, yeah, we vent once or twice, but to say it several times, it's a little bit deeper, and I think you'll understand why it was a little deeper with this man over here, because Gerald told you that Dr. Mann felt that he was being singled out by the board because of where he was from and his religion. It doesn't get much more personal than that. This was deep-seated in Dr. Mann. This wasn't just about some other doctors who had used drugs and were angry with the board. This was deeply personal within that man. He felt that they were filing all these frivolous complaints against him, harassing him, trying to get him because of where he was from and what he believed in. That's how deep-seated this was. That's what separates him, along with all this other stuff, from the other doctors. And you have to recognize that the timing of the bombing was not a coincidence. That was part of the message. It's no mistake that the bombing occurred on the morning that Dr. Pierce was coming down to the medical board that Wednesday morning. That was not a mistake. It's no mistake that it was the first medical board after Dr. Mann found out that the board was checking him out again. He knew that because Rita told him. That's what she told you,

and that's what happened, that's how he knew. And when he found out, The board is coming after me again, he lashed out and he took it out on Dr. Pierce, the man that he is fixated on.

The 40-millimeter grenades. At first, I wasn't going to talk about it a whole lot, but now all of a sudden this is a law enforcement conspiracy. I guess ATF planted this box out there. The State Police planted it out there. The Pope County Sheriff's Office. Maybe it was the City of London. You've heard from 70 witnesses that we brought in here. Most of those were law enforcement specifically dealing with search warrants and finding of the ammo can. None of those people knew Dr. Mann. None of them knew his family. These were all people just doing their jobs. I mean, really, how desperate do you have to be when you start pointing the finger and saying, Law enforcement was out to get me? And, you know, with the number of patients that he had dying, maybe they didn't want him in their town, but it's a huge step to then say that law enforcement planted these grenades. Did they blow up Dr. Pierce too?

When you're back there -- well, the reason they have to do that is because there's nothing they can do about the grenades. This ammo can that was buried in the ground matches the one found in his garage. It's the twin to the one in his garage. And they want you to say there were 528 of these in Central Arkansas. No. What Gerald Riley told you was, when they went

to the gun show together, he and Dr. Mann, Gerald Riley cleaned the guy out, and they left there with seven big tins and a bunch of smaller ones that fit inside. There were 528 made in the world, not made here in Central Arkansas, and there were seven that came home with Gerald Riley and Dr. Mann. And it is no coincidence that the one buried down the road from Dr. Mann's house matches the one in his garage. It's no coincidence that the contents of the ammo can could be fired from one of Dr. Mann's two grenade launchers. Those were his toys. The question y'all need to ask is, why were they buried? If Dr. Mann had them for all these years in his house, why would he bury them down the road? All of a sudden, why does he need to get them out of the house? And there's only one logical, rational explanation. He knew when that bomb went off that ATF would be at his door. Because he was involved in this whole plan to bomb Dr. Pierce, he knew when it was going to go off, so he knew when those grenades had to get out of his house. So what he did is he took the remains of two rolls of black plastic that he had, wrapped up the can, walked them down the street, and buried them at the end of Galaxy Lane. He didn't want to get rid of them. He just wanted them to be there until the heat was off, because he knew ATF was coming, and they did. He buried them -- well, let me find -- you need to really understand this neighborhood. This is Dr. Mann's neighborhood right up here. It's on a peninsula out in the lake. Very

isolated. One way in, one way out. Who else is going to bury the grenades out there? Who else but him? The reason they're right down the street from his home is so he can keep an eye on them. It's an isolated area. He doesn't want them too far away. He wants them close enough to where he can make sure everything is okay. And they're buried in an area where no one should be. There's no construction, there's no homes. There's no nothing back there. You just walk down the street and you put them right there. And you don't bury them real deep because then you might have a hard time finding them. So you just bury them lightly, so if you have to, you can just kick around some dirt and find them. And that's exactly what the city worker told you what happened, that's how he found them. He was walking in the woods to use the restroom, and he steps on it, catches his foot, and unearths the top of the box. It's not that complicated. Your common sense tells you these were his grenades, and when you know these were his grenades and why they were put out in the field, that ties him further, deeper into the bombing, because he had to bury them because he knew ATF was coming.

Dr. Mann is not dumb, and he has done his best to stay one step ahead of law enforcement this entire case. It started with burying the grenades. And once he got arrested, it continued with Mrs. Mann. He tried to stay one step ahead of us: They're coming with the search warrant to the office. I'll tell you

what. Go in there and tidy things up for me. He tells her in code to take the signatures, the checks out, give them to Tim or Riley, and she does. On these phone calls, you can hear there were guns in the office. We didn't find any guns when the search warrant was run. Where did they go? All this stuff that was taken out by Phil and Rita. Here's the thing about that. It was a truckload and a carload full. To Phil and Rita, it was junk, to them, without a doubt. The point was, ATF would have known what it was. And one of the remaining binders that did not get burned was a folder for the bank records of Sandip Mann, the defendant's brother. So who knows what was burned. But it is an awfully odd time to be doing spring cleaning right after your husband gets arrested.

So let's talk about the checks. Mr. Dudley wanted to know a bunch of questions. I tried to keep up with them. She didn't conceal the checks from us is what he's saying, because she gave them back to us when we issued a grand jury subpoena. Well, you know, that's not really how it works. That's not her voluntarily coming forward with the information. We had to compel her with the subpoena. The concealment occurred when she took them out of the office. When you listen to the call, she even says, Signatures, locked drawer, office. They were in a locked drawer in his office. She took them out from a safe place -- they want to talk about she thought it would be safer elsewhere. Why didn't she take it home and put it in your gun

safes or somewhere else in your house? Why do you take it to one of your husband's friends and say, Here, keep this for us? He wants us to show that she knew what she was doing was wrong. Well, how about when she goes back and she tells Gerald the next day, I'm sorry I got you involved in this? How about her apologies? How about him burning up Gerald's phone to apologize to him? They knew what they had done was wrong. It's not that complicated. She doesn't get to decide what's relevant to this investigation. We do. And it's not that it had to affect a grand jury investigation, it's that it would have or could have. And in a case like this, a man with all that money, the money trail's always relevant, especially when his brother in India -- he sent the e-mail to his brother in India. His brother in India owns the clinic. They're buying and selling cars in the brother's name. The land's in his brother's name. It is relevant for us to check out the brother for the facts of this case, especially when he got deported to India in 2002 and yet he still has all these things going on here in the United States.

It's late. You've been in the jury box for a painfully long time. This case is not that complicated. Like Karen told you, it's pretty simple. And like I told you, we want you to step back and look at the case in its entirety, see how it fits together, see what makes sense. Remember, there's one victim in this case, and he's seated right over there. They're not

victims. Dr. Pierce was doing his job, protecting us from doctors who are unfit, standing up for us, and now we've got to stand up for him. That man over there is the one man who had the motive, the means, the knowledge, and the deep, dark desire to hurt Dr. Pierce. He needs to be held accountable, and we ask that you find him guilty.

THE COURT: Well, ladies and gentlemen, this is the time you get to do your job. I'm going to give you your last instruction. I am going to hold up on giving you the verdict forms because the lawyers and I still have to work out some issues with the verdict forms. I'm going to release you for today, after I give you this instruction, and then I want you back here tomorrow at 9 o'clock, at which time you can begin your deliberations.

As I told you earlier, if there's any piece of evidence or anything you need, let us know and we'll make sure we bring it back to you.

"Now, in conducting your deliberations and returning your verdict, there are certain rules you must follow. I'll give you those rules now:

"First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

"Second, it is your duty, as jurors, to discuss the case with one another in the jury room. You should try to reach an

agreement if you can do so without violence to individual judgment. Because a verdict, whether guilty or not guilty, must be unanimous.

"Each of you must make your own conscientious decision, but only after you've considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

"Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

"Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

"Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone, including me, how your vote stands numerically.

"Fifth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your

verdict should be. That is entirely for you to decide."

And I'll say that again. "The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be. That is entirely for you to decide."

"Finally, the verdict forms are simply the written notice of the decision that you reach in this case."

Now, we have a number of verdict forms that we've been working on, and I'll just show you an example of them. This first verdict form states: "The United States of America v. Randeep Mann and Sangeeta Mann, a/k/a Sue Mann," and it has "Verdict Form" on it. And here's the way all of them, for the most part, will read: "We, the jury, in the above-entitled and numbered case, find the defendant Randeep Mann," and there's an underline, "guilty or not guilty." I would say write in your verdict. And sometimes juries will come back and just circle one or the other. I say that lets you off easy. You need to write it in. And it says, "of the crime charged in Count 1 of the indictment." So as to Count 1, you'll decide whether guilty or not guilty, and you'll write it on that line, Count 1, use of weapon of mass destruction. It explains the count. Then it has the date. And whoever you choose as your foreperson has to sign it. We have a separate verdict form for each count and for each defendant on each count for which he or she is charged. You have to go through each one and decide each one of those counts

individually.

Now I'll just continue reading the instruction. "You'll take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in each form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom."

So, you understand what your responsibility is. At this point, you can retire to the jury room. But as I said, you are free to go for today. I would ask that you come back tomorrow, bright and early, at 9 o'clock, so we can get started.

Finally, and it's probably even more important now, I ask you -- although I told you once you get the case, then you can talk about it. Well, if you're walking down the hallway and you want to talk to your fellow jurors about the case, you actually could, but I would ask you not to. I wouldn't want anybody in this courtroom to hear what anybody's opinions are about this case until the full jury speaks. You understand what I'm saying? So what I ask you to do is, even more critical now than before, that you not talk to anybody about the case, outside your fellow jurors, that you not read anything about the case, that you not watch television about the case, because there will be stuff all over the news tonight about the case; that you not listen to the radio about the case. Don't let anybody in your families come up and start telling you what their opinions are about the case. Just tell them to hold tight, you'll be able to

talk to them once you get your verdict decided.

The final thing. Don't talk to anybody that you see in the courtroom on your way out, if anybody comes up to you and says hi. We don't know who each one of those people are. So as I said all along, what do we want? We want this process not only to be fair, but what? To appear to be fair. So I can't have you out here talking to lawyers, talking to witnesses, talking to somebody out here in the courtroom because you don't know who they are, and somebody might see you talking to somebody who is connected to the case in some way and think something fishy is going on, even though I know you would not let that happen.

Okay. You can leave for today. Come back tomorrow at 9 o'clock. I will give you a copy of the verdict forms and the instructions when you come back.

And a final thing. My two alternates, you don't have to come back to the jury room tomorrow. What I want you to do is, I want you to stay downstairs in the jury lounge, and if we need you, we'll bring you up. Okay?

(Whereupon, the jury exited the courtroom and proceedings continued in open court as follows:)

THE COURT: Mr. Black, will you be with the jury when they deliberate? Do you know if you will be?

COURT SECURITY OFFICER: I sure don't.

THE COURT: Let me do this. Even though they've already gone, let's swear you in, and we'll swear in whoever

takes over for you tomorrow.

COURT SECURITY OFFICER: Yes, sir.

(Court security officer sworn as bailiff.)

THE COURT: Okay. Thank you, Mr. Black. All right. Now, lawyers, I think we have the verdict forms. Do you want to work on that this evening? I would like to put them in the hands of the jury as soon as possible, but I don't think we'll need them until the first couple of hours tomorrow morning. So if you want to go home and get some rest and come back in the morning, I'll be here. The question is, what time tomorrow do you want to get together to go over them? I really don't think there's any need for you to be up here at 9 o'clock, unless you just wanted to. I'm sure you all want to get a good night's sleep.

MR. DUDLEY: How about 10 o'clock, Your Honor?

THE COURT: 10 o'clock is good. For the government, 10 o'clock okay?

MS. CASSINELLI COUCH: I need to make a record.

THE COURT: You may.

MS. CASSINELLI COUCH: 10 is good for us.

THE COURT: You can make your record now.

MS. CASSINELLI COUCH: Whenever you prefer. At the bench?

THE COURT: I told you you can make it at the lectern or at the bench, either way. If you make it at the lectern,

that's fine.

MS. CASSINELLI COUCH: I don't care.

THE COURT: You can come to the lectern to make it.

MS. CASSINELLI COUCH: Your Honor, we need to renew our severance based on the government's final closing argument. We need to renew our motion for severance again based on the government's final closing argument. Mr. Gordon argued to the jury that all the evidence was globally admissible, cross-admissible as to every other count, to look at the, quote, case as a whole, implying that each and every count, each and every fact is relevant and admissible evidence as to each and every other count. And that is inaccurate, it is not a correct statement of law. And I think that our briefs have fully set out why it is so important for those counts to be severed, and that argument just hammered that error in, and I think that's highly prejudicial. So we would just renew our motion. And I have another motion too.

THE COURT: That's denied.

MS. CASSINELLI COUCH: The second one is, we would ask the Court to reconsider the admission of our proffered exhibit, which I'm not sure what number it is. The government's closing arguments have reiterated the importance of the picture to their case, of the picture, the e-mailed picture of Drs. Pierce and Jouett. And it is critical, critical to our defense that the jury understand Sarina Mann's testimony as to the religious

aspects to the sending of that picture, and specifically to the identifying of individuals who have some influence over proceedings and areas of their lives. And that photograph with the two circles with the names that was found in the home is crucial for the jury to be able to see the parallel in support of our defense. And not allowing the jury to see that exhibit really hinders our ability to present a defense. And we would ask that the Court reconsider in allowing that photograph to go back to the jury.

THE COURT: What's the position of the government on the circle, the prayer circle? It's not a picture. It's more of a drawing or writing. I think we've heard argument on this before.

MR. GORDON: Your Honor, our position has not changed at all.

THE COURT: I'm not sure. Did we take that up at the bench or did we take that up in open court?

MR. GORDON: At the bench.

THE COURT: For the reasons that I stated at the bench -- and I think -- who discussed it in closing? Was it Mr. Hendrix or did -- I don't think Mr. Gordon did.

MS. CASSINELLI COUCH: Ms. Whatley did, and I think Mr. Hendrix did.

MR. HENDRIX: What did I do?

MS. CASSINELLI COUCH: I think Mr. Gordon did as well.

It's a pretty critical piece of evidence for their case. I think when you balance the needs that the Court expressed earlier at the bench with the defendant's need and right to present a defense and evidence in support of it, clearly the constitutional right to present a defense outweighs any other consideration in this circumstance.

THE COURT: I'm going to deny it. I denied it before. I think it's prudent to deny it.

Is there anything else we need to take up today? 10 o'clock tomorrow?

Have you given opposing counsel your proposed --

MS. CASSINELLI COUCH: No. And I need to discuss them anyway. I just threw something together.

THE COURT: You don't have to actually propose these. If you think better of it in the morning and you want to submit something else, you can.

MS. CASSINELLI COUCH: Yes. I'll print it and talk to them. Thanks.

(Overnight recess at 7:10 p.m.)

C E R T I F I C A T E

I, Eugenie M. Power, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Eugenie M. Power, RMR, CRR, CCR Date: March 17, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

August 5, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 10:57 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 17
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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On Behalf of Defendant Randeep Mann (1):

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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

(Proceedings continuing in open court at 10:57 a.m.)

THE COURT: Okay. I believe we were working on our jury instructions. Do we have a completed pack of verdict forms? I have what I had yesterday plus I have three additional ones that were just given to me. But I was wondering if anybody had an actual pack of which ones are we going to use and which ones are we not going to use?

MS. WHATLEY: Okay. Okay. Your Honor, the one for Count 1 that was just given to you --

THE COURT: Yes.

MS. WHATLEY: -- that is an agreed-upon one.

THE COURT: Okay. And it reads -- let me hand it to you. Ms. Couch, would you give her this?

MS. CASSINELLI COUCH: Sure. Thank you.

MS. WHATLEY: Yes, Your Honor, that's the one.

THE COURT: Okay.

MS. WHATLEY: For Count 2, I believe the one that was originally submitted with the United States' jury instructions is correct with the exception that we need to add at the very bottom regarding whether or not injury to a person occurred, that we have to add, "We the jury in the above-entitled and numbered case find beyond a reasonable doubt that personal injury to another" --

THE COURT: I have that.

MS. WHATLEY: Okay. The verdict form originally

submitted for Count 3 is correct.

THE COURT: Okay.

MS. WHATLEY: For Count 4 is correct. For Count 5 is correct.

THE COURT: Hold on just one second. 4, 5, okay.

MS. WHATLEY: Count 6 is correct. There are two forms for Count 7, one for Randeep Mann, one for Sangeeta Mann, and those are both correct.

THE COURT: Okay.

MS. WHATLEY: The one that was given to you for Count 8 for Randeep Mann and Sangeeta Mann, those are agreed upon.

Did you add the "S"?

THE COURT: Would you take a look at these?

MS. WHATLEY: Are you okay with those, Mr. Dudley?

MR. DUDLEY: I am.

MS. WHATLEY: The ones for Count 8 are okay. And the one previously submitted for Count 9, Mr. Dudley? Is that one okay?

MR. DUDLEY: Yeah. That's just guilty and not guilty.

MS. WHATLEY: Yes, sir. And the one for the Count 9 previously submitted is okay.

THE COURT: Okay. Here, put in "beyond a reasonable doubt" there, Count 2. So are those ready to go back to the jury?

MS. WHATLEY: Yes, Your Honor.

THE COURT: Do we have anything else we need to take up?

MS. WHATLEY: We heard that they were writing a note.

THE COURT: Yeah. And we'll wait on that. Let me tell you what my process usually is. When they write a note, I get it, normally I call the lawyers in. I don't know if you-all are going to hang around the courthouse today. If you choose to -- or if you choose not to, what I will do is I'll call you and we can either come back up and discuss it, or we can join on the telephone and discuss it. Normally I let the lawyers tell me what the response should be because I don't get into that. But any time we get a note, I'll inform you and let you know what it is. I think we have one coming, but we can discuss that when it comes out.

Another thing, we had an issue with regard to the exhibits. What I think we're going to do, with some of the firearms and different things like that that we would not allow to go back to the jury room, I know this is going to hurt the feelings of some of the people who are sitting in the courtroom now, but we're going to have to clear the courtroom, let them come back out here and look at them. And, of course, none of us can be in here while they are looking at it because we can't try to figure out what they are doing with it. And so I will put everybody out of the courtroom, lock it up, allow Mr. Bellamy to bring them out and take a look at what they need

to look at.

MS. WHATLEY: Your Honor --

THE COURT: Mr. Dudley has risen to his feet.

MR. DUDLEY: Your Honor, I have no objection to that, but I would request that the sound system in the courtroom be turned off while the jury is --

THE COURT: Not only the sound system, but the closed-circuit television. We'll turn everything off but the lights.

MS. WHATLEY: And, Your Honor, anything they don't have, we do have up here, and it is available and we can have an agent pull it out and get it ready and leave.

THE COURT: That's fine. And what we'll do, Mr. Bellamy or whoever is with them can get it from the agent or whoever and take it back to them and then bring it back in here.

There was something else. You don't have anything else?

MS. WHATLEY: The next thing that we have in the packet were the forfeiture instructions, and we were discussing whether or not it would even -- in the event there was a conviction on those counts, whether or not that would even have to be something that would have to go -- the jury doesn't necessarily have to find the forfeiture if the defendant waives that and lets the Court decide. I was just asking as to whether or not we needed to go over that.

MS. CASSINELLI COUCH: And I think we just need to discuss it.

THE COURT: You want to discuss that without me here, or do you want to discuss it now on the record?

MS. CASSINELLI COUCH: No. I mean we with the client.

THE COURT: That's fine. Another thing. I have a meeting that I want to go to over in Helena at 6 o'clock this evening -- this afternoon. The question is going to be, if it looks like there's going to be a verdict today, I'll stay. If it looks like there's not going to be one today, I'll probably go. Now, a question for the lawyers. How do I ask or find out whether there's going to be a verdict today?

I would not want to lead the jury in any way to believe that I have something to do and I want to rush them up. You understand what I'm saying? But I do kind of want to get a feel for where they are. Because if they are not going to bring a verdict back today, I don't want to stay until 6:00 or 7:00 this evening when -- so what I think I will do is ask whoever the CSO who is handling it to just see what it looks like and let me know. Does anybody have an objection to that?

MR. HENDRIX: Well, it seems to me you could, you know, late this afternoon have a CSO go in and say, "Hey, do you guys want to break early, like 4:00 or 4:30 today, or do you want to stay?"

THE COURT: That might be a better way to handle it.

MR. HENDRIX: And if they say, "We want out so we can come back in the morning," we'll do that.

THE COURT: Mr. Dudley?

MR. DUDLEY: I agree with that, Your Honor. And I would object to asking them if they are going to reach a verdict. I would not object if the Court wants to have a magistrate here to take the verdict if one comes. I think everybody would have to agree to that. But taking a verdict, I don't think that's -- I wouldn't object to a magistrate doing it.

THE COURT: That might be what I do. Does anybody have an objection to that? Like I said, if it looks like there was going to be one today, I would probably stay. But if it looks like there's not going to be one -- we'll play that by ear. I'm not going to worry about that too much.

Another thing before we get to the question, there was something else and I meant to write it down. This is what happens when you don't write stuff down. Oh. The jury this morning asked could they have more than one copy of the jury instructions. And different judges and different lawyers like to do different things. Normally I give one copy and they work off one copy, but a lot of judges give every juror a copy. And there's goods and bads to that. I don't care.

MS. WHATLEY: That's fine with us.

THE COURT: Do y'all have a --

MR. DUDLEY: I don't care. I would as soon give them all one. Probably make it easier on them.

THE COURT: What we'll do is we need to mark the original set so we can have a record of it. And then just make, I guess, 12 copies from it or 11 copies from it so that everybody sitting there can have a copy and they can sit there and discuss it as they're going through it. Do we have an agreement on that?

MS. WHATLEY: Yes, Your Honor.

MS. CASSINELLI COUCH: Yes.

MR. DUDLEY: Yes.

THE COURT: If the lawyers will come to the bench so I can ask this question.

(Bench conference reported as follows:)

THE COURT: The young man that sat at the top, he was sitting there, he was into it. Yeah. He was really into it. The question is this, is -- and it's from [Juror No. 7], "Can we see full transcripts or hear the full call (greater context)," in parentheses, "around RM's comments that he knew the firearms needed to be registered," of March 7 and 11, and the exhibits are 144-A, 147-A and B, and it says 1496, but it must be 149-B.

MR. DUDLEY: I'm impressed. They kept up with the exhibits better than I did.

MS. WHATLEY: I noticed.

MR. HENDRIX: Ouch.

THE COURT: Do we have the transcripts?

MR. DUDLEY: Not in evidence. And I read that to mean they are asking, "Can we hear the rest of the recording, not just what's played?"

THE COURT: Yeah. They can only --

MS. CASSINELLI COUCH: Consider what's been submitted in evidence.

THE COURT: In evidence, so they have -- do they have the transcripts?

MS. WHATLEY: No, Your Honor.

THE COURT: I thought you introduced the transcripts of the actual call?

MS. WHATLEY: No.

THE COURT: Can they hear the actual calls, what they heard, again?

MR. DUDLEY: Sure.

MS. WHATLEY: Yes, you have to give them a computer so they can play it.

THE COURT: That's right.

MS. CASSINELLI COUCH: And block Internet access.

THE COURT: What do we need? Hold on just one second. What was on the DVD? Was that on DVD, or CD?

MS. WHATLEY: They were on CD, but I don't think they can be played on a CD player. I think they have to be played

on the computer. I thought the Court, meaning the IT, had a computer that was just a basic Internet --

THE COURT: Can we get a --

COURT SECURITY OFFICER: They can. They have a portable that we --

THE COURT: A cart. Okay. Question, what's our response?

MS. CASSINELLI COUCH: "You may only consider what's been admitted in evidence."

MR. HENDRIX: I prefer the government did not introduce --

MR. DUDLEY: I have a question. If we send that back, do you have on the DVD just what was introduced?

MS. WHATLEY: Yes.

MR. DUDLEY: Not other stuff?

MS. WHATLEY: Yeah.

THE COURT: Should we say, "You may consider only what's been admitted into evidence"? What's the time now?

MR. HENDRIX: 11:12.

THE COURT: So I don't make any comments about we can give them a computer to play the calls they've heard because that's not what they are asking for.

MS. CASSINELLI COUCH: I say you just take the computer --

THE COURT: And we just take it back there.

MS. WHATLEY: Take it to them.

MS. CASSINELLI COUCH: Although they are on top of it, they might send another note before you get the computer in there and say, "Where's the computer?"

THE COURT: Tell me if I misspelled anything. I was always the first kid knocked out of the spelling bees. If I misspell anything --

MR. HENDRIX: I did bring my glasses this morning so I can read.

MS. WHATLEY: I think it's fine.

(Proceedings continued in open court as follows:)

THE COURT: Is there any objection to the verdict forms?

MR. HENDRIX: No, sir.

MS. WHATLEY: No, Your Honor.

MR. DUDLEY: No, Your Honor.

THE COURT: We have our verdict form. I'm going to send those back now.

We have a change of plea at noon, so we'll probably have some lawyers coming in here in a minute, in about 30 minutes. You don't have to -- you don't have to move. We can work it out.

MR. HENDRIX: Are we done, Judge?

THE COURT: I would imagine. If you're ready to go, you can go.

MR. HENDRIX: Okay. I've got to go find my life.

THE COURT: I understand. I understand. We'll be in recess, I guess, until 12 o'clock.

MR. HENDRIX: Thanks, Judge.

(Recess at 11:15 a.m.)

C E R T I F I C A T E

I, Judith A. Ammons, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 22, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

August 6, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 10:16 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 18
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

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MS. KAREN D. WHATLEY, Assistant U.S. Attorney
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Via Telephone:

On Behalf of Defendant Randeep Mann (1):

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[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

(Proceedings continuing in chambers at 10:16 a.m.)

THE COURT: Okay. First, I think this is our fourth question. Has everybody gotten the previous three? I think the first one was the one we took up in the courtroom. And I forgot what the question was.

MS. CASSINELLI COUCH: The tapes.

THE COURT: The tapes. And the second one dealt with -- do we have those?

MS. WHATLEY: They wanted the exhibit list.

THE COURT: The exhibit list. And then one was bringing up the device --

MS. WHATLEY: The gun.

THE COURT: No. We must have five then because one was: Can we have the device to play the recording?

MS. CASSINELLI COUCH: Right.

THE COURT: And we said it's on the way or whatever. So we'll get copies of that before you leave. The fourth or maybe fifth question is a substantive question, and it says, "Per Court's Instruction No. 21, if Randeep Mann was acting on advice of 'an official,'" and that's in quotations, "must we find him not guilty?" And here I know the answer to "must we," but the question is, how do we respond to it? What is the answer that we send back? I don't want to give them the impression that they can't find him not guilty, but I don't want to give them the impression they have to.

MR. HENDRIX: Can you read it again?

THE COURT: It says, "Per Court's Instruction No. 21, if Randeep Mann was acting on advice of 'an official,' must we find him not guilty?"

MR. HENDRIX: The answer is "Yes."

MS. CASSINELLI COUCH: Yeah.

MS. WHATLEY: Do we have Court's Instruction 21?

MR. DUDLEY: I assume that's an entrapment by estoppel instruction. I don't know that, but --

MR. CRABTREE: Yes, it is, *U.S. v Austin*.

MS. CASSINELLI COUCH: The problem was when we decided, we didn't know if we should put it in the actual instruction of the elements or as a second defense instruction.

THE COURT: Let me ask you this, Mr. Hendrix. You and Ms. Couch, this is your issue. It's a defense, but it's not a total defense, is it? It isn't, if you find that he acted on their advice, they have to, do they?

MS. CASSINELLI COUCH: Yes.

MR. HENDRIX: Yes, I think that's exactly what the instruction says.

MS. WHATLEY: What is the instruction?

MS. CASSINELLI COUCH: If they find the defense, then there would necessarily be a reasonable doubt.

THE COURT: Let me read the instruction again.

MR. DUDLEY: Count 4? I thought that's where they

started.

MS. WHATLEY: I did, too.

MR. DUDLEY: I hope they have done more than one count. We all thought they started on Count 4 because that's the way it was argued.

THE COURT: Where's Derrick?

COURTROOM DEPUTY: I think he is visiting the media.

THE COURT: What's he doing visiting with the media? Tell him to come up here.

MR. DUDLEY: He's trying to be a star, Judge.

THE COURT: I leave that up to everybody else.

Okay. The Court's Instruction 21 says, "It is a defense to Count 4 of the indictment charging possession of an unregistered shotgun if an official assured Dr. Randeep Mann that possession was legal and Dr. Randeep Mann relied on that advice in continuing to possess the shotgun."

MS. CASSINELLI COUCH: I mean, I think it's not the only defense he had. But if they found that defense, then, yes, they would have to acquit him.

MR. GORDON: Again, Judge, what was the question?

THE COURT: They say "must we?" "Per Court's Instruction No. 21, if Randeep Mann was acting on advice of 'an official,' must we find him not guilty?"

So the question is, if we find that he acted on the statements of the ATF or whoever, do they have to find him not

guilty. What I would imagine is -- I don't know this -- is that they are probably framing up the discussion right now, or maybe they are down to it and they believe one way or the other and they are trying to determine. I don't know.

MR. HENDRIX: Well, yeah. I don't know any other way to answer it except, Yes." It's -- if you acted on the advice of the official, it provides a defense, and a defense necessarily means you get acquitted. It means you found the defense and the defense is the reason to acquit.

THE COURT: Mr. Hendrix, let me tell you what I normally do. I believe the instruction speaks for itself. And I just don't like telling a jury, "Either you have to acquit, or you have to find guilty." I would rather refer them to the instruction and say -- give them a neutral answer, "the answer is in the instruction," or --

MR. GORDON: "You have been instructed on the law."

THE COURT: -- "Please review Instruction No. 21." To tell them they have to, it's almost as if I'm weighing into their deliberations.

MS. CASSINELLI COUCH: My concern, Judge, is that when we were doing the instructions, you remember, I think mostly you and I were talking about whether or not to put in that count instruction --

THE COURT: Yes --

MS. CASSINELLI COUCH: -- you know --

THE COURT: -- in 20.

MS. CASSINELLI COUCH: -- "If you find entrapment, then you have to acquit." And we decided not to and then just put the second entrapment instruction. And maybe that ended up causing confusion. I thought it wouldn't, but apparently I was wrong.

THE COURT: I don't know that it's confusion. It's just they just want to know do they have to.

MS. CASSINELLI COUCH: And they do.

MR. HENDRIX: Yeah. I guess really the question is, is "What is a defense?" "And a defense is, 'If you find a defense, you must vote not guilty.'"

MS. CASSINELLI COUCH: The way the question is presented, it sounds to me like they are saying, "If we find all of these facts are true and they meet the facts required for this defense, is it a defense that results in acquittal?" And if you say, "Look at the instructions," then obviously they have a question about it and they think maybe they don't have to acquit, which is a wrong interpretation of the law.

MR. HENDRIX: Right. I mean, it's illogical. If they find the facts which legally equates to the defense, if they were to convict, it seems to me that would be overturned because you found the defense.

MR. GORDON: But to me from the instruction, it sounds like there are -- there's two parts to the defense, and based

upon what the jury is asking, they are only asking about one of those parts.

MS. CASSINELLI COUCH: What are the other parts they are not asking about?

MR. GORDON: Say that again.

MS. CASSINELLI COUCH: What are the other parts that they are not asking about?

MR. GORDON: Well, it sounds like he has to be told by an official, and then he has to -- there's, like, a reasonable reliance.

MS. CASSINELLI COUCH: It doesn't say that -- I think that's what they said in their question, right, if he relied on the advice of an official?

THE COURT: It says, "If Randeep Mann was acting on advice of." So they are asking if he relied on it, do they have to acquit him or find him not guilty.

MS. CASSINELLI COUCH: If they found he relied on the advice?

THE COURT: Yes, that's clearly what the question is.

MS. CASSINELLI COUCH: Then they covered all the defense.

MR. HENDRIX: They are saying, "If we find all of the elements of the defense, do we have to acquit?" And the answer is obviously, "Yeah, you have to."

MS. WHATLEY: At this point in time the Court has

given the law --

MR. HENDRIX: That's a better response, "If you find the elements of a defense, you must find the defendant not guilty."

MS. WHATLEY: At this point in time, the Court has given the law. And could you respond and say something to the effect of -- of that "And you must consider Instructions 20 and 21 in conjunction with each other," because I don't think that we can give them more law at this point in time?

THE COURT: The problem is I would rather not say "You have to go back and consider 20 and 21 together" because that gives them the inference that I'm telling them, "No," that, "No, don't just look at 21. You've got to look at 22." I would like to say something just neutral. I don't want to say, "Yes, you have to," but I don't want to say, "No, you can't either." You understand what I'm saying? What is a neutral way of telling them, yeah, they can, I mean, "Yes, but I'm not telling you to"?

MS. CASSINELLI COUCH: Well, could you say, "If you find the elements in Instruction No." -- whatever the elements was, "If you find the elements are not all proven beyond a reasonable doubt, then you must acquit"? "If you find the defense presented in" whatever instruction "has been proven, you also must acquit"? That's not the only way that they can find him acquittable.

MR. DUDLEY: I like that. Either way.

THE COURT: Mr. Crabtree, you're looking like you want to say something. I don't know if you wanted to weigh in. I know this is not an issue for your client.

But somebody has to be able to give me a little more neutral language. I don't want to tell them what to do.

MR. DUDLEY: Judge, let me speculate a little bit. I think what they are asking is, "If we find the government's met its burden of proof under Instruction No. 20, but we also find that he relied on the advice of an official, what do we do?" That's what I think they are asking.

THE COURT: Yeah. I think that's probably right.

MR. CRABTREE: And that might merit an explanation.

MS. CASSINELLI COUCH: Yeah. I mean, in that situation, clearly, they have to find him not guilty. To say anything else, I think, is misleading.

THE COURT: Last word from the government? Anybody going to help me craft some language, because, otherwise, I'm not going to go through a long explanation. I'm going to say something neutral or say "Yes" or "No." And that's what I'm going to do, because the more I start explaining, the more jumbled up this record gets and it can be even more confusing.

MR. DUDLEY: But isn't the answer, "Yes," Judge? If they find he relied -- under that instruction, if they find he relied on the advice of an official, they must acquit. I think

the answer is just, "Yes."

MR. CRABTREE: And that still leaves it up to the jury to decide if they met the facts of the instruction.

THE COURT: That's right. They have to first find that an official told him this, and that he relied on it. But I guess they are trying to say, "Well, what do we do if we find that? Are we required to?"

MR. CRABTREE: And they are.

THE COURT: Because you know how that goes. If they don't want to acquit him, they are not going to find it. You know, I mean, I hate to say it like that, but, you know -- last words?

MR. GORDON: I never liked Instruction 21 to begin with.

THE COURT: Let the record reflect that Mr. Gordon objected to that instruction from the very beginning.

MR. GORDON: And now I really object.

THE COURT: The record is clear on that. And what's the other young man's name who was here?

MR. GORDON: Josh Robles.

THE COURT: He not only objected to it, but he said that it was wrong on the law, and even told me what the law was, what the case law was.

MR. HENDRIX: I do -- I think it's a one-word answer, "Yes."

THE COURT: Last words?

MS. WHATLEY: May I see Instruction 21?

THE COURT: Yes, here are the instructions. 20 and 21 are with them.

MS. WHATLEY: Thank you.

THE COURT: I just don't like telling juries the ultimate issue, "You have to acquit, or you have to convict," because ultimately that's their decision. But I guess I tell them in the instructions that, "If you don't find each one of these elements, you have to acquit." That's the instruction.

MR. GORDON: Judge, I'm looking at the question here and they have "an official" set off in quotations.

THE COURT: They do.

MR. GORDON: And, I mean, that kind of bothers me with -- it makes me wonder really what are they asking about. Is there -- maybe it's not what it appears to be on its surface.

THE COURT: I think I understand your point, but I disagree with you just a little bit. They put "an official" in quotations meaning they understand that they have to find that an official actually told him this. They understand that they have to find that an official did. Now, whether they determine that this telephone call he made or whatever, that that was truly an official who told him that, I think they understand that they have to find that.

MS. WHATLEY: Well, rather than giving just a yes/no answer, I mean, I would prefer either a neutral answer or a "If you find that an official assured him, then you can find him not guilty."

MR. CRABTREE: Or you can leave it more neutral and say --

THE COURT: I can. I don't think that's as neutral as it first sounds.

MS. WHATLEY: I said either something neutral or that.

THE COURT: Because I think that's essentially leading to believe that it's questionable that an official told him that. So that's what I would be doing by restating "an official." So I wouldn't want to do that either. Now, more neutral besides -- I mean, yes or no -- it's going to be "Yes" or "No" if we can't come up with some neutral language.

MS. CASSINELLI COUCH: We vote "Yes."

THE COURT: Of course. Of course.

MR. HENDRIX: And, Judge, let me say this. As far as whatever the response it is, what my main concern is is for the jury not to be left with the impression that we have to establish the defense beyond a reasonable doubt. All we have to do is present some evidence of the defense if it's believed it creates reasonable doubt with the jury.

THE COURT: What he's saying is they don't have to prove the offense beyond a reasonable doubt or the defense

beyond a reasonable doubt. They just have to present evidence of the defense. And if the jury believes it, then that overcomes reasonable doubt.

MR. HENDRIX: Yeah. I just don't want them to think we have to prove it beyond a reasonable doubt.

THE COURT: I understand.

MR. HENDRIX: So, again, I get back to I think the answer is simply "Yes."

MS. CASSINELLI COUCH: Yeah. I think getting into that is confusing because -- I think you're right, just "Yes" or -- "Yes."

THE COURT: I think the answer is in the instructions.

MS. WHATLEY: I do, too.

THE COURT: It says, "If you find this."

MS. WHATLEY: "If you find this, then."

MR. DUDLEY: But the problem is, it says, "It is a defense." It doesn't say you must acquit. And that's their question.

THE COURT: That's true.

MR. GORDON: Yeah. I mean, I think, "If you find the defense in Court's Instruction No. 21" -- I don't know what word -- "exists or has been established, then you must find him not guilty."

MR. DUDLEY: I think that's certainly satisfactory. I think that answers your question.

MS. CASSINELLI COUCH: I can live with that.

THE COURT: Give me that language again.

MS. WHATLEY: "If you find" --

THE COURT: "If you find" --

MR. GORDON: -- "that the defense" --

THE COURT: -- "that the defense" --

MS. WHATLEY: "set forth" --

MR. GORDON: -- "set forth in Court's Instruction No. 21" --

MS. WHATLEY: "Has been established, you must find the defendant not guilty."

THE COURT: Okay.

MR. HENDRIX: It would be something like, "If you find" --

THE COURT: Hold on. I'll tell you what. Here, let me read you what's been proposed by the government. "If you find that the defense set forth in Court's Instruction No. 21 has been established, then you must find Dr. Mann not guilty."

MS. CASSINELLI COUCH: I think it might be better if we just take out the "has been established" and say, "If you find the defense in Instruction 21, you must acquit," because I don't know -- we're sitting here going are we telling them they have to --

MR. HENDRIX: Yeah.

MS. WHATLEY: It doesn't say beyond a reasonable

doubt.

MR. HENDRIX: Let me say off the top of my head. Is this better? "If you find from the evidence the defense in Instruction 21" --

MS. CASSINELLI COUCH: I would say, "If you find the defense, you find him not guilty." That way you're not telling them who established what or -- you know.

THE COURT: But I think that the defendant has to establish the defense. Now, they don't have to establish it beyond a reasonable doubt, but they just have to show it.

MS. CASSINELLI COUCH: Well, there's an issue there because how much do you have to show?

THE COURT: That's right.

MS. CASSINELLI COUCH: If they find that one of the elements wasn't proven because he relied on -- I think you're getting into legal issues there about who has to present what and by what standard, and we haven't told them any of that.

THE COURT: No.

MS. WHATLEY: I like what we just said.

THE COURT: "If you find" -- she said, "If you find the defense set forth in Court's Instruction 21."

MS. CASSINELLI COUCH: I think that's just more vague or not committing them to some --

MS. WHATLEY: Of course you want it vague, Erin.

THE COURT: Let me ask this. Although the defense --

we haven't told them by what standards you have to show the defense, it has to be established, right?

MR. HENDRIX: Right.

MS. CASSINELLI COUCH: I don't think that any of us know right at this moment what exactly -- if we're raising a reasonable doubt, or if you have to provide something on proof. I think that's a dangerous area to get into is all I'm saying.

MS. WHATLEY: We didn't set forth a standard in the sentence.

THE COURT: How about if we say, "If Dr. Mann has proven the defense set forth"?

MS. CASSINELLI COUCH: No.

MR. HENDRIX: No.

THE COURT: "Has shown"?

MS. CASSINELLI COUCH: That's just not what we -- now, we're, like, changing the original instructions is all I'm saying.

MR. HENDRIX: Clearly, does the defense create a reasonable doubt? The burden is still on the government to establish guilt beyond a reasonable doubt. The defense creates a reasonable doubt if the defense is found. That's why I'm saying it's murky and technical. The answer should be, "Yes," or the modified --

MR. GORDON: Are you saying --

MR. HENDRIX: -- "If you find the defense in

Instruction No. 21, you must find the defendant not guilty."

MR. GORDON: Are you saying the defense is an affirmative defense or -- because you keep just saying that this defense creates a reasonable doubt, and there's a big difference between the two.

MS. CASSINELLI COUCH: Well, I know, and I think what we're saying is that we don't know --

THE COURT: Ms. Couch, can you restate that? We didn't get that.

MR. GORDON: Keep your lips off the speakerphone.

MS. CASSINELLI COUCH: Yes, Your Honor. What would you like me to restate? "If you find the" --

THE COURT: No. You were making an objection just a second ago or you were making a statement and we didn't get it.

MS. CASSINELLI COUCH: I was just saying that I think nobody at this moment right now has any idea whether we're talking raise a reasonable doubt or proving something by some standard. And we can't add law to the instructions we've already given them. I think Mr. Gordon just asked me a question so I was responding to that. So I was basically saying I think we should stay away from all of that because we should have addressed it way before now if we were going to.

MR. GORDON: Yes, you should have.

MS. WHATLEY: If we can't put more law in the instructions, then the answer has to be, "You have to refer to

Court's Instruction 21 to answer your question."

MS. CASSINELLI COUCH: No, because the instructions clearly say that the answer to the question is, "Yes." That law is already there.

MS. WHATLEY: If that law is already there, then we refer back to Court's Instruction 21 and that's what the judge says in his response.

MS. CASSINELLI COUCH: Well, then you're misleading them because clearly they are not getting it.

THE COURT: Hold on just a second.

MR. HENDRIX: It's almost like you can write them a textbook on this issue, or just say, "Yes."

MS. CASSINELLI COUCH: Right.

THE COURT: I'm still trying to understand what the objection to has been established --

MR. HENDRIX: Are we still on?

THE COURT: Yes, we're still on. I'm trying to figure out what the objection to has been established.

MR. HENDRIX: Well, here's the quagmire, Judge. It's sort of the difference between affirmative defenses, which you have a burden of proof, and sort of like self-defense. If it's just raised, it's what creates a reasonable doubt about guilt. And so we get that quagmire there of explaining the difference between those two.

MS. CASSINELLI COUCH: And we don't know which one

applies --

THE COURT: I think the case that I was provided says that it's an affirmative defense, or it's the same as, that the defendant has the burden of proof showing it, not by -- but it didn't say you had to prove it by -- it didn't give a standard.

MS. CASSINELLI COUCH: It was kind of unclear. And I, frankly, think that this was a discussion we should have had during jury instruction conference and raised --

THE COURT: We did. We actually had it. And what happened is I removed the language from the other -- from the other instruction.

MS. CASSINELLI COUCH: That was my instruction.

THE COURT: That's right. Mr. Gordon objected to this instruction, but we gave it. And I think we had the case here that dealt with it, and Mr. Robles argued -- I think you'll remember Mr. Robles argued that the defendant actually has to show the particular agent who gave the information to actually even have this instruction included. And there was a big argument about whether enough evidence had come in to show who Dr. Mann had actually spoken with. And then I made the ruling that because his conversation occurred so many years ago, there's no way you could expect anybody to remember the particular person he spoke with. And so that's why I decided to give the instruction. But I think the case law that we had indicated that the defendant has to prove this, but it didn't

say that it has to be beyond a reasonable doubt. Of course, it wouldn't be. I would imagine it would be a preponderance of the evidence on this type of defense. But I think the defense has to be established for there to be automatic acquittal.

MS. CASSINELLI COUCH: Your Honor, I think we're confusing public authority defense with entrapment by estoppel. And I think we had that discussion during the jury instruction conference as well. You don't have to identify the individual. Mr. Robles' argument was that you have to show that it was an official who I think was able to give some advice.

THE COURT: Well, I think his argument was in the case that he had with him was a case where the Court said you had to actually show the actual official you spoke with and that official had the authority to tell you that you complied.

MR. HENDRIX: Your Honor, what's happening is that is confusing two different defenses. What Erin was saying is the public authority defense does require that the defendant give, "This is the public official that told me that this conduct was okay." That's one defense. The second defense in what the Court has instructed the jury on is entrapment by estoppel, and entrapment by estoppel does not have that requirement.

THE COURT: But when we were here in jury instructions, on this particular offense -- because what Mr. Robles argued was you couldn't call down to the police department and speak with a secretary who is a temp who tells

you that you don't have to register, and then you go and rely on it, and then say it was entrapment by estoppel. That was his argument. And his argument was, we don't know who Dr. Mann spoke with.

MS. CASSINELLI COUCH: And, Judge, that's not a requirement of this defense. And I think that that's what the Court found. The issue for me is more that at that point, the government proposed an instruction that said we think this is an affirmative defense, or we think this is just a defense that raises reasonable doubt. That was the time, I guess, to go explore that area and provide that law and nobody did, so I don't think we can do it now.

MR. DUDLEY: Can I propose a compromise?

THE COURT: Yes.

MR. DUDLEY: I still think the jury's problem is they're saying, "If we find this instruction, it doesn't tell us what to do because it just says it's a defense." How about to stay away from the burden of proof issue if we just say, "If you find Dr. Mann relied upon advice of an official, then you must acquit"? It doesn't comment on what the burden of proof is. It's just --

MS. CASSINELLI COUCH: It takes their language out of their note, right?

MR. DUDLEY: Basically, yeah.

MS. CASSINELLI COUCH: I think that's fair.

MR. GORDON: And I would rather track the language from Instruction 21. "If you find" -- whatever 21 says, comma, "then you must find" --

MS. CASSINELLI COUCH: I can agree with that, too. If you want to take that exact language from that instruction, and put, "If you find," "you must acquit" behind it, that's fine. That actually seems like the most logical --

MR. GORDON: And then the next question will be, "Must we find it beyond a reasonable doubt?"

MR. DUDLEY: You may be right.

MR. GORDON: At which point I'm leaving.

THE COURT: Okay.

MS. CASSINELLI COUCH: Yes, sir.

THE COURT: Here's what I have. "If you find that," and this is where we start quoting directly from the Court's instruction, "an official assured Dr. Randeep Mann that possession was legal and Dr. Randeep Mann relied on that advice in continuing to possess the shotgun," here's where -- "then you must find Dr. Randeep Mann not guilty."

MS. CASSINELLI COUCH: That's fine.

MR. GORDON: Because here's the -- well, the problem is it's -- the issue is registration, not possession.

THE COURT: Well, the possession wouldn't be legal if he didn't register, right? I think that's the whole issue. He said he called over there, they told him he didn't have to. So

I think it loops back. And that quotes directly from the instruction.

MR. GORDON: If that's what it does, that's fine. No sense in arguing about it.

THE COURT: Anybody want to see this? I'm just going to attach it and say, "See attached."

COURTROOM DEPUTY: Judge, do you want me to make copies of that for the attorneys?

THE COURT: Yes, you can if you want.

MS. WHATLEY: I don't see -- I have way too much paper downstairs now.

THE COURT: Okay. That's it. We'll go off the record.

(Recess at 10:48 a.m.)

C E R T I F I C A T E

I, Judith A. Ammons, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 10, 2011
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:09CR00099-01-02 BSM

August 9, 2010
RANDEEP MANN (1); and Little Rock, Arkansas
SANGEETA MANN, a/k/a SUE MANN (2), 10:25 a.m.

Defendants.

TRANSCRIPT OF JURY TRIAL - VOLUME 19
BEFORE THE HONORABLE BRIAN S. MILLER,
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

On Behalf of the Government:

MR. MICHAEL S. GORDON, Assistant U.S. Attorney
MS. KAREN D. WHATLEY, Assistant U.S. Attorney
U.S. Attorney's Office
425 West Capitol Avenue, Suite 500
Post Office Box 1229
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On Behalf of Defendant Randeep Mann (1):

MR. JACK T. LASSITER, Attorney at Law
MS. ERIN CASSINELLI COUCH, Attorney at Law
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813 West Third Street
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MR. J. BLAKE HENDRIX, Attorney at Law
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813 West Third Street, Suite 200
Little Rock, Arkansas 72201

[CONTINUED]

APPEARANCES CONTINUED:

On Behalf of Defendant Sangeeta Mann (2):

MR. TIMOTHY O. DUDLEY, Attorney at Law
MR. DANNY R. CRABTREE, Attorney at Law
114 South Pulaski Street
Little Rock, Arkansas 72201

Defendants present.

Proceedings reported by machine stenography and displayed in realtime; transcript prepared utilizing computer-aided transcription.

(Proceedings continuing in open court at 10:25 a.m.)

THE COURT: I understand that we have a verdict. Is there anything we need to take up before we bring the jury back in? Anything?

Bring them in.

I would say this before they come back in. Regardless of what happens, I would just ask everybody to be respectful of the jury. I know we all have emotions about the case, but I would rather nobody scream out, fall on the floor, do those types of things, because I've seen those things happen.

(Jury enters the courtroom.)

THE COURT: Five weeks, five weeks and a day now. And I understand that we have a verdict. Is that true? First, who is the foreman?

JUROR NO. 7: (Raises hand.)

THE COURT: [Juror No. 7]. Please hand your verdict over.

Okay. [Juror No. 7], you've just handed me, I think it's seven pages or nine pages. Hold on just one second. 11 pages. Is this your verdict?

JUROR NO. 7: Yes, sir.

THE COURT: The verdict reads as -- the verdicts read as follows: "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, guilty of the crime charged in Count One of the Indictment."

And, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, conspired to use and aided and abetted the use of a weapon of mass destruction." And it is dated August the 9th, 2010, by the foreperson, can't read your writing, [Juror No. 7] -- [Juror No. 7].

Verdict form No. 2 states, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, guilty of the crime charged in Count Two of the Indictment. We, the jury in the above entitled and numbered case, find beyond a reasonable doubt that the personal injury to another person did occur as a result of this offense." And it's checked, "Yes." And it's dated August the 9th, 2010, by [Juror No. 7].

Verdict form No. 3 states as follows, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, guilty of the crime charged in Count Three of the Indictment." And that was -- Count Three is possession of unregistered firearms. And that's August the 9th, 2010, by [Juror No. 7].

Verdict Form No. 4, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, not guilty of the crime charged in Count Four of the Indictment." Count Four is possession of an unregistered firearm, and that's an Interord Corporation 12-gauge model shotgun, dated August 9th, 2010, by [Juror No. 7].

Verdict Form No. 5 states, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, guilty of the crime charged in Count Five of the Indictment." Count Five is possession of an unregistered firearm, 7.62 caliber machine gun." It is dated August the 9th of 2010, by [Juror No. 7].

Verdict Form No. 6 states, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, guilty of the crime charged in Count Six of the Indictment." Count Six is possession of a machine gun. It's a 7.62 caliber machine gun. And it's dated August the 9th, 2010, by [Juror No. 7].

Verdict Form No. 7 states, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, guilty of the crime charged in Count Seven of the Indictment." Count Seven is conspiracy to obstruct an official proceeding. It's dated August the 9th, 2010, by [Juror No. 7].

Verdict Form No. 8 states, "We, the jury in the above and entitled and numbered case, find the defendant, Sangeeta Mann, guilty of the crime charged in Count Seven of the Indictment." Count Seven is conspiracy to obstruct an official proceeding. August the 9th, 2010, by [Juror No. 7].

The next verdict form states, "We, the jury in the above entitled and numbered case, find the defendant, Randeep Mann, guilty of the crime charged in Count Eight of the Indictment."

It also states that, "We, the jury, unanimously find the object or objects concealed by the defendant were: A special power of attorney," there's a checkmark there, "A general power of attorney," a checkmark there, "Pre-signed blank checks," a check there, "Financial documents related to banking account ending in numbers 8796," a checkmark there. And Count Eight is "Conceal or attempt to conceal an object from use in an official proceeding." It's dated August 9, 2010, by [Juror No. 7].

The next verdict form states, "We, the jury in the above entitled and number case, find the defendant, Sangeeta Mann, guilty of the crime charged in Count Eight of the Indictment. We, the jury, unanimously find the object or objects concealed by the defendant were" as follows, "A special power of attorney, A general power of attorney, Pre-signed blank checks, Financial documents related to a bank account ending in numbers 8796." And Count Eight is "Conceal or attempting to conceal an object from use in an official proceeding." It's dated August 9, 2010, by [Juror No. 7].

The final verdict form states, "We, the jury in the above entitled and numbered case, find the defendant, Sangeeta Mann, not guilty of the crime charged in Count Nine of the Indictment." Count Nine is making a false declaration to a grand jury. And it's dated August 9, 2010, by [Juror No. 7].

Now, does anybody want to have the jury polled?

MR. HENDRIX: Yes, Your Honor.

THE COURT: Okay. First, [Juror No. 1], are they your verdicts?

JUROR NO. 1: Yes.

THE COURT: [Juror No. 2], are these your verdicts?

JUROR NO. 2: Yes.

THE COURT: [Juror No. 3], are these your verdicts?

JUROR NO. 3: Yes.

THE COURT: [Juror No. 4], are these your verdicts?

JUROR NO. 4: Yes.

THE COURT: [Juror No. 5], are these your verdicts?

JUROR NO. 5: Yes.

THE COURT: [Juror No. 6], are these your verdicts?

JUROR NO. 6: Yes.

THE COURT: [Juror No. 7], are these your verdicts?

JUROR NO. 7: Yes.

THE COURT: [Juror No. 8], are these your verdicts?

JUROR NO. 8: They are, sir.

THE COURT: [Juror No. 9], are these your verdicts?

JUROR NO. 9: Yes.

THE COURT: [Juror No. 10], are these your verdicts?

JUROR NO. 10: Yes.

THE COURT: [Juror No. 11], are these your verdicts?

JUROR NO. 11: Yes.

THE COURT: [Juror No. 12], are these your verdicts?

JUROR NO. 12: Yes.

THE COURT: Okay. Ladies and gentlemen, this has been a long and grueling five weeks, and I really appreciate your service. What I will say to you is -- and I say this to our two alternates who sat through everything and didn't participate. I say this to all of you. A lot of times I hear people complaining and complaining about the government. There's one way that I know of that you really can participate in the process, and that's by being jurors. This is one time that citizens, just normal citizens from off the street, come down and decide -- well -- and make decisions that affect our system, they affect our society.

And I'm going to tell you what. I sat through this whole case and I was looking at you and I was noticing you writing your notes, I was noticing you paying attention. And I really, really appreciate the time you put in. There is no way I can express to you how valuable your service is and was. So before I let you go, I just wanted to tell you thank you and I really appreciate you. You are released and your service is done, so you can go.

Final thing, I've been telling you all along don't talk about the case. I've been telling you all along don't read about the case. I told you all along don't listen about the case. Now you can read, talk, listen all you want now. What I would say to you is, is that you have a right to talk to

whoever you want to about it, and you have a right to tell people, if they want to grill you on things or ask you questions about things, say, "I don't want to talk about it." And if someone is harassing you, just refer them to me; if you say, "I don't want to talk about it. Talk to the judge," refer them to me and I'll talk to them. Okay? All right. You are free to go.

(Jury exits the courtroom.)

THE COURT: And I'm going to say let our alternates go, too.

Now, issues regarding bond, any other issues we need to take up before we adjourn?

MR. DUDLEY: Your Honor, I would ask that Mrs. Mann be allowed the same conditions of release that she's been under.

THE COURT: Okay. Any objection to that?

MR. GORDON: No, Your Honor.

THE COURT: Okay. Anything on behalf --

MR. HENDRIX: (Shaking head.)

THE COURT: Ladies and gentlemen, we will adjourn.

(Proceedings concluded at 10:38 a.m.)

C E R T I F I C A T E

I, Judith A. Ammons, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of proceedings in the above-entitled case.

/s/ Judith A. Ammons, RPR, CRR, CCR Date: February 22, 2011
United States Court Reporter